

Case No. 14-15139

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**CITY OF SAN JOSÉ; CITY OF SAN JOSÉ AS SUCCESSOR  
AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF  
SAN JOSÉ; and THE SAN JOSÉ DIRIDON  
DEVELOPMENT AUTHORITY,**  
*Plaintiffs and Appellants,*

v.

**OFFICE OF THE COMMISSIONER OF BASEBALL, an  
unincorporated association doing business as Major League Baseball;  
and ALLAN HUBER “BUD” SELIG,**  
*Defendants and Appellees.*

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On Appeal from the United States District Court,  
Northern District of California  
Case No. 13-CV-02787-RMW, Honorable Ronald M. Whyte, Judge

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**MOTION TO EXPEDITE BRIEFING AND HEARING ON APPEAL**

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## **I. INTRODUCTION**

Pursuant to **28 U.S.C. § 1657** and Circuit Rules **27-12** and **34-3**, Plaintiffs/Appellants City of San José, City of San José as Successor Agency to the Redevelopment Agency of the City of San José, and the San José Diridon Development Authority (collectively “City of San José”) hereby respectfully request that this Court expedite the briefing and hearing date on this appeal.

Good cause exists for expediting the briefing and the hearing for this appeal because the City of San José will suffer irreparable harm if this appeal is not heard before **November 8, 2014**. The City of San José and the Athletics Investment Group LLC (“Athletics”) have entered into an Option Agreement for the relocation of the Oakland A’s Major League Baseball team from Oakland to San José. The option term expires on November 8, 2014. Apprised of the Option Agreement, Defendants/Appellees Major League Baseball and Commissioner Allan Huber “Bud” Selig (collectively “MLB”) have delayed for almost **three (3) years** from allowing the City of San José and the Athletics to build a stadium. A true and correct copy of the Option Agreement is attached as **Exhibit B** to the Declaration of Philip L. Gregory filed herewith (“Gregory Declaration”).

This case involves a question of great public importance regarding the validity and contours of the so-called “baseball exemption” to the American antitrust laws. The “baseball exemption” is a highly questionable precedent set in 1922 in *Federal Baseball Club v. National League*, 259 U.S. 200 (1922), a decision granting MLB an indefensible exemption to the American antitrust laws that govern every other business and industry in the United States. Justice Blackmun referred to the “baseball exemption” as an “anomaly and aberration,” writing that “[w]ith its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly. *Federal Baseball* and *Toolson* [v. *New York Yankees*, 346 U.S. 356 (1953)] have become an aberration confined to baseball.” *Flood v. Kuhn*, 407 U.S. 258, 282 (1972).

Justice Douglas added that “[t]his Court’s decision in *Federal Baseball Club v. National League*, 259 U.S. 200, made in 1922, **is a derelict in the stream of the law that we, its creator, should remove.**” *Id.* at 286, emphasis added.

**Judge Ronald W. Whyte**, from whose court this appeal arises, wrote that he was bound by the 1922 decision but added:

**“This court agrees with the other jurists that have found baseball’s antitrust exemption to be ‘unrealistic, inconsistent, or illogical.’ The exemption is an ‘aberration’**

**that makes little sense given the heavily interstate nature of the ‘business of baseball’ today.”**

*City of San José, et al. v. Office of the Commissioner of Baseball, et al.*, Case No. 13-cv-02787-RMW, Dkt. No. 41, pg. 15:18-21, emphasis added; *citing Radovich v. National Football League*, 352 U.S. 445, 452 (1957); *Flood*, 407 U.S. at 282. A true and correct copy of Judge Whyte’s decision on the Motion to Dismiss is attached as **Exhibit C** to Gregory Declaration.

Good cause exists to expedite the briefing and hearing on this appeal because MLB has and continues to deny the rights of baseball clubs and cities to freely negotiate relocation based on indisputably anticompetitive conduct. MLB’s conduct is sanctioned based on highly questionable legal precedent and, if allowed to continue, will cause irreparable harm to the City of San José, as well as many other operations of baseball – all of which should be governed by the same antitrust laws affecting **all other sports in the United States**. MLB has operated and continues to openly operate in violation of American antitrust laws based on this 1922 legal authority that is unsupported by contemporary jurisprudence. There is a strong public interest in preventing this illegal conduct from continuing and, if this matter is not heard expeditiously, the option will expire.

On June 18, 2013, the City of San José filed its complaint. Dkt. No. 1; **Exhibit A** to Gregory Declaration. On October 11, 2013, Judge Whyte

issued his Order Granting-in-Part and Denying-in-Part Defendants' Motion to Dismiss, dismissing the federal and state antitrust claims resulting from MLB's refusal to allow the Athletics to relocate to San José. Dkt. No. 41; **Exhibit C** to Gregory Declaration. The record on appeal will be short and can be compiled easily and forwarded to the Ninth Circuit Court of Appeals.

The current briefing schedule is as follows:

- The City of San José's opening brief due May 5, 2014.
- MLB's response brief due June 4, 2014.
- The City of San José's reply brief due June 18, 2014.
- Oral argument has not been scheduled.

The City of San José proposes the followed expedited briefing schedule:

- The City of San José's principal brief due February 10, 2014.
- MLB's response brief due March 10, 2014.
- The City of San José's reply brief due March 24, 2014.

Good cause exists to expedite this appeal because this appeal qualifies as a case of public importance. This Court should expedite the briefing and oral argument schedule for this appeal pursuant to **28 U.S.C. § 1657** and Circuit Rules **27-12** and **34-3**.

## II. FACTUAL BACKGROUND

This appeal arises out of MLB's exclusive territorial rights agreement between and among member clubs, which constitutes a blatant market allocation scheme that is **illegal** under the American antitrust laws in all other professional sports. Dkt. No. 1, ¶¶ 1, 4-11; **Exhibit A** to Gregory Declaration. "A market allocation agreement between competitors at the same market level is a classic *per se* antitrust violation." *United States v. Brown*, 936 F.2d 1042, 1045 (9th Cir. 1991), *citing United States v. Topco Assocs., Inc.*, 405 U.S. 596, 608 (1972). Pursuant to this illegal exclusive territorial rights agreement, MLB has refused to permit the Athletics Club to relocate from Oakland to San José, purportedly because the San Francisco Giants Club "owns" the exclusive territorial rights to San José. Dkt. No. 1, ¶¶ 19, 21; **Exhibit A** to the Gregory Declaration.

After years of preliminary negotiations, in November 2011, the City of San José and the Athletics entered into an Option Agreement which granted the Athletics a two year option (with a one year extension) to acquire property in San José, and relocate the Athletics baseball team to San José. *Id.* at ¶ 76. The City of San José spent considerable time, resources, political capital, and effort to secure the rights to property within San José that would be able to accommodate a professional sports stadium. The

Option Agreement included an extension for a third year. *Id.* The Athletics exercised this extension for a third year, thus extending the option through **November 2014**. See Gregory Declaration, ¶ 5.

The reason that the Athletics have not yet been able to exercise their option is because MLB continues to **refuse** to allow the Athletics to relocate to San José, illegally restraining competition pursuant to the MLB Constitution and the exclusive territorial rights agreement between and amongst the MLB Clubs. After the expiration of the current Option Agreement in November 2014, the City of San José may not be able to put together the same option package as set forth in the current Option Agreement, and the current opportunity for successfully relocating the Athletics from Oakland to San José will be lost because of MLB's illegal conduct.

### **III. PROCEDURAL BACKGROUND**

On June 18, 2013, the City of San José filed this case against MLB bringing both federal claims under the federal antitrust laws and California state law claims. Dkt. No. 1; **Exhibit A** to Gregory Declaration. On August 7, 2013, MLB filed a motion to dismiss. Dkt. No. 25. On October 4, 2013, the Court heard the motion to dismiss. Dkt. No. 38. On October 11, 2013,

Judge Whyte denied the motion to dismiss as to the California state law<sup>1</sup> interference claims for damages, but granted the motion to dismiss as to the federal antitrust law claims under *Federal Baseball*. Dkt. No. 41; **Exhibit C** to the Gregory Declaration.

Judge Whyte agreed with other jurists, finding baseball's antitrust exemption to be **“unrealistic, inconsistent or illogical.”** *Id.* at 15:18-19, emphasis added. Judge Whyte also found “the exemption is an ‘aberration’ that makes little sense given the heavily interstate nature of the ‘business of baseball’ today.” *Id.* at 15:19-21. However, Judge Whyte was duty bound to grant the motion to dismiss because, “[d]espite this recognition, the court is still bound by the Supreme Court’s holdings ....” *Id.* at 15:21-22.

Although Judge Whyte dismissed the City of San José’s antitrust and unfair competition claims due to Supreme Court precedent, he recognized the serious legal and factual flaws underlying that precedent:

**“This court agrees with the other jurists that have found baseball’s antitrust exemption to be ‘unrealistic, inconsistent, or illogical.’ The exemption is an ‘aberration’ that makes little sense given the heavily interstate nature of the ‘business of baseball’ today.”**

*Id.* at 15:18-21, emphasis added; *citing Radovich v. National Football*

*League*, 352 U.S. 445, 452 (1957); *Flood*, 407 U.S. at 282.

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<sup>1</sup> The state law interference claims were subsequently dismissed without prejudice. Dkt. No. 51.

#### IV. LEGAL ARGUMENT

##### A. Good Cause Exists to Expedite this Appeal

MLB has conducted its business in violation of the antitrust laws of the United States since the United States Supreme Court decision in *Federal Baseball Club*, a decision that was dubious in 1922 and certainly indefensible in 2014. MLB should not be allowed to flout the antitrust laws by taking advantage of the inherent delay in legal proceedings in the hopes of stopping the move. This will cause such irreparable harm to San José that an eventual judgment in the City's favor will be too late to allow the Athletics to successfully relocate to San José.

Circuit Rule 27-12 provides that “[m]otions to expedite briefing and hearing may be filed and will be granted upon a showing of good cause.” “Good cause” includes, but is not limited to, “situations in which . . . in the absence of expedited treatment, irreparable harm may occur or the appeal may become moot.”

Here, the Option Agreement for the Athletics to relocate to San José expires on November 8, 2014. If the appeal is not expedited, the City of San José will suffer irreparable harm because the Option Agreement will have lapsed. In that event, the City of San José, after spending years, great resources, and efforts to secure the relocation of the Athletics, will lose the



benefits attendant to hosting a professional baseball franchise.<sup>2</sup> Dkt. No. 1, ¶¶ 67-76; **Exhibit A** to Gregory Declaration. The property covered by the Option Agreement is uniquely able to handle the requirements of supporting a professional baseball stadium. If the Option Agreement is allowed to lapse, the City of San José may not be able to put together an option package similar to the one in the current Option Agreement for the successful relocation of the Athletics from Oakland to San José.

While damages for the economic harm caused by MLB would still offer some remedy to the City of San José, such a remedy is inadequate. Ultimately, MLB's illegal conduct would have been successful in preventing free competition in the baseball market. Dkt. No. 1, ¶ 133; **Exhibit A** to Gregory Declaration. The only true remedy is an expedited briefing schedule and hearing with a final decision from this Court prior to November 8, 2014 in order that the Athletics will be permitted to exercise the option set forth in the Option Agreement.

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<sup>2</sup> The City of San José has already competed for and succeeded in the competition for an option agreement with the Athletics. The only impediment to this free competition is the antitrust violations this lawsuit seeks to redress.

**B. This Cases Involves the Resolution of a Critically Important Federal Question**

Circuit Rule 34-3 defines priority cases to include “[a]ppeals entitled to priority on the basis of good cause under 28 U.S.C. § 1657.” 28 U.S.C. § 1657 provides each court with the authority to determine the order in which civil actions are heard and determined and permits expediting the consideration of any action if good cause is shown. “Good cause” is shown “if a right under the Constitution of the United States or a Federal Statute . . . would be maintained in a factual context that indicates that a request for expedited consideration has merit.” 28 U.S.C. § 1657. “It is abundantly clear that Congress intended to give preference on crowded court dockets to federal questions.” *Zukowski v. Howard, Needles, Tammen, & Bergendoff*, 115 F.R.D. 53, 55 (D. Colo. 1987).

Such is the case here. This appeal relates to a **purely federal question** of significant importance regarding the validity and appropriate scope of the so-called “baseball exemption” to the American antitrust laws. This purported exemption is based on a 1922 decision of the United States Supreme Court that professional baseball did not involve “interstate commerce,” a proposition of no validity today.<sup>3</sup> *See Federal Baseball Club*,

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<sup>3</sup> Many Judges and commentators have opined and written on the antiquated nature of *Federal Baseball*. Writing for the Second Circuit, Judge Friendly

259 U.S. at 206. Given the irreparable harm that will accrue to the City of San José if this appeal is not expedited, as well as the importance of promptly answering this simple and straightforward federal question, expedited briefing and hearing on this appeal is warranted.

**C. This Appeal Involves a Case of Public Importance**

The Court controls its docket and can give preference to cases of public importance. 9 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2351 (3d ed. 2010). This is a case of public importance since it relates to a business that is actively and openly in violation of American antitrust laws, and committing illegal acts that cause significant ongoing harm to competition. Expedited briefing and an

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commented, “We freely acknowledge our belief that *Federal Baseball* was not one of Mr. Justice Holmes’ happiest days [and] that the rationale of *Toolson* is extremely dubious ...” *Salerno v. American League of Professional Baseball Clubs*, 429 F.2d 1003, 1005 (2d Cir. 1970), *cert. denied*, 400 U.S. 1001 (1971). As legal historian Stuart Banner writes in the introduction to his recent book *The Baseball Trust*, “Scarcely anyone believes that baseball’s exemption makes any sense.” (Oxford, 2013). See Samuel G. Mann, *In Name Only: How Major League Baseball’s Reliance on Its Antitrust Exemption Is Hurting the Game*, 54 Wm. & Mary L. Rev. 587 (2012); Mitchell Nathanson, *The Irrelevance of Baseball’s Antitrust Exemption: A Historical Review*, 58 Rutgers L. Rev. 1 (2005); Morgan A. Sullivan, *A Derelict in the Stream of Law: Overruling Baseball’s Antitrust Exemption*, 48 Duke L.J. 1265 (April 1999); Stephen F. Ross, *Reconsidering Flood v. Kuhn*, 12 U. Miami Ent. & Sports L. Rev. 169 (1994-1995); Andrew Zimbalist, *Baseball Economics and Antitrust Immunity*, 4 Seton Hall J. Sport L. 287 (1994); and Connie Mack & Richard M. Blau, *The Need for Fair Play: Repealing the Federal Baseball Antitrust Exemption*, 45 Fla. L. Rev. 201 (1993).

expedited hearing on this appeal is necessary to prevent serious harm to the City of San José on a matter of public importance.

**V. STATUS OF TRANSCRIPT PREPARATION**

Appellants timely ordered the preparation of all transcripts on **January 27, 2014**. The transcripts will be finalized within the next few days. *See* Gregory Declaration, ¶ 6.

**VI. POSITION OF OPPOSING COUNSEL**

On January 21, 2014, counsel for Appellants wrote counsel for MLB informing counsel of this Motion and requesting MLB's position. On January 22, 2014, counsel for MLB responded stating that MLB opposes "any effort to expedite this appeal." MLB does not think an expedited appeal "is necessary" and believes "expedition would prejudice the careful consideration" this appeal deserves. Finally, MLB's position is that the expiration date of the Option Agreement "is a meaningless deadline, therefore no deadline at all." *See* Gregory Declaration, ¶ 7.

**VII. CONCLUSION**

The City of San José respectfully requests that this Court grant this motion for expedited briefing and hearing of this appeal and order the briefing schedule be set as proposed in this motion or any other schedule that

would allow oral argument and a decision to occur significantly in advance of November 8, 2014.

Respectfully submitted,

Dated: January 29, 2014

**COTCHETT, PITRE & McCARTHY**

By: /s/ Philip L. Gregory  
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FRANK C. DAMRELL, JR.  
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Case No. 14-15139

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**IN THE UNITED STATES COURT OF APPEALS  
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*Defendants and Appellees.*

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On Appeal from the United States District Court,  
Northern District of California  
Case No. 13-CV-02787-RMW, Honorable Ronald M. Whyte, Judge

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**DECLARATION OF PHILIP L. GREGORY IN SUPPORT OF  
MOTION TO EXPEDITE BRIEFING AND HEARING ON APPEAL**

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**DECLARATION OF PHILIP L. GREGORY**

I, PHILIP L. GREGORY, declare:

1. I am an attorney duly admitted to practice before this Court and all courts of the State of California, and am an attorney with the law firm of Cotchett, Pitre & McCarthy, LLP (“CPM”), attorneys for Plaintiffs/Appellants in this matter. I make this of my own personal knowledge and, if called to testify as a witness, could and would competently testify to the matters stated herein.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Complaint in this matter, Dkt. No. 4.

3. Exhibit 3 to the Complaint is a true and correct copy of the Option Agreement between The City of San José and the Athletics Investment Group LLC (“Athletics”) for the relocation of the Oakland A’s Major League Baseball team from Oakland to San José. Attached hereto as **Exhibit B** is a true and correct copy of the Option Agreement.

4. On October 11, 2013, Judge Whyte issued his Order Granting-in-Part and Denying-in-Part Defendants’ Motion to Dismiss, dismissing the federal and state antitrust claims resulting from MLB’s refusal to allow the Athletics to relocate to San José. Dkt. No. 41. Attached hereto as **Exhibit C** is a true and correct copy of the Order on the Motion to Dismiss.

5. The Option Agreement included an extension for a third year. The Athletics exercised this extension for a third year, thus extending the option through **November 2014**.

6. On behalf of Appellants, I ordered the preparation of all transcripts on **January 27, 2014**. I am informed and believe that the transcripts will be finalized within the next few days.

7. On January 21, 2014, I wrote John Keker, counsel for Defendants, informing Mr. Keker of this Motion and requesting Defendants' position. On January 22, 2014, Mr. Keker responded stating that Defendants oppose "any effort to expedite this appeal." According to Mr. Keker, Defendants do not think an expedited appeal "is necessary" and believe "expedition would prejudice the careful consideration" this appeal deserves. Finally, according to Mr. Keker, Defendants' position is that the expiration date of the Option Agreement "is a meaningless deadline, therefore no deadline at all."

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct, and that this declaration was executed on this 29th day of January 2014 at Burlingame, California.

/s/ Philip L. Gregory  
PHILIP L. GREGORY



# EXHIBIT A

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San José; and the San José Diridon Development Authority*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

**CITY OF SAN JOSÉ; CITY OF SAN  
JOSÉ AS SUCCESSOR AGENCY TO  
THE REDEVELOPMENT AGENCY OF  
THE CITY OF SAN JOSÉ; and THE SAN  
JOSÉ DIRIDON DEVELOPMENT  
AUTHORITY,**

**Plaintiffs,**

**v.**

**OFFICE OF THE COMMISSIONER OF  
BASEBALL, an unincorporated association  
doing business as Major League Baseball;  
and ALLAN HUBER "BUD" SELIG,**

**Defendants.**

Case No. 13-02787

**COMPLAINT:**

1. TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;
2. TORTIOUS INTERFERENCE WITH CONTRACTUAL ADVANTAGE;
3. CALIFORNIA'S UNFAIR COMPETITION LAW (SECTION 17200);
4. VIOLATIONS OF CALIFORNIA'S CARTWRIGHT ACT;
5. VIOLATIONS OF THE SHERMAN ACT, SECTION 2; AND
6. VIOLATIONS OF THE SHERMAN ACT, SECTION 1

**JURY TRIAL DEMANDED**

**COMPLAINT**



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<b>1.</b>	<b>The tax revenue to be received by the City of San José has been greatly diminished.....</b>	<b>31</b>

1	2. The City of San José has lost millions in new direct spending that would have accrued during the construction period and the post-construction period .....	31
2	3. The City of San José's General Fund has lost millions .....	31
3	4. The City of San José's local agencies, including its school district, have lost hundreds of thousands of dollars on an annual basis .....	31
4		
5	5. The City of San José has lost millions in new sales tax revenue that would have accrued during the construction period and the post-construction period .....	32
6	6. The City of San José has lost hundreds of new jobs and the related revenues that would have been generated for the City .....	32
7		
8	7. The City of San José has lost new economic output generated by spending related to the ballpark .....	32
9	8. Plaintiffs have been deprived of free and open competition in the relocation of the Athletics .....	33
10		
11	9. Plaintiffs failed to receive the benefits to which they were entitled under the Option Agreement, which benefits they would have received in an competitive marketplace absent Defendants' conspiracy .....	33
12		
13	10. Plaintiffs have lost millions of dollars spent on planning for the franchise relocation .....	33
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15		
16	<b>VI. CLAIMS FOR RELIEF .....</b>	<b>34</b>
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1 Plaintiffs City of San José, City of San José as successor agency to the Redevelopment  
2 Agency of the City of San José, and the San José Diridon Development Authority (collectively  
3 “Plaintiffs”) allege as follows:

4 **I. INTRODUCTION**

5 1. This action arises from the blatant conspiracy by Major League Baseball (“MLB”)  
6 to prevent the Athletics Baseball Club from moving to San José. For years, MLB has unlawfully  
7 conspired to control the location and relocation of major league men’s professional baseball clubs  
8 under the guise of an “antitrust exemption” applied to the business of baseball.

9 2. Baseball occupies a coveted place in American culture. It is a uniquely American  
10 sport, originating before the American Civil War as a humble game played on sandlots. In 1871,  
11 the first professional baseball league was born. Eventually the teams were divided into two  
12 leagues, the National and American – these are the two leagues that persist today.

13 3. Today there are 30 separate Major League Baseball Clubs in the United States, all  
14 of which compete against each other in regularly scheduled games. Baseball is big business in the  
15 United States with combined 2012 annual revenues of **\$7.5 billion**. Whereas baseball may have  
16 started as a local affair, modern baseball is squarely within the realm of interstate commerce.  
17 MLB Clubs ply their wares nationwide; games are broadcast throughout the country on satellite  
18 TV and radio, as well as cable channels; and MLB Clubs have fan bases that span from coast to  
19 coast.

20 4. However there is a dark side to this storied institution – MLB operates in clear  
21 violation of state unfair business laws and federal antitrust laws, including the Sherman Antitrust  
22 Act. The General Counsel of the Office of the Commissioner of Baseball has gone on record as  
23 admitting that MLB prohibits franchise movements “except in the most dire circumstances where  
24 the local community has, over a sustained period, demonstrated that it cannot or will not support a  
25 franchise.” According to internal MLB rules, three quarters of the teams in a league must vote in  
26 favor of proposed team relocation or the relocation will be prohibited, thus denying other cities or  
27 counties from competition for teams.

1           5.       At issue in this case is MLB's unlawful and continued restraint of the move by the  
2 Athletics from Oakland to San José, California. Plaintiffs have suffered and continue to suffer  
3 damages and antitrust injury in the millions of dollars due to Defendants' unreasonable restraint  
4 of trade.<sup>1</sup>

5           6.       Plaintiffs seek relief under state laws and federal antitrust laws in connection with  
6 a threatened loss resulting from the unlawful exercise of market power by MLB in the market for  
7 major league men's professional baseball contests in the United States and Canada. MLB is  
8 excluding competition and restraining trade in that market through the application of  
9 unreasonable restrictions in its Constitution which are preventing the City of San José from  
10 competing with the City of Oakland for the Athletics Baseball Club. The MLB Constitution  
11 expired in December 2012 and no new Constitution has been posted on its website.

12           7.       MLB is made up of competitive member teams and has market power in the  
13 provision of major league professional baseball games in North America. Use by MLB of Article  
14 4.3 of its Constitution, which grants each Club absolute veto power over the relocation of a  
15 competitive team within its "operating territory," as well as application of Article 4.2 of its  
16 Constitution to restrict the transfer and relocation of the Oakland Athletics Club, are  
17 unreasonable, unlawful, and anticompetitive restraints under Section 1 of the Sherman Act.

18           8.       Through MLB and the exclusionary and anticompetitive provisions in the MLB  
19 Constitution, members of MLB have conspired to violate state laws, and have willfully acquired  
20 and maintained monopoly power in violation of Section 2 of the Sherman Act within their  
21 "operating territories," as defined by Section 4.1 of the MLB Constitution, by refusing to allow  
22 the relocation of MLB Clubs to markets where existing Clubs currently have MLB franchises.

23           9.       MLB and its Clubs have agreed to create exclusive television and radio broadcast  
24 rights within designated territories through contracts with individual MLB Clubs, thereby  
25 maintaining monopoly power within each team's "operating territory" by preventing others from  
26 broadcasting events within those territories.

27 \_\_\_\_\_  
28 <sup>1</sup>Plaintiffs are not seeking damages from the Athletics, as it is the Defendants, including MLB, that have acted to prevent the Athletics from relocating to San Jose.

1 10. MLB is comprised of thirty separately owned and operated major league men's  
 2 baseball clubs in the United States and Canada. The MLB Clubs, like other sports leagues, have  
 3 structured their governance to permit major decisions regarding on-field sporting competition and  
 4 off-field business competition to be made by the club owners themselves. In so doing, the owners  
 5 act in their own economic self-interest, including entering into a series of agreements that  
 6 eliminate, restrict, and prevent off-field competition. These anticompetitive agreements go far  
 7 beyond any cooperation reasonably necessary to provide major league men's professional  
 8 baseball contests that increase fan appeal or respond to consumer preferences.

9 11. This action challenges – and seeks to remedy – Defendants' violation of state and  
 10 federal laws and the use of the illegal cartel that results from these agreements to eliminate  
 11 competition in the playing of games in the San Francisco Bay Area. Defendants have  
 12 accomplished this elimination of competition by agreeing to divide the live-game market into  
 13 exclusive territories, which are protected by anticompetitive territorial rights. Not only are such  
 14 agreements not necessary to producing baseball contests, they are directed at reducing  
 15 competition in the live-game market.

16 12. In a 1998 complaint against MLB and other Clubs, the New York Yankees  
 17 conceded that MLB is a cartel that has exceeded the boundaries of necessary cooperation. (*New*  
 18 *York Yankees Partnership and Adidas America, Inc. v. Major League Baseball Enterprises, Inc.,*  
 19 *et al.*, Case No. 98-civ-0129 (S.D.N.Y.).) The New York Yankees sued when MLB interfered  
 20 with the New York Yankees' individual licensing agreement with Adidas. As the New York  
 21 Yankees, a partner to the MLB operation in 1998, stated in their complaint:

22 **“Defendants operate a horizontal cartel, through which the Major League Clubs**  
 23 **have agreed not to compete with each other and thereby to fix prices and to reduce**  
 24 **output below competitive levels in the (i) professional baseball retail licensing**  
 25 **markets; and (ii) the professional baseball sponsorship markets.”** *Id.* at ¶ 153.

26 (Emphasis added.)

27 13. The violations of law and the restraints articulated in the present complaint are no  
 28 less anticompetitive or justified than the restraints set forth in the New York Yankees' case

1 against MLB. The New York Yankees and MLB reached a confidential agreement before any  
 2 briefing on the merits of the New York Yankees' suit to avoid future litigation exposure and  
 3 putting MLB under further scrutiny.

4 14. Clubs in other sports leagues have also sued their respective leagues for violations  
 5 of state law and on antitrust grounds. In 2007, Madison Square Garden, L.P., which owns the  
 6 New York Rangers Club, sued the National Hockey League ("NHL") to eliminate anticompetitive  
 7 restraints that are similar to those alleged in this complaint. The Rangers' complaint flatly  
 8 conceded that the NHL was a "cartel" and acknowledged that the League's televising and  
 9 streaming restrictions were anticompetitive and unlawful. (*Madison Square Garden L.P. v.*  
 10 *National Hockey League, et al.*, Case No. 07-8455 (S.D.N.Y.), Amended Complaint ("MSG  
 11 Complaint"), ¶ 6). After the Rangers defeated the NHL's motion to dismiss the complaint, the  
 12 League and the Rangers quietly settled the lawsuit.

13 15. In *American Needle, Inc. v. National Football League*, 130 S. Ct. 2201 (2010), the  
 14 United States Supreme Court unanimously rejected the NFL's claim that an agreement regarding  
 15 the joint marketing of club-owned intellectual property was the decision of a "single entity" – the  
 16 National Football League – not subject to section 1 of the Sherman Act. The Supreme Court  
 17 reaffirmed lower court decisions that sports leagues are subject to the antitrust laws and that  
 18 league owners must refrain from agreements that unreasonably restrain trade. The Supreme Court  
 19 also reaffirmed its own decision in *NCAA v. Board of Regents*, 468 U.S. 85 (1984), which held  
 20 that the hallmark of an unreasonable restraint is one that raises price, lowers output, or renders  
 21 output unresponsive to consumer preference. The Supreme Court's decision extended a long line  
 22 of precedents recognizing that sports leagues are subject to the antitrust laws. Indeed, the United  
 23 States District Court for the Eastern District of Pennsylvania found over a half-century ago that  
 24 television blackout agreements amount to "an unreasonable and illegal restraint of trade." *United*  
 25 *States v. Nat'l Football League*, 116 F. Supp. 319, 327 (E.D. Pa. 1953).

26 16. Despite clear precedents, MLB's Clubs continue to agree to divide the relevant  
 27 market by assigning an exclusive territory to each Club. In exchange for being granted  
 28 anticompetitive protections in its own home market, the Club and its partners expressly agree not



1 to compete in the other Clubs' exclusive territories. The stated purpose of these policies is to  
2 create regional monopolies that protect the Clubs from competition in their respective local areas.

3 17. As one set of commentators has put it: "Absent the exclusive territorial  
4 arrangements agreed to by league owners, individual teams would . . . arrange for their own  
5 games to be available out-of-market. . . . Fans wishing to see only their favorite team now pay for  
6 more games than they want, so sports leagues are currently using their monopoly power to  
7 effectuate a huge wealth transfer. Another significant group of less fanatic consumers would be  
8 willing to pay a more modest sum for their favorite teams' games only. As to these fans, the  
9 current scheme reduces output." Stephen F. Ross & Stefan Szymanski, *Fans of the World Unite!*  
10 (Stanford Univ. 2008).

11 18. These violations of laws and restraints are not necessary to maintain a level of  
12 competitive balance within the league that fans prefer, or to maintain the viability of Clubs. To  
13 the extent that competition among Clubs would result in revenue disparities that preclude a fan-  
14 optimal level of competitive balance, agreements that require revenue sharing, if set at levels that  
15 do not restrict output, is an obvious and well-recognized less restrictive alternative, and one that  
16 baseball already employs.

17 19. In 1990, when the San Francisco Giants were considering selling the team and  
18 moving to Florida, Bob Lurie, the then-owner of the Giants, expressed interest in moving to San  
19 José. To accommodate the Giants, Walter Haas, the Athletics then-owner, gave his consent for  
20 the Giants to relocate to San José for no consideration paid to the Athletics. As a result, the MLB  
21 Constitution was amended to provide that the Giants hold territorial rights to the County of Santa  
22 Clara, which includes the **City of San José**. The Giants twice were unsuccessful in their attempt  
23 to obtain a publicly-funded stadium in the South Bay and although the Giants did not move, the  
24 Giants continued to claim the territorial rights to the County of Santa Clara.

25 20. The City of San José has one of the fastest growing populations in the Bay Area  
26 and is home to dozens of large technology companies. It is also easy to understand why the  
27 Athletics wish to move to the City of San José. Unlike San Francisco County, Santa Clara  
28 County is immediately contiguous to Alameda County. Moreover the Athletics are an

1 economically disadvantaged team in an aging stadium in Alameda County which the Athletics  
2 must share with the Oakland Raiders (the only such arrangement in baseball), and are heavily  
3 dependent on revenue sharing from their more well-heeled colleagues.

4 21. San José has entered into an option agreement with the Athletics Investment  
5 Group, LLC, the California limited partnership that owns and operates the Oakland A's. By  
6 refusing to allow the Oakland A's Club to locate to the City of San José, Defendants are  
7 interfering with this contract. Plaintiffs seek to restore competition among and between the clubs  
8 and their partners by ending Defendants' collusive agreements.

9 22. These practices, in addition to others described herein, have resulted in an  
10 unreasonable restraint on competition, in violation of federal and California law, and constitute  
11 unlawful, unfair, and/or fraudulent business practices under California law.

12 23. This is an action for violation of California's Unfair Competition Law, Tortious  
13 Interference with Contractual Advantage, and Tortious Interference with Prospective Economic  
14 Advantage, and for violation of the federal Sherman Act, and violation of California's Cartwright  
15 Act.

## 16 **II. PARTIES**

### 17 **A. PLAINTIFFS**

18 24. Plaintiff **CITY OF SAN JOSÉ** is, and at all times mentioned herein was, a  
19 California municipal corporation, organized as a Charter City under the California Constitution  
20 and the laws of the State of California. Plaintiff City of San José is located in the County of Santa  
21 Clara. Plaintiff City of San José has the capacity to sue pursuant to, *inter alia*, California  
22 Government Code section 945 and brings this action individually and on behalf of the People of  
23 the City of San José.

24 25. Although the Redevelopment Agency of the City of San José (the "Agency") has  
25 been dissolved, Plaintiff City of San José is suing in its capacity as the **Successor Agency to the**  
26 **Redevelopment Agency of the City of San José**. Plaintiff City of San José has the capacity to  
27 sue pursuant to, *inter alia*, California Government Code section 945, and brings this action  
28 individually and on behalf of the People of the City of San José.

26. Plaintiff **SAN JOSÉ DIRIDON DEVELOPMENT AUTHORITY** is a joint powers association comprised of the City of San José and the former Redevelopment Agency. The San José Diridon Development Authority was formed on March 8, 2011, when the City of San José and the then-Redevelopment Agency of the City of San José formed a joint powers authority under the Joint Exercise of Powers Act to facilitate the development and redevelopment of the Diridon Area, which is the area within the City of San José bounded on the North by the northerly line of the Julian Street right of way, bounded on the East by Los Gatos Creek, bounded on the South by the southerly line of the Park Avenue right of way, and bounded on the West by the westerly line of the railroad right of way adjacent to the Diridon station.

#### **B. DEFENDANTS**

27. Defendant **THE OFFICE OF THE COMMISSIONER OF BASEBALL d/b/a MAJOR LEAGUE BASEBALL** (“MLB”) is an unincorporated association whose members are the thirty Major League Baseball Clubs. It is the most significant provider of major league men’s professional baseball games in the world. MLB, on behalf of its members, has responsibility for administrative and operational matters relating to Major League Baseball. MLB headquarters are located at 245 Park Avenue, New York, New York.

28. Defendant **THE OFFICE OF THE COMMISSIONER OF BASEBALL** (“OCB”) is an office created pursuant to the Major League Agreement entered into by the member Clubs of Major League Baseball. Upon information and belief, the OCB has the power to act for and bind MLB in business matters centralized in the League.

29. Through the MLB Constitution, MLB and the Clubs have adopted agreements governing all aspects of major league men’s professional baseball. The MLB Constitution was adopted by votes of the Clubs and may be amended by votes of the Clubs. The rules in the MLB Constitution are vertical agreements between MLB and the Clubs and horizontal agreements between the Clubs.

30. Each Club that is a member of MLB is a separate and independent business with a separate and independent owner, exercising significant autonomy in its business operations. While the Clubs cooperate to schedule and produce major league men’s professional baseball

1 games and facilitate competition on the field, the Clubs compete off the field in the sale of tickets,  
 2 sponsorships, merchandise, and concessions. The Clubs also compete in the developing,  
 3 licensing, and marketing of their respective trademarks for various purposes. The Clubs set their  
 4 own prices for the sale of tickets for attending games at their stadiums. For legal purposes, the  
 5 MLB Clubs are competitors and are capable of conspiring under Section 1 of the Sherman Act.  
 6 *See Los Angeles Memorial Coliseum Comm'n v. National Football League* 726 F.2d 1381 (9th  
 7 Cir. 1984).

8 31. Defendant **ALLAN HUBER “BUD” SELIG** (“Selig”) is the Commissioner of  
 9 Major League Baseball, having served in that capacity since 1992, first as acting commissioner,  
 10 and as the official commissioner since 1998. Upon information and belief, Selig is a resident of  
 11 Milwaukee, Wisconsin.

### 12 **C. RELEVANT MARKETS**

13 32. The relevant product market is the provision of major league men’s professional  
 14 baseball contests. There are peculiar and unique characteristics that set major league men’s  
 15 professional baseball apart from other sports or leisure activities. Close substitutes do not exist,  
 16 and watching or participating as a fan in major league men’s professional baseball is not  
 17 interchangeable with watching or participating as a fan in other sports, leisure pursuits, or  
 18 entertainment activities. Assuming a small, but significant, non-transitory increase in price to  
 19 attend major league men’s professional baseball games, fans will not switch to attend other sports  
 20 or entertainment activities. Accordingly, there is a unique and separate demand for major league  
 21 men’s professional baseball.

22 33. The relevant geographic market for the provision of major league men’s  
 23 professional baseball is the United States and Canada, where the MLB Clubs are located and  
 24 where MLB Clubs play games. Various geographic submarkets also exist, defined as a city, and  
 25 fifty miles from the corporate limits of that city, in which only one existing MLB Club is located.  
 26 This is defined as the “operating territory” in Article VIII, Section 8 of the MLB Constitution.

27 34. The market in the United States and Canada for provision of major league men’s  
 28 professional baseball is characterized by high barriers to entry. MLB is the only provider of

1 major league men's professional baseball contests in the United States and Canada. No other  
 2 league in the United States and Canada provides a quality of play comparable to MLB. Previous  
 3 attempts at forming a major league professional baseball league to compete with MLB have failed  
 4 (e.g., the Federal League). Moreover, an absolute barrier to entry exists in each geographic  
 5 submarket by virtue of the absolute veto power granted to each MLB Club to preclude the entry  
 6 of competition into its exclusive "operating territory."

7 35. MLB exercises monopoly power (the ability to control prices and exclude  
 8 competition) in this market as it is the only provider of major league men's professional baseball  
 9 in the United States and Canada.

10 36. MLB is engaged in conduct, complained of herein, which has affected and directly,  
 11 substantially, and foreseeably restrained interstate and foreign commerce.

### 12 **III. JURISDICTION AND VENUE**

#### 13 **A. FEDERAL JURISDICTION**

14 37. Plaintiffs bring this action pursuant to Section 16 of the Clayton Act, 15 U.S.C. §  
 15 26, to obtain injunctive relief and to recover damages, including treble damages, costs of suit and  
 16 reasonable attorneys' fees, premised on Defendants' violation of the Sherman Act, 15 U.S.C. §§  
 17 1, 2. This Court has subject matter jurisdiction over these claims pursuant to Sections 4(a) and 16  
 18 of the Clayton Act, 15 U.S.C. §§ 15, 26, and 28 U.S.C. §§ 1331 and 1337(a).

#### 19 **B. STATE PENDENT JURISDICTION**

20 38. This Court has subject matter jurisdiction over this claim pursuant to 28 U.S.C. §  
 21 1367. Plaintiffs also bring this action pursuant to Section 17200 of the California Business and  
 22 Professions Code.

#### 23 **C. VENUE**

24 39. Venue is proper pursuant to 28 U.S.C. § 1391 and 15 U.S.C. § 22. Defendants  
 25 transact business in this District and are subject to personal jurisdiction in this District.

1 **D. INTRADISTRICT ASSIGNMENT**

2 40. Pursuant to Local Rules 3-2(c)-(e) and 3-5, assignment to the San José Division is  
3 appropriate because the action arises in Santa Clara County and the underlying contract was  
4 entered into and was to be performed in San José Division.

5 **IV. NATURE OF INTERSTATE TRADE AND COMMERCE**

6 41. As then District Judge (now Supreme Court Justice) Sonia Sotomayor wrote:  
7 Major League Baseball is a “monopoly industry.” *Silverman v. Major League Baseball Relations*  
8 *Inc.* 880 F. Supp. 246, 261 (S.D.N.Y. 1995).

9 42. Major league men’s professional baseball has attributes attractive to sports fans  
10 that set it apart from other sports or leisure activities. Close substitutes do not exist. Watching  
11 (or participating as a fan in) major league men’s professional baseball cannot be reasonably  
12 interchanged with watching (or participating as a fan in) other sports or other leisure activities.

13 43. The provision of major league men’s professional baseball contests in the United  
14 States and Canada is a relevant product/service market. This market is characterized by high  
15 barriers to entry. MLB has market power as it is the only provider of this product/service. MLB,  
16 acting through and in combination with the separate and independent Clubs, also exercises market  
17 power through exclusive license agreements and other unnecessary and unjustified restraints on  
18 each Club’s competitive activities that are the subject of this complaint.

19 44. Most importantly for this action, there is a relevant market for live presentations of  
20 major league men’s professional baseball games in various cities. MLB’s dominance in the  
21 production of major league men’s professional baseball games in the United States and Canada  
22 gives it the ability, together with its partners, to exercise power in the market for live  
23 presentations of MLB games.

24 45. Defendants’ conduct complained of herein has taken place in and affected, and  
25 directly, substantially, and foreseeably restrained, the interstate and foreign trade and commerce  
26 of the United States, by, *inter alia*, the interstate and foreign distribution of live MLB games.

1 **V. FACTUAL BACKGROUND**

2 **A. RELEVANT HISTORY OF THE ATHLETICS**

3 46. The Athletics are a Major League Baseball Club based in Oakland, California. The  
4 Athletics are popularly known as “the A’s” and are a member of the Western Division of MLB’s  
5 American League.

6 47. One of the American League’s eight charter franchises, the Club was founded in  
7 Philadelphia, Pennsylvania, in 1901 as the Philadelphia Athletics. The Club had notable success  
8 in Philadelphia, winning three of four World Series from 1910 to 1913 and two in a row in 1929  
9 and 1930. However, after declining success, the team left Philadelphia for Kansas City in 1955  
10 and became the Kansas City Athletics.

11 48. The Athletics moved to Oakland in 1968. In the early 1970’s the team enjoyed  
12 tremendous success, winning three World Championships in a row from 1972 to 1974. In 1980,  
13 Walter Haas purchased the Athletics and spearheaded a decade of success, both in the win column  
14 and in stadium attendance. The Athletics won the American League Pennant in 1988, 1989, and  
15 1990 and won the World Series in 1989. More recently, the Athletics have often been playoff  
16 contenders but have not returned to the World Series since 1990.

17 49. The Oakland Athletics are one of the most economically disadvantaged teams in  
18 major league men’s professional baseball. The Oakland Athletics are heavily dependent on  
19 revenue sharing from more well-heeled colleagues. Because of the economic structure of  
20 baseball, which does not split team revenues as evenly as other sports, there is wide disparity  
21 between rich and poor teams and the Athletics are a poor team in revenues.

22 50. The Oakland Athletics are housed in an old stadium, formally named O.co  
23 Coliseum, but also known as Oakland–Alameda County Coliseum, and commonly known as  
24 Oakland Coliseum or The Coliseum (the “Oakland Coliseum”). The Oakland Coliseum is the  
25 only remaining multi-purpose stadium in the United States which serves as a full-time home to  
26 both a Major League Baseball Club (the A’s) and a National Football League team (the Raiders),  
27 where the two teams play games on the same field.

51. Since the 1990's, attendance at A's games has plummeted and average attendance at the A's home games is the 25th of the 30 MLB Clubs. For example, comparing attendance to its cross bay rivals, the San Francisco Giants, they average less than half the number of fans in attendance. The following chart shows the numbers:

2013 Attendance			
San Francisco 32 Home Games	1,332,865	41,652 average	Ranks 2/30
Oakland 30 Home Games	627,966	20,932 average	Ranks 25/30
2012 Attendance			
San Francisco	3,337,371	41,695 average	4/30
Oakland	1,679,013	20,728 average	27/30

52. The Oakland Coliseum is also the only major league park that hosts another team in another sport and is the fourth-oldest ballpark in the majors. According to the 2010 census, the Giants' territory includes 4.2 million people; the A's territory 2.6 million.

53. Spokespeople for the Athletics have repeatedly stated the Athletics have exhausted their options in Oakland after years of trying to increase attendance.

#### **B. RELEVANT HISTORY OF THE CROSS BAY RIVAL – THE GIANTS**

54. The San Francisco Giants are a Major League Baseball Club based in San Francisco, California, playing in the National League West Division. The Gothams, as the Giants were originally known, entered the National League in 1883. Later the Club was known as the New York Giants. The team was renamed the San Francisco Giants when the team moved to San Francisco in 1958. The Giants are currently the reigning World Series champion.

55. The Giants have won the most games of any team in the history of American baseball. They have won twenty-two National League pennants and appeared in nineteen World Series competitions – both records in the National League. The Giants have won seven World



1 Series Championships, ranking second in the National League (the St. Louis Cardinals have won  
2 eleven).

3 56. Since arriving in San Francisco, the Giants have won five National League  
4 Pennants, the 2010 World Series, and the 2012 World Series.

5 57. The current home of the Giants is AT&T Park, located at the edge of downtown  
6 San Francisco and the San Francisco Bay. AT&T Park is widely-acclaimed as one of the best  
7 ballparks in the league with its state-of-the-art design and breathtaking views.

8 58. However, before moving to AT&T Park in 2000, the Giants played their home  
9 games in Candlestick Park (from 1960 – 2000).

### 10 **C. THE TERRITORIAL DISPUTE BETWEEN THE A's AND GIANTS**

11 59. The instant territorial dispute between the A's and Giants traces its roots to the  
12 1980s – and arises out of an effort by the A's to help its fellow Bay Area team in a time of need.

13 60. In the late 1980's, the Giants were hoping to build a stadium in the South Bay Area  
14 and requested that MLB approve expansion of their territory into Santa Clara and Monterey  
15 Counties. In 1981, Giants then-owner Bob Lurie declared Candlestick Park “unfit for baseball,”  
16 and began a failed campaign for a new ballpark in San Francisco.

17 61. In 1987 and 1989, respectively, the Giants sponsored ballot measures to build a  
18 new ballpark in San Francisco. The San Francisco voters rejected both measures. After  
19 considering new stadium sites on the Peninsula and in the South Bay, the Giants sponsored a  
20 ballot measure to build a new stadium in Santa Clara. The Santa Clara voters summarily rejected  
21 that measure.

22 62. In 1990, in what was viewed as a final effort to keep the Giants in the Bay Area,  
23 Giants owner Bob Lurie pursued a new stadium in San José. However, the Giants faced territorial  
24 restrictions under MLB's Constitution, which expressly limited the Giants to San Francisco and  
25 San Mateo Counties. Faced with this definitive hurdle, Mr. Lurie reached out to then-A's owner  
26 Walter Haas. Over a handshake and without consideration, Mr. Haas consented to the Giants'  
27 relocation to San José. Mr. Haas never granted the Giants an exclusive right to Santa Clara  
28

1 County, only his consent to pursue relocation of the Club to Santa Clara County in 1990. On June  
2 14, 1990, MLB unanimously approved this expansion.

3 63. Commenting on this gentlemen's agreement, Commissioner Selig said, "Walter  
4 Haas, the wonderful owner of the Oakland club, who did things in the best interest of baseball,  
5 granted permission . . . What got lost there is they didn't feel it was permission in perpetuity."  
6 Indeed, the MLB recorded minutes reflect that the San Francisco Giants were granted the Santa  
7 Clara County operating territory subject to their relocating to Santa Clara. See March 7, 2012  
8 Oakland Athletics media release. Ultimately, like the voters in San Francisco and Santa Clara  
9 before them, the San José voters summarily rejected the Giants' ballot measure to relocate the  
10 team to San José.

11 64. San José voters rejected the proposal of the Giants for a taxpayer-funded stadium  
12 both in 1990 and again in 1992. After rejection by the voters in San José, the Giants abandoned  
13 any interest in relocating to San José, and set their sights on selling the Club and moving to  
14 Tampa Bay, Florida. In 1992, after reaching a deal to relocate to Tampa Bay, by a 9 – 4 vote,  
15 Major League Baseball rejected the deal to move to Florida and the Giants remained in San  
16 Francisco.

17 65. The Giants were unable to successfully obtain a vote to move into the County of  
18 Santa Clara. However, the return of the County of Santa Clara to its original status was not  
19 formally accomplished. See March 7, 2012 Oakland Athletics media release.

20 66. Unable to acquire public financing in the South Bay, the Giants eventually  
21 obtained private financing for the 2000 construction of AT&T Park in San Francisco's China  
22 Basin. Notably, this new stadium was closer to the A's home stadium than Candlestick Park.

23 67. As early as 2004, Baseball San José, a community organization promoting  
24 relocation of the Athletics to San José, lobbied the City of San José ("San José") to authorize a  
25 new stadium in San José to lure the Athletics. However, the Athletics pursued new stadium deals  
26 in Fremont.

27 68. In October 2004, San José and the San José Redevelopment Agency ("RDA")  
28 began studying the potential for developing a ballpark in the Diridon Station area. That process

1 culminated in February 2007, with the certification of an Environmental Impact Report (“EIR”)  
2 for a ballpark project consisting of a 1.5 million square-foot MLB stadium and a parking structure  
3 with ground floor commercial uses on approximately 23.1 acres in San José. The ballpark  
4 proposed in 2007 had a maximum seating capacity of 45,000. In early 2009, San José began  
5 exploring the development of a modified project and proposed an Athletics ballpark to be built on  
6 13.36 acres near the Diridon train station, bounded by Park Avenue and San Fernando and  
7 Autumn streets. The current ballpark concept reduces the size of the stadium from 45,000 to  
8 32,000 seats. The following is an illustration of the proposed ballpark:



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25 69. Sports venues have become a catalyst for urban transformation or revitalization.  
26 New sports facilities attract businesses to the neighborhoods surrounding the sports facility, which  
27 creates additional jobs, consumer spending, and tax revenue. New sports facilities also create an  
28

incentive for new hotels, restaurants, and businesses to move to a city, which serves to revitalize a city by creating more economic activity, even out of season. The downtown areas then generate higher hotel occupancy, restaurant patronage, retail jobs, and city revenues as the fans can walk from the stadium to restaurants and bars to celebrate. The districts themselves then become as much of an attraction as the events and facilities in the cities.

70. A 2009 **Economic Impact Analysis** prepared by Conventions Sports and Leisure International (“CSL”) for the RDA **detailed the economic benefits of the proposed Athletics stadium in San José** (“CSL Study”). The CSL Study provided independent and conservative estimates of the quantifiable impacts that would be generated by an Athletics stadium in San José. A copy of the CSL Study is attached as **Exhibit 1**. Findings and estimates of the CSL Study include the following:

- \$96.0 million in net new direct spending in San José during a three year construction period; \$558,000 in sales tax revenues to the City over the three year construction period;
- 980 jobs supported annually due to ballpark development;
- \$82.9 million in net new annual direct spending in San José following construction, with a 30-year present value of \$1.8 billion;
- \$130 million ballpark-produced annual net new output in the City;
- Over a 30-year period, the estimated net present value of the total new economic output generated by spending related to the ballpark is \$2.9 billion;
- \$1.5 million per year in net new tax revenues would be generated for San José’s General Fund, and more than \$3.5 million per year for other local agencies, including:
  - \$706,000 a year for Redevelopment Agency Housing;
  - \$912,000 for Redevelopment Agency Non-Housing;
  - \$109,000 for San José General Obligation bonds; and,
  - \$495,000 for the San José Unified School District;
- The net present value of the City tax revenues generated by the ballpark over a 30-year and 50-year period is estimated to be approximately \$31.2 million and \$42.0 million, respectively;

- 1       ▪ Local hotels, restaurants, stores, and night spots would benefit, with the average
- 2       ballpark attendee anticipated to spend \$47 at businesses outside of the stadium; and,
- 3       ▪ San José would benefit substantially more from development of the MLB baseball
- 4       park than by using the same land for an alternative development.

5       71. On March 7, 2012, the **Oakland Athletics** issued a statement “regarding A’s and

6       Giants sharing Bay Area territory.” The Oakland Athletics statement contained the following

7       points:

- 8           a. Of the four two-team markets in MLB, only the Giants and Athletics do not
- 9           share the exact same geographic boundaries;
- 10          b. MLB-recorded minutes clearly indicate that the Giants were granted Santa
- 11          Clara County subject to relocating to the City of Santa Clara;
- 12          c. The granting of Santa Clara County to the Giants was by agreement with
- 13          the Athletics late owner Walter Haas, who approved the request without
- 14          compensation to the Athletics;
- 15          d. The Giants were unable to obtain a vote to move to Santa Clara County but
- 16          the return of Santa Clara County to its original status in the MLB
- 17          Constitution was not fully accomplished; and,
- 18          e. The Athletics “are not seeking a move that seeks to alter or in any manner
- 19          disturb MLB territorial rights.” Instead, the Athletics “seek an approval to
- 20          create a new venue that our organization and MLB fully recognize is
- 21          needed to eliminate [] dependence on revenue sharing.”

22       72. On May 12, 2009, the San José City Council and the Redevelopment Agency of

23       the City of San José established negotiating principles for the development of a stadium in the

24       downtown area of the City of San José for a Major League Baseball team, which were

25       subsequently amended by the City Council on August 3, 2010.

26       73. In 2010, after the Athletics’ Fremont deal collapsed, the City of San José again

27       explored a stadium deal with the Athletics. The San José City Council reviewed and unanimously

28       approved an **environmental impact study** (“EIS”). Upon approval of the EIS, San José Mayor

1 Chuck Reed called for a public vote on whether the Athletics could purchase land and build a new  
 2 stadium for the Athletics in San José. However, at Commissioner Selig's request, Mayor Reed  
 3 delayed the vote pending the MLB Relocation Committee's determination of the A's-Giants  
 4 territorial dispute.

5 74. On September 10, 2010, through the efforts of the Silicon Valley Leadership  
 6 Group, a letter from seventy-five of Silicon Valley's leading CEOs was sent to MLB urging  
 7 Commissioner Selig to approve the Athletics' move to San José. A copy of the September 10,  
 8 2010 Letter is attached at **Exhibit 2**.

9 75. In March 2011, the City of San José transferred assets in anticipation of the  
 10 Athletics move to San José. The RDA transferred several properties in the Diridon  
 11 Redevelopment Project Area ("Diridon Area") to the San José Diridon Joint Powers Authority, a  
 12 joint powers authority made up of the City of San José and the RDA ("JPA"). The properties that  
 13 were the subject of the transfer were originally purchased by the RDA with the intent that the  
 14 properties, along with adjacent properties, be developed into a MLB park, or alternatively a mixed  
 15 use development with housing.<sup>2</sup>

16 76. On November 8, 2011, the **San José City Council** executed an **option agreement**  
 17 with the Athletics Investment Group (the "Option Agreement"). A copy of the Option Agreement  
 18 is attached at **Exhibit 3**. The Option Agreement granted the Athletics a two year option to  
 19 purchase six of the parcels of land that San José transferred to the JPA in March 2011. The  
 20 Option Agreement permits the Athletics to purchase six parcels located in the Diridon Area of  
 21 Downtown San José to build a new stadium for a purchase price of \$6,975,227 (the "San José  
 22 Stadium Property"). In exchange for the option to purchase these six properties from the JPA, the  
 23 Athletics agreed to pay \$50,000 for the two year option, with the authority to extend the option  
 24 term by one year for an additional \$25,000.

25  
 26 \_\_\_\_\_  
 27 <sup>2</sup> On June 28, 2011, three months after San José transferred the properties to the JPA, the Governor signed into law  
 28 ABX1 26, which prohibited Redevelopment Agencies from engaging in new business, established mechanisms and  
 timelines for the dissolution of Redevelopment Agencies and created Successor Agencies to oversee dissolution of  
 the Redevelopment Agencies and redistribution of Redevelopment Agency assets.



1           77. The Option Agreement further obligated the JPA and the Athletics to negotiate, in  
2 good faith, a purchase and sale agreement for the San José Stadium Property (the “Purchase  
3 Agreement”), with a first draft to be exchanged within 90 days. The Option Agreement specified  
4 provisions that were required to be included in the Purchase Agreement.

5           78. A March 2010 poll conducted by the San José State University’s Survey and  
6 Policy Research Institute on behalf of the Mercury News found that 62 percent of those surveyed  
7 favored giving the Athletics city owned land for a stadium, with only 23.5 percent opposed. The  
8 margin of error for the poll was 4.25 percentage points.

9           79. Various local organizations, including the San José Silicon Valley Chamber of  
10 Commerce, the San José Convention and Visitors Bureau, the San José Sports Authority, and  
11 Baseball San José, have all expressed their support for a relocation by the Athletics to San José.

12           80. On December 2, 2011, Stand For San José (a coalition group backed by the San  
13 Francisco Giants and the San José Giants to block the Athletics relocation to San José) filed a  
14 civil action against the City of San José, the San José Redevelopment Agency, and the Athletics,  
15 among others, in Santa Clara Superior Court, Case No. 1-11-CV-214196. Despite a thorough  
16 EIS, the lawsuit claims the studies on issues such as traffic and air quality are insufficient under  
17 the California Environmental Quality Act (“CEQA”), allegedly necessitating additional studies.

18           81. Despite the Giants’ staunch opposition, the County of Santa Clara, the City of San  
19 José, and leading Silicon Valley businesses support the Athletics relocation. In an April 2, 2013  
20 letter to Commissioner Selig, San José Mayor Reed wrote:

21           When will the A’s be moving to San José? That’s the question that is most often asked of  
22 me by CEOs of Silicon Valley companies competing to retain and attract global talent . . .

23           The A’s ownership continues to express its desire to locate the team in San José and I  
24 strongly endorse that outcome . . . Direct communication between us will help resolve any  
25 lingering issues about our commitment to having the A’s home plate be located in San  
26 José and could reduce the probability of additional litigation.

1 82. In an April 4, 2013 response, Commissioner Selig wrote Mayor Reed. Instead of  
 2 meeting with Mayor Reed, the Commissioner referred the Mayor to MLB Relocation Committee  
 3 Chairman Bob Starkey.

4 83. Commissioner Bud Selig has failed to act on this territorial dispute for several  
 5 years. In March 2009, **Selig appointed a special Relocation Committee to evaluate the Bay**  
 6 **Area territorial issues.** The MLB Relocation Committee includes:

- 7 • Chairman Bob Starkey: a former Arthur Anderson accountant who had  
 8 done extensive work for the Commissioner and the Minnesota Twins;
- 9 • Corey Busch: a former San Francisco Giants Executive Vice President  
 10 under Bob Lurie;
- 11 • Irwin Raij: an attorney at Foley & Lardner, LLP, who worked on ballpark  
 12 deals for the Washington Nationals and Florida Marlins; and
- 13 • Bob DuPuy: Major League Baseball's Chief Operating Officer.

14 84. At the January 2012 owners' meetings, Selig said the situation was on the "front  
 15 burner." On March 7, 2012, MLB spokesman Pat Courtney said, "No decisions have been  
 16 made." As recently as May 16, 2013, Commissioner Selig said MLB had no news on the quest of  
 17 the Oakland Athletics to relocate to San José. According to Selig, the MLB Relocation  
 18 Committee appointed in March 2009 "is still at work."

19 85. While the Oakland Athletics have expressed the desire to move the Club to the  
 20 City of San José, MLB has made it clear that it plans to oppose and prevent the relocation of the  
 21 Oakland Athletics to San José. MLB intends to effect this conspiracy by using various provisions  
 22 in its alleged Constitution that unlawfully restrict and constrain the transfer and relocation of  
 23 Clubs.

24 86. Article VIII, Section 8 of the MLB Constitution provides in part: "No franchise  
 25 shall be granted for an operating territory within the operating territory of a member without the  
 26 written consent of such member." Article 4.1 of the MLB Constitution defines "operating  
 27 territory" to mean: "Each Member Club shall have exclusive territorial rights in the city which it  
 28 is located and within fifty miles of that city's corporate limits."



1           87.     The purpose and effect of Article VIII, Section 8 of the alleged MLB Constitution  
2 is to unreasonably restrain trade by granting *de facto* exclusive territories to the MLB Clubs and  
3 allowing Clubs to protect their respective monopolies by preventing new team entry into  
4 operating territories previously assigned to an MLB Club.

5           88.     Because of the provisions of the former MLB Constitution, the relocation of the  
6 Oakland Athletics to San José, California, would purportedly place them within the “operating  
7 territory” of the San Francisco Giants Club, and therefore subject to application of Article VIII,  
8 Section 8 of the MLB Constitution.

9           89.     Granting another franchise absolute veto power over a competitor’s relocation to  
10 San José, California, is facially anticompetitive and would deny consumers the benefits that  
11 would flow from increased competition. A new MLB franchise in San José, California, would  
12 compete with the San Francisco Giants Club. Entry of the Oakland Athletics Club in this region  
13 would increase competition, increase the output of baseball, increase the number of fans attending  
14 baseball games, and increase fan intensity levels in the relevant market.

15           90.     Upon information and belief, the San Francisco Giants Club previously exercised  
16 and/or threatened to exercise its veto to block the relocation of the Oakland Athletics Club to San  
17 José, California, in each instance preserving and maintaining the market power of MLB.

18           91.     The sole purpose and effect of Article VIII, Section 8 of the MLB Constitution is  
19 to shield Clubs from competition that otherwise would exist, absent this veto power.

20           92.     There is no pro-competitive justification to grant each MLB Club absolute veto  
21 power over whether to permit the relocation of a competitor club into its exclusive “operating  
22 territory,” especially a franchise like the San Francisco Giants Club, which is strong and  
23 established, with a large, loyal and enthusiastic fan base. Indeed, the San Francisco Giants Club  
24 and the Oakland Athletics Club already compete within 50 miles of one another and have done so  
25 for many years.

26           93.     Other provisions in the MLB Constitution concerning Club relocation are equally  
27 exclusionary and anticompetitive and are without any pro-competitive justification.  
28

1           94. In addition, MLB has imposed a lengthy and, under the circumstances,  
2 unreasonable process for relocation of the Oakland Athletics Club.

3           95. Taken together, these provisions unduly and unlawfully restrict the ability of MLB  
4 Clubs to relocate. Moreover, even if MLB could proffer pro-competitive justifications for these  
5 provisions, their application to block the Oakland Athletics proposed relocation to San José,  
6 California, is unreasonable and anticompetitive.

7           96. Any application of Article VIII, Section 8 of the MLB Constitution would be  
8 unreasonable and anticompetitive, intended solely to prevent the proposed relocation of the  
9 Oakland Athletics to San José. MLB Commissioner Bob Selig has publicly stated: “They need  
10 approval. We have to go through an approval process. It just depends on where they’re moving  
11 to.” Selig also has stated that there is no timetable for resolving the territorial dispute between the  
12 Oakland A’s and the San Francisco Giants.

13           97. In short, MLB has prejudged the relocation of the Oakland Athletics to San José.  
14 Application of Article VIII, Section 8 of the MLB Constitution is motivated by a desire to limit  
15 competition.

16           98. Upon information and belief, MLB, without even cursory consideration of the  
17 desirability of moving the Oakland Athletics to San José, California, has already determined it  
18 will not consider the relocation of the Oakland Athletics to San José.

19           **D. MLB’S REFUSAL TO PERMIT RELOCATION OF THE OAKLAND A’S**  
20           **CLUB RESTRAINS COMPETITION AND CREATES ANTICOMPETITIVE**  
21           **EFFECTS THAT WILL LEAD TO CONSUMER HARM**

22           99. Although many activities of MLB are legitimate under the antitrust laws, including  
23 the negotiation of labor agreements with players and the promulgation and enforcement of agreed  
24 rules of play, other activities which are anticompetitive and not necessary for the success of MLB  
25 in providing major league professional baseball games are illegal and unreasonable restraints of  
26 trade.

27           100. The antitrust laws prohibit this association of competitive teams, which has market  
28 power, from restricting the competitive activities of individual members of MLB, except where

1 such restriction is shown to be reasonably necessary to the success of MLB or the achievement of  
2 some other legitimate, pro-competitive purpose.

3 101. MLB rules governing franchise relocations, and exclusive territories in particular,  
4 are harmful to consumers when, as in this case, those rules are used to create and sustain an  
5 exclusive territory as well as to prevent a team from entering another team's market and  
6 competing for fans.

7 **E. THE MLB CONSTITUTION**

8 102. It has been long recognized that MLB Clubs, like the member clubs of all  
9 professional sports leagues, must cooperate to define, schedule, and produce league contests.  
10 That limited cooperation is fully consistent with the antitrust laws. But the member clubs  
11 continue to exist as separate businesses with separate owners that retain significant degrees of  
12 autonomy in their operations. In these operations, the clubs compete in business matters that are  
13 separate and distinct from the facilitation of baseball games.

14 103. The Major League Constitution (the "MLB Constitution") governs the operation of  
15 Major League Baseball and is an agreement among the MLB Clubs. The territorial rights of each  
16 of the 30 Major League Clubs are spelled out in Article VIII, Section 8 of the MLB Constitution.  
17 According to public sources, the MLB Constitution was last amended and ratified by the teams in  
18 2008 and was to remain in effect through **December 31, 2012**. A copy of the MLB Constitution  
19 is attached at **Exhibit 4**. No new Constitution has been posted by MLB.

20 104. Upon information and belief, given the expiration of the MLB Constitution on  
21 December 31, 2012, there is no operative MLB Constitution. According to the MLB  
22 Constitution, "[t]he Major League Clubs shall have assigned operating territories within which  
23 they have the right and obligation to play baseball games as the home Club." The relevant  
24 territories are as follows (Article VIII, Section 8):

25 **San Francisco Giants:** City of San Francisco; and San Francisco, San Mateo, Santa  
26 Cruz, Monterey and Marin Counties in California; provided, however, that with  
27 respect to all Major League Clubs, Santa Clara County in California shall also be  
28 included.

**Oakland Athletics:** Alameda and Contra Costa Counties in California.

1 105. Of the four two-team markets in MLB, only the San Francisco Giants and the  
2 Oakland Athletics do not share the exact same geographic boundaries.

3 106. MLB's territorial rules date back to 1876, when the initial National League  
4 Constitution established a Club's control of a 5 mile radius around its city. After MLB expanded  
5 in 1960, MLB relocation rules were changed to establish power within the two individual leagues.  
6 The National League determined territories to be 10 miles beyond a Club's city limits; while the  
7 American League established a 100 mile radius around a Club's home ballpark. Each league  
8 required a three-fourths vote to permit a Club to move, but neither league could stop the other  
9 from relocating into the other's territory.

10 107. In 1994, MLB amended its territorial rules so that Clubs may only move to a new  
11 territory upon the approval of three-fourths of the Clubs in that league and one-half of the Clubs  
12 in the other league. Clubs may not invade within 15 miles of another Club's established territory  
13 unless the "invaded" team grants permission.

14 108. Under the MLB Constitution the **vote of three-fourths** of the Major League Clubs  
15 is required for the relocation of any of the Clubs. (Article V, Sec. 2(b)(3).) Similarly a **three-**  
16 **fourths vote** is required to amend the Constitution (which would be necessary to change the  
17 territorial rights specified in Article VIII, Section 8 of the MLB Constitution). A **three-fourths**  
18 **vote** is also required for there to be expansion by the addition of a new Club or Clubs. (Article V,  
19 Sec. 2(b)(1).)

20 109. Notably under Article VI, Sections 1-2 of the MLB Constitution, the Clubs agree  
21 that any disputes between the Clubs are to be decided solely by the Commissioner as arbitrator,  
22 and the Clubs agree not to engage in litigation between the Clubs.

23 110. Boundary rules grant each Club protected territorial rights, **defined based on the**  
24 **lines of entire counties**. No Club may play its home games within the home territory or within  
25 fifteen miles from the boundary of the home territory of any other Club. *See* Major League Rules  
26 52(a)(1), 52(a)(4), 52(d)(1), 52(b)(1)(D) and National Association Agreement 10.06(B).  
27 However, there are a number of examples of Clubs that have overlapping territories. (*e.g.*, the  
28

1 Los Angeles Dodgers and the Los Angeles Angels; the New York Mets and the New York  
2 Yankees; the Chicago White Sox and the Chicago Cubs).

3 111. Reviewing the history of franchise movement in baseball, **almost no movement**  
4 **has been allowed by the owners.** MLB has been hostile to movement of Clubs. The last move  
5 was in **2005** when the Montreal Expos moved to Washington D.C. and became the Washington  
6 Nationals. This was the **first MLB relocation in 33 years.**

7 112. Pursuant to a series of “constitutions” between and among the MLB Clubs, the  
8 League has obtained centralized control over distribution of live MLB games. As described more  
9 fully below, as a result of these agreements, the clubs have agreed not to compete in business  
10 matters related to live major-league professional baseball games.

11 113. The stated purpose of these restrictions is to restrain competition by protecting the  
12 local market of each MLB game for the Clubs.

13 114. Defendants have agreed to enforce and maintain these anticompetitive restrictions.

14 115. The result of these agreements is a classic, horizontal, geographical market  
15 division.

16 116. Defendants have restrained and threatened to restrain competition in the carrying  
17 of games, seeking to control the delivery of content through all media platforms in ways that go  
18 beyond what is reasonably necessary to the production of baseball contests or to the success of  
19 Major League Baseball.

## 20 **F. THE GIANTS BLOCK THE A’S RELOCATION TO SAN JOSÉ**

21 117. In 2005, investors led by John Fischer and Lew Wolff purchased the Athletics.  
22 Faced with abysmal attendance and an old stadium in Oakland, Wolff pursued a move to the  
23 South Bay. From 2006 to 2009, with the support of Major League Baseball, the Athletics  
24 attempted to broker a deal to build CISCO Field in Fremont. As it became clear the Fremont City  
25 Council would not approve the stadium, Commissioner Selig wrote Mr. Wolff a letter indicating  
26 that the Athletics had the right to “discuss a ballpark with other communities,” *e.g.*, San José.

27 118. In February 2009, the Athletics terminated plans for a new stadium in Fremont,  
28 and turned their focus to San José. The Giants immediately interceded to prevent the Athletics

1 from moving to San José. The Giants disingenuously took the position that the 1990 consent by  
 2 the Athletics to allow the Giants to relocate to San José barred the Athletics from moving to San  
 3 José in perpetuity. Notably when the Giants moved to AT&T Park from Candlestick, they moved  
 4 closer to the Athletics' ballpark. If the Athletics were to move to the proposed site next to the HP  
 5 Pavilion in San José, they would be 48 miles from AT&T Park (instead of the current distance of  
 6 16.4 miles).

7 119. Commenting on the controversy, Bud Selig stated:

8 “Wolff and the Oakland ownership group and management have worked very hard to  
 9 obtain a facility that will allow them to compete into the 21st century . . . The time has  
 10 come for a thorough analysis of why a stadium deal has not been reached. The A’s cannot  
 11 and will not continue indefinitely in their current situation.”

12 **G. DEFENDANTS’ CONDUCT LIMITS COMPETITION IN THE BAY AREA**  
 13 **BASEBALL MARKET AND PERPETUATES THE GIANTS’ MONOPOLY**  
 14 **OVER THE SANTA CLARA MARKET**

15 120. As the years have dragged on, the MLB Relocation Committee’s activities have  
 16 remained shrouded in secrecy. Commissioner Selig issued a directive that the A’s and the Giants  
 17 were prohibited from discussing any aspect of the dispute in public. The silence from the Clubs  
 18 was briefly broken when on March 7, 2012, three years after the MLB Relocation Committee was  
 19 formed, the Athletics issued a short press release seeking to outline key facts of the dispute  
 20 including the following:

- 21 • Of the four two-team markets in Major League Baseball, only the Giants  
 22 and A’s do not share the exact same geographic boundaries;
- 23 • Major League Baseball recorded minutes that clearly indicate the Giants  
 24 were granted territorial rights to Santa Clara County “subject to” the team’s relocation to  
 25 Santa Clara;
- 26 • The granting of territorial rights to Santa Clara County to the Giants was by  
 27 agreement with the Athletics late owner, Walter Haas, who approved the request without  
 28 consideration;

• Despite the fact the Giants were unable to obtain a vote to move to Santa Clara County, those territorial rights were never formally returned to their original status; and,

• The Athletics “are not seeking a move that seeks to alter or in any manner disturb MLB territorial rights.” Instead, the Athletics “seek an approval to create a new venue that our organization and MLB fully recognize is needed to eliminate [] dependence on revenue sharing.”

121. The Giants issued a curt rebuttal claiming the City of San José is in the Giants’ defined territory and if the Athletics were allowed to move there, it would undermine the Giants’ investment in its stadium in San Francisco and marketing to fans.

**H. THE AGREEMENTS HAVE RESTRAINED COMPETITION AND HAVE HAD ANTICOMPETITIVE EFFECTS AND LED TO CONSUMER HARM**

122. The above-described agreements have restrained horizontal competition between and among the MLB Clubs and the MLB, including in the commercial exploitation of live games where the Clubs could and would compete with each other. In particular, in the absence of the territorial rights restrictions and other competitive restraints, MLB Clubs would compete with each other in the presentation of their teams’ games to a much greater extent than the limited opportunities that are now available.

123. The above-described agreements have adversely affected and substantially lessened competition in the relevant markets.

124. Competition by individual Clubs independently acting to exploit the distribution of their teams’ games would produce consumer benefits.

125. The above-described agreements do not concern matters of league business or structure and do not concern any unique characteristic or need of baseball exhibitions. These anticompetitive restraints are not necessary to the exhibition of baseball and are not integral to the sport itself.

126. Teams in Major League Baseball, like teams in other major sports leagues, have made attempts to compete in the market outside of their prescribed territories.

127. There are no legitimate, pro-competitive justifications for these exclusive territorial agreements and other competitive restraints, which have harmed consumers in various ways, including in the ways described above.

128. Defendants have misused the MLB Constitution for anticompetitive and unlawful purposes, the adverse effects of such misuse are continuing, and the territorial restrictions in the MLB Constitution should be declared unenforceable until such time as adequate relief is entered to remedy the violations alleged and the effects of the violations are dissipated.

**I. MLB HAS INTERFERED WITH PLAINTIFFS' CONTRACTUAL  
RELATIONSHIP WITH THE ATHLETICS AND ITS FUTURE ECONOMIC  
ADVANTAGE**

129. As reflected in Exhibit 3, since November 8, 2011, the San José City Council and the Athletics Investment Group have been contractually obligated to one another under an Option Agreement. The Option Agreement granted the Athletics a two year option to purchase six of the parcels of land that San José transferred to the JPA in March 2011. The Option Agreement permits the Athletics to purchase the San José Stadium Property for a purchase price of \$6,975,227. Defendants are interfering with and preventing the operation of the contract between the Athletics and San José as Defendants are actively preventing the Athletics from relocating to San José. In addition to interfering with the existing Option Agreement, Defendants are interfering with negotiation of a Purchase Agreement (as provided for in the Option Agreement), and are also interfering with the economic relationship between Plaintiffs and the Athletics.

130. Despite being aware of the Option Agreement, Defendants have prevented the Athletics from moving to San José, even though they knew that their actions would interfere with the performance of the contract. Defendants' actions, if not stopped, will serve to completely prevent performance of the contract as the Athletics cannot move to San José without the consent of MLB.

131. Plaintiffs have suffered millions in harm and stand to suffer billions in harm due to Defendants' refusal to permit the Athletics to move to San José. Specifically, the City of San José



1 has lost hundreds of jobs, property tax revenue, and sales tax revenue. This harm is all directly  
2 attributable to Defendants' conduct.

3 132. Defendants' acts have disrupted the economic relationship between San José and  
4 the Athletics, as well as performance under the Option Agreement and negotiation of a Purchase  
5 Agreement pursuant to the Option Agreement.

6 **J. PLAINTIFFS HAVE SUFFERED ANTITRUST INJURY**

7 133. Plaintiffs are governmental entities which have suffered cognizable antitrust injury  
8 under the Sherman Act and the Cartwright Act as well as violation of California law. There has  
9 been injury to competition in the relevant product market, which is the market for existing  
10 American and National League baseball teams, as well as the market for the Athletics specifically.  
11 As reflected in the history of this dispute, Plaintiffs compete with other major cities in the United  
12 States in the team franchise market. The City of San José is in competition with other major cities  
13 that have the interest and ability to invest in hosting a Major League Baseball Club. San José is  
14 the tenth largest city in the United States and is the urban center of the Silicon Valley. By  
15 population, San José is significantly larger than San Francisco.

16 134. MLB's actions have placed direct and indirect restraints on the purchase, sale,  
17 transfer and relocation of Major League Baseball Clubs generally, and of the Athletics,  
18 specifically, and on competition in the purchase, sale, transfer and relocation of such teams, all of  
19 which directly and indirectly affect interstate commerce. In short, Major League Baseball is an  
20 unreasonable and unlawful monopoly created, intended and maintained by Defendants for the  
21 purpose of permitting an intentionally select and limited group of Clubs to reap enormous profits.  
22 MLB has achieved these restraints on trade and its monopoly status by engaging in an unlawful  
23 combination and conspiracy, the substantial terms of which have been to eliminate all competition  
24 in the relevant market, to exclude Plaintiffs from participating in the relevant market, to establish  
25 monopoly control of the relevant market and to unreasonably restrain trade by denying the sale,  
26 transfer, and relocation of the Athletics to San José.

135. Defendant's unlawful activities have resulted in (a) the elimination of San José from competing in the market; (b) the exclusion of Plaintiffs from engaging in the business of Major League Baseball; and (c) loss of Plaintiffs' contractual and property rights.

136. As reflected in **Exhibit 3**, since November 8, 2011, the San José City Council and the Athletics Investment Group have been contractually obligated to one another under an Option Agreement. The Option Agreement granted the Athletics a two year option to purchase six of the parcels of land that San José transferred to the JPA in March 2011. The Option Agreement permits the Athletics to purchase the San José Stadium Property for a purchase price of \$6,975,227. Defendants are interfering with and preventing the operation of the contract between the Athletics and San José as Defendants are actively preventing the Athletics from relocating to San Jose.

137. As a result of Defendants' anticompetitive agreements, Plaintiffs are injured because MLB Clubs are prevented from offering to play their teams in a competitive market such as San José and are denied the freedom of movement available to businesses in virtually every other industry in the United States.

138. Plaintiffs' injuries coincide with injuries to the public and to competition. The public ultimately pays the price for Defendants' anticompetitive behavior and suffers the loss not just of the enjoyment of a home team, but also the loss of tax revenue, property values and jobs. The citizens of the City of San José deserve a fair and competitive playing field. The citizens of San José support the Athletics' relocation to San Jose. In fact in 2010, seventy-five leading Silicon Valley CEOs<sup>3</sup> wrote to Selig expressing support for the move and concluding that those community leaders "strongly believe that both teams will thrive in a vibrant two team market anchored by San Francisco and the Bay Area's largest city, San José." See **Exhibit 2**.

139. While the full amount of Plaintiffs' damages will be calculated after discovery and awarded based on proof at trial, the combination and conspiracy alleged herein has injured Plaintiffs and threatened Plaintiffs with loss or damage in at least the following ways:

---

<sup>3</sup>Including the CEO of Cisco, Inc., Yahoo!, eBay, Kleiner Perkins and Adobe.

1           **1. The tax revenue to be received by the City of San José has been greatly**  
 2           **diminished**

3           140. San José reasonably expected an expansion of its tax base through the building of a  
 4 MLB stadium in the Diridon area and the hosting of the Athletics as the home city of the team.  
 5 The 2009 CSL Study which specifically analyzed the economic impact of the Athletics relocating  
 6 to San José, concluded that hundreds of thousands in tax revenue would be generated in the  
 7 construction period alone.

8           **2. The City of San José has lost millions in new direct spending that would have**  
 9           **accrued during the construction period and the post-construction period**

10          141. Net new direct spending during the construction period for the Athletics stadium in  
 11 San José has been conservatively estimated at \$96.0 million just during a three year construction  
 12 period. Net new direct spending would then level off to \$82.9 million in net new annual direct  
 13 spending following construction, with a 30-year present value of **\$1.8 billion**. This is direct  
 14 spending that will not occur absent the relocation of the Athletics.

15          **3. The City of San José's General Fund has lost millions**

16          142. San José's General Fund has experienced shortfalls for a number of years as the  
 17 City has sought to weather the economic crisis. The City's struggling General Fund had been  
 18 damaged by Defendants' refusal to permit the Athletics to move to San José. The CSL Study  
 19 provides the conservative estimate that the Athletics stadium deal would have generated \$1.5  
 20 million, per year, in new tax revenue for the General Fund. These funds are greatly needed for  
 21 the City's basic services, such as police, fire and parks and recreation.

22          **4. The City of San José's local agencies, including its school district, have lost**  
 23          **hundreds of thousands of dollars on an annual basis**

24          143. The City of San José's local agencies have lost millions per year due to  
 25 Defendants' actions. It is conservatively estimated that in addition to the General Fund revenue,  
 26 more than \$3.5 million per year in net new property tax revenue would have been generated for  
 27 other local agencies, including, \$706,000 a year for Redevelopment Agency Housing, \$912,000  
 28 for Redevelopment Agency Non-Housing, \$109,000 for San José General Obligation bonds; and,

1 \$495,000 for the San José Unified School District. Again, these are all funds that are desperately  
2 needed by the City and its residents.

3 **5. The City of San José has lost millions in new sales tax revenue that would**  
4 **have accrued during the construction period and the post-construction period**

5 144. As demonstrated by other stadium deals throughout the United States, including  
6 the development of AT&T Park in San Francisco, new MLB ballparks act as a catalyst for local  
7 economies. Local hotels, restaurants, stores, and nightspots all stand to benefit, with the average  
8 non-resident ballpark attendee anticipated to spend \$47 at businesses outside of the stadium,  
9 according to the CSL Study. Stadiums bring with them new business opportunities, both directly  
10 at the stadium and in the surrounding areas. San José has lost millions in new sales tax revenue as  
11 the result of Defendants' refusal to permit the Athletics to move to San José. During the  
12 construction period, San José conservatively would have realized \$558,000 in new tax revenue.  
13 The net present value of the City tax revenues generated by the ballpark over a 30-year and 50-  
14 year period has been estimated to be approximately **\$31.2 million** and **\$42.0 million**, respectively.

15 **6. The City of San José has lost hundreds of new jobs and the related revenues**  
16 **that would have been generated for the City**

17 145. The Defendants' actions have resulted in the loss of hundreds of jobs in San José –  
18 including construction jobs, stadium jobs, service sector jobs and retail jobs. The CSL Study  
19 analyzed job growth that would be associated with the Athletics' move and found that **980 jobs**  
20 would be supported annually due to ballpark development. The net present value of the total  
21 personal earnings generated by the jobs created as a result of the ballpark over a 30-year and 50-  
22 year period is estimated to be approximately **\$1.4 billion** and **\$2.0 billion**, respectively, by the  
23 CSL Study.

24 **7. The City of San José has lost new economic output generated by spending**  
25 **related to the ballpark**

26 146. It is estimated that by 2018, the planned ballpark could conservatively generate  
27 approximately **\$86.5 million** in net new direct spending within the City of San Jose. Over a 30-  
28 year and 50-year term, it is estimated that the net present value of this net new direct spending

could be approximately **\$1.9 billion** and **\$2.7 billion**, respectively. The net new direct spending in the local economy as a result of the annual operations of the proposed ballpark will, in turn, generate approximately **\$130.3 million** in total net new output in the City of San José. Overall, it is estimated that the net present value of the total net new **economic output** generated by the spending related to the operations of the ballpark would be approximately **\$2.9 billion** over a 30-year period and **\$4.1 billion** over a 50-year period.

**8. Plaintiffs have been deprived of free and open competition in the relocation of the Athletics**

147. Defendants have interfered with and are currently preventing the City of San José from competing as a home city of a MLB Club. As a result, San José is being prevented from hosting MLB baseball games, and from hosting Athletics' games more specifically.

**9. Plaintiffs failed to receive the benefits to which they were entitled under the Option Agreement, which benefits they would have received in an competitive marketplace absent Defendants' conspiracy**

148. As stated above, on November 8, 2011, the San José City Council executed an Option Agreement with the Athletics Investment Group which granted the Athletics a two year option to purchase six of the parcels of land that San José transferred to the JPA in March 2011. The Option Agreement permits the Athletics to purchase the San José Stadium Property for a purchase price of \$6,975,227. In exchange for the option to purchase the San José Stadium Property the Athletics agreed to pay \$50,000 for the two year option, with the authority to extend the option term by one year for an additional \$25,000. As described in detail above, the Athletics desire to move forward with the relocation to San José and construction of the stadium. They are prevented from moving due to Defendants' conspiracy.

**10. Plaintiffs have lost millions of dollars spent on planning for the franchise relocation**

149. San José and the San José Redevelopment Agency have been actively working on the development of the ballpark in the Diridon Station area since 2004. That process culminated in February 2007, with the certification of an Environmental Impact Report ("EIR") for the

1 ballpark project. Since 2007 the EIR has been updated and amended. This has been an expensive  
 2 and time consuming process. In addition, the City and the RDA have commissioned the  
 3 preparation of economic impact analysis, including the CSL Study.

4 **11. Competition in the relocation of major league professional baseball teams has**  
 5 **been restrained, suppressed, or eliminated**

6 150. As described above, the purpose and effect of Article VIII, Section 8 of the MLB  
 7 Constitution is to unreasonably restrain trade by granting *de facto* exclusive territories to the MLB  
 8 Clubs and allowing Clubs to protect their respective monopolies by preventing new team entry  
 9 into operating territories previously assigned to an MLB Club. Defendants' actions have  
 10 damaged competition that otherwise would exist in connection with the relocation of major league  
 11 professional baseball teams.

12 **VI. CLAIMS FOR RELIEF**

13 **COUNT ONE**

14 **TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

15 151. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every  
 16 allegation set forth in the preceding paragraphs of this Complaint.

17 152. Under the Option Agreement, Plaintiffs enjoyed a successful economic  
 18 relationship with the Oakland Athletics Club. Defendants knew Plaintiffs had an existing  
 19 economic relationship with the Oakland Athletics Club and that relationship included future  
 20 economic benefits for Plaintiffs. Were it not for Defendants' wrongful scheme to block relocation  
 21 of the Oakland Athletics Club to San José, Plaintiffs' economic relationship with the Oakland  
 22 Athletics Club would have continued forward for the duration of the Option Agreement and for  
 23 the foreseeable future.

24 153. Defendants intentionally interfered with Plaintiffs' economic relationship with the  
 25 Oakland Athletics Club by blocking relocation of the Oakland Athletics to San José. Defendants  
 26 knew that such actions would interfere or was substantially certain to interfere with the economic  
 27 relationship between the Oakland Athletics Club and the City of San José.

1 154. As a direct and proximate result of Defendants' actions, the economic relationship  
2 between the Oakland Athletics Club and Plaintiffs was in fact disrupted.

3 155. Defendants' actions in interfering with Plaintiffs' economic relationship with the  
4 Oakland Athletics Club were wrongful including insofar as Defendants' actions violated federal  
5 and state antitrust law and California's Unfair Competition law.

6 156. As a result of the wrongful actions of Defendants, and each of them, Plaintiffs  
7 have been damaged in an amount to be proven at trial, but which exceeds \$75,000 (exclusive of  
8 interest and costs), and which, at a minimum, includes millions of dollars of lost revenues to  
9 Plaintiffs resulting from Plaintiffs' loss of revenue it reasonably expected under the Option  
10 Agreement and the Purchase Agreement, respectively.

11 157. The aforementioned acts of Defendants were willful, oppressive, and/or malicious.  
12 Plaintiffs are therefore entitled to punitive damages in an amount to be proven at trial, in addition  
13 to all other damages and other relief.

14 **COUNT TWO**

15 **TORTIOUS INTERFERENCE WITH CONTRACTUAL ADVANTAGE**

16 158. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every  
17 allegation set forth in the preceding paragraphs of this Complaint.

18 159. Defendants have engaged in wrongful acts to intentionally interfere with the  
19 economic and contractual relationship between Plaintiffs and the Oakland Athletics Club.

20 160. On November 8, 2011, the City Council of the City of San José entered into a valid  
21 contract with the Oakland Athletics Club – specifically the Athletics Investment Group – in the  
22 form of the Option Agreement, benefits and rights under which specifically inured to Plaintiffs.

23 161. Defendants were aware of the existence of the Option Agreement and were also  
24 aware that, through the Option Agreement, Plaintiffs were the direct and principal beneficiaries of  
25 significant rights with respect to relocating the Oakland Athletics Club to San José.

26 162. Upon information and belief, when Defendants created the MLB Relocation  
27 Committee and intentionally engaged in tactics delaying any decision of the MLB Relocation  
28

1 Committee for over four years, Defendants knew such activity would interfere or was  
2 substantially certain to interfere with the Option Agreement.

3 163. As a direct and proximate result of Defendants' wrongful actions, performance  
4 under the Option Agreement and negotiation of a Purchase Agreement pursuant to the Option  
5 Agreement were in fact disrupted. Defendants disrupted the contractual relationship between the  
6 Oakland Athletics Club and Plaintiffs.

7 164. As a result of the wrongful actions of Defendants, and each of them, Plaintiffs  
8 have been damaged in an amount to be proven at trial, but which exceeds \$75,000 (exclusive of  
9 interest and costs), and which, at a minimum, includes millions of dollars of lost revenues to  
10 Plaintiffs resulting from Plaintiffs' loss of revenue it reasonably expected under the Option  
11 Agreement and the Purchase Agreement, respectively.

12 165. The aforementioned acts of Defendants were willful, oppressive, and/or malicious.  
13 Plaintiffs are therefore entitled to punitive damages in an amount to be proven at trial, in addition  
14 to all other damages and other relief.

15 WHEREFORE, Plaintiffs pray for relief as set forth below.

16 **COUNT THREE**

17 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

18 166. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every  
19 allegation set forth in the preceding paragraphs of this Complaint.

20 167. The actions of Defendants and the unnamed co-conspirators as alleged herein  
21 constituted unlawful, unfair, and/or fraudulent business practices in violation of California  
22 Business and Professions Code § 17200 *et seq.*

23 168. Defendants committed and continue to commit acts of unfair competition, as  
24 defined by Section 17200 *et seq.* of the California Business and Professions Code, by engaging in  
25 the acts and practices described above.

26 169. This claim is instituted pursuant to Sections 17203 and 17204 of the California  
27 Business and Professions Code, to obtain restitution from Defendants for acts, as alleged herein,  
28



1 that violated Section 17200 of the California Business and Professions Code, commonly known  
2 as the Unfair Competition Law.

3 170. Defendants' conduct as alleged herein violated Section 17200. The acts,  
4 omissions, misrepresentations, practices, and non-disclosures of Defendants, as alleged herein,  
5 constituted a common, continuous, and continuing course of conduct of unfair competition by  
6 means of unfair, unlawful, and/or fraudulent business acts or practices within the meaning of  
7 California Business and Professions Code Section 17200 *et seq.*, including, but not limited to,  
8 violations of the Cartwright Act as set forth above.

9 171. Defendants' acts, omissions, misrepresentations, practices, and non-disclosures, as  
10 described above, whether or not in violation of the Cartwright Act, and whether or not concerted  
11 or independent acts, are otherwise unfair, unlawful, and/or fraudulent.

12 172. Defendants' acts or practices are unfair to consumers of professional baseball and  
13 are unfair to competitors of MLB as the practices threaten an incipient violation of California's  
14 antitrust laws.

15 173. Plaintiffs are entitled to full restitution of all revenues, earnings, profits,  
16 compensation, and benefits that may have been obtained by Defendants as a result of such  
17 business acts or practices and at the expense of Plaintiffs.

18 174. The illegal conduct alleged herein is continuing and there is no indication that  
19 Defendants will not continue such activity into the future.

20 175. The unlawful and unfair business practice of Defendants, and each of them, as  
21 described above, have caused and continue to cause damages to Plaintiffs due to, among other  
22 things, the suppression of competition among professional baseball clubs, specifically, between  
23 the San Francisco Giants Club and the Oakland A's Club.

24 176. The conduct of Defendants as alleged in this Complaint violates § 17200 of the  
25 California Business and Professions Code.

26 177. As alleged herein, Defendants and their co-conspirators have been unjustly  
27 enriched as a result of their wrongful conduct and by Defendants' unfair competition. Plaintiffs  
28 are accordingly entitled to equitable relief including restitution of all revenues, earnings, profits,

1 compensation, and benefits that may have been obtained by Defendants as a result of such  
2 business practices and at the expense of Plaintiffs, pursuant to the California Business and  
3 Professions Code, §§ 17203 and 17204.

4 WHEREFORE, Plaintiffs pray for relief as set forth below.

5 **COUNT FOUR**

6 **VIOLATION OF THE CALIFORNIA CARTWRIGHT ACT**

7 178. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every  
8 allegation set forth in the preceding paragraphs of this Complaint.

9 179. Defendants and their co-conspirators created, operated, aided, or abetted a trust,  
10 combine, or monopoly for the purpose of creating and carrying out restrictions on trade or  
11 commerce with the purpose, intent, and effect of restraining horizontal competition among the  
12 MLB Clubs and the MLB for the distribution of major league professional baseball games.

13 180. The trust, combine, or monopoly has resulted in an agreement, understanding, or  
14 concerted action between and among Defendants and their co-conspirators that (a) major league  
15 professional baseball games only be carried out within a team's protected territory, and (b) certain  
16 cities and counties are prohibited from hosting major league professional baseball games.

17 181. The trust, combine, or monopoly has resulted in an agreement, understanding, or  
18 concerted action between and among Defendants and their co-conspirators to limit the location of  
19 MLB Clubs and the number of cities that can host MLB Clubs, and to thereby keep the price of  
20 merchandise and tickets artificially high.

21 182. By virtue of exclusionary and anticompetitive agreements, such as the absolute  
22 veto power under Article VIII, Section 8 of the MLB Constitution, MLB has willfully acquired  
23 and maintained monopoly power in the relevant geographic market and each submarket by  
24 blocking the relocation of Clubs, including the relocation of a competitive team to San José,  
25 California, thereby preventing competition in the relevant geographic market and each submarket.

26 183. The MLB Clubs which are actual competitors in the market for major league  
27 men's professional baseball games have conspired with and through MLB to maintain a  
28 monopoly power in their "operating territories" by refusing to allow the relocation of MLB Clubs

1 to markets where existing Clubs currently have territorial rights, thereby restricting trade and  
 2 commerce, limiting competition within geographic regions, and controlling prices.

3 184. Through the anticompetitive conduct described herein, Defendants and their co-  
 4 conspirators have willfully acquired and maintained, and unless restrained by the Court, will  
 5 continue to willfully maintain, that monopoly power over the market for MLB games by  
 6 anticompetitive and unreasonably exclusionary conduct. These activities have gone beyond those  
 7 which could be considered as “legitimate business activities,” and are an abuse of market  
 8 position. Defendants and their co-conspirators have acted with an intent to illegally acquire and  
 9 maintain that monopoly power in the relevant product market, and their illegal conduct has  
 10 enabled them to do so, in violation of the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*

11 185. The following agreements are void and not enforceable under the Cartwright Act,  
 12 Business and Professions Code § 16722:

- 13 • The exclusionary and anticompetitive provisions in the MLB Constitution,  
 14 including the absolute veto power under Article VIII, Section 8 of the MLB  
 15 Constitution; and
- 16 • The agreements of Defendants and their co-conspirators to prevent or limit team  
 17 relocation; and
- 18 • The agreements of Defendants and their co-conspirators to restrict which cities  
 19 may host a MLB Club.

20 186. The above-described actions constitute monopolization of the relevant geographic  
 21 market and each submarket in violation of the Cartwright Act.

22 187. Plaintiffs have suffered an ascertainable loss of money or property as the result of  
 23 the actions of Defendants and their co-conspirators, including but not limited to the loss of tax  
 24 revenue and the loss of revenue under the Option Agreement.

25 188. The conduct of Defendants and their co-conspirators is a substantial factor in  
 26 Plaintiffs’ loss. The loss was a direct and proximate result of the willful conspiracy of Defendants  
 27 and their co-conspirators to restrain trade and lessen competition.

189. As Defendants and their co-conspirators created, operated, aided, or abetted a trust with the purpose of lessening competition in the business of Major League Baseball and the business of hosting of Major League Baseball in violation of the California Cartwright Act, Cal. Bus. & Prof. Code §§ 16700 *et seq.*, Plaintiffs, accordingly, seek damages and injunctive relief pursuant to Cal. Bus. & Prof. Code Section 16750. Pursuant to the Cartwright Act, Plaintiffs are authorized to recover three times the damages they sustained plus interest.

190. As a direct and legal result of the acts of Defendants and their co-conspirators, Plaintiffs were forced to file this action, resulting in ongoing attorneys' fees, costs, and other expenses for which they seek recovery according to proof.

WHEREFORE, Plaintiffs pray for relief as set forth below.

#### **COUNT FIVE**

#### **VIOLATION OF SECTION 2 OF THE SHERMAN ACT**

191. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

192. MLB possesses monopoly power in the market for major league men's professional baseball games in the relevant geographic market and each submarket.

193. By virtue of exclusionary and anticompetitive provisions in the MLB Constitution, including the absolute veto power under Article VIII, Section 8 of the MLB Constitution, MLB has willfully acquired and maintained monopoly power in the relevant geographic market and each submarket by blocking the relocation of Clubs, including the relocation of a competitive team in San José, California, thereby inhibiting the development of competition in the relevant geographic market and each submarket.

194. The MLB Clubs which are actual competitors in the market for major league men's professional baseball games have conspired with and through MLB to maintain a monopoly power in their "operating territories" by refusing to allow the relocation of MLB Clubs to markets where existing clubs currently have territorial rights.

195. Through the anticompetitive conduct described herein, Defendants and their co-conspirators have willfully acquired and maintained, and unless restrained by the Court, will

1 continue to willfully maintain, that monopoly power over the market for major league baseball  
 2 games by anticompetitive and unreasonably exclusionary conduct. These activities have gone  
 3 beyond those which could be considered as “legitimate business activities,” and are an abuse of  
 4 market position. Defendants and their co-conspirators have acted with an intent to illegally  
 5 acquire and maintain that monopoly power in the relevant product market, and their illegal  
 6 conduct has enabled them to do so, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

7 196. The above-described actions constitute monopolization of the relevant geographic  
 8 market and each submarket in violation of Section 2 of the Sherman Act.

9 197. Defendants’ anticompetitive conduct has directly and proximately caused antitrust  
 10 injury to Plaintiffs, as set forth above. Plaintiffs will continue to suffer antitrust injury and  
 11 threatened loss or damage unless MLB is enjoined from continuing to engage in the foregoing  
 12 violations of law.

13 WHEREFORE, Plaintiffs pray for relief as set forth below.

14 **COUNT SIX**

15 **VIOLATION OF SECTION 1 OF THE SHERMAN ACT**

16 198. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every  
 17 allegation set forth in the preceding paragraphs of this Complaint.

18 199. Beginning at a time presently unknown to Plaintiffs, and continuing through the  
 19 present, the exact dates being unknown to Plaintiffs, Defendants and their co-conspirators entered  
 20 into a continuing agreement, combination or conspiracy in restraint of trade with the purpose,  
 21 intent, and effect of restraining horizontal competition among the MLB member clubs and the  
 22 MLB, with the purpose, intent, and effect of restraining trade and commerce in the distribution of  
 23 major league professional baseball games, in violation of Section 1 of the Sherman Act, 15 U.S.C.  
 24 § 1.

25 200. The contract, combination or conspiracy has resulted in an agreement,  
 26 understanding, or concerted action between and among Defendants and their co-conspirators that  
 27 regular season games will only be carried within a team’s protected geographical territory.  
 28

1           201. The contract, combination, or conspiracy has restrained competition between and  
2 among Defendants in violation of Section 1 of the Sherman Act. It has led to anticompetitive  
3 effects in the relevant markets, as alleged above and caused injury to consumers and competition  
4 in those relevant markets and elsewhere.

5           202. Defendants' contract, combination, agreement, understanding or concerted action  
6 with the co-conspirators occurred in or affected interstate commerce. Defendants' unlawful  
7 conduct was through mutual understandings, combinations or agreements by, between and among  
8 Defendants and other unnamed co-conspirators. These other co-conspirators have either acted  
9 willingly or, due to coercion, unwillingly in furtherance of the unlawful restraint of trade alleged  
10 herein.

11           203. Defendants' anticompetitive conduct has directly and proximately caused antitrust  
12 injury, in the form of lower tax revenue and no revenue from the Option Agreement, as set forth  
13 above. Plaintiffs will continue to suffer antitrust injury and other damage unless Defendants are  
14 enjoined from continuing to engage in the foregoing violations of law.

15           WHEREFORE, Plaintiffs pray for relief as set forth below.

16 **VII. PRAYER FOR RELIEF**

17           WHEREFORE, Plaintiffs, and each of them, pray as follows:

18           A. This Court declare the conduct of Defendants, and each of them, constituted a  
19 conspiracy and that Defendants, and each of them, are liable for the conduct of or damage  
20 inflicted by any other co-conspirator;

21           B. Defendants, and each of them, be permanently enjoined from enforcing Article  
22 VIII, Section 8 of the MLB Constitution and to prohibit the relocation of the Oakland Athletics  
23 Club to San José, California;

24           C. The contract, combination or conspiracy, and the acts done in furtherance thereof  
25 by Defendants and their co-conspirators as alleged in this complaint, be adjudged to have been a  
26 violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

1 D. The actions of Defendants and their co-conspirators to illegally acquire and  
2 maintain monopoly power in the relevant product market be adjudged to have been in violation of  
3 Section 2 of the Sherman Act, 15 U.S.C. § 2;

4 E. Judgment be entered for Plaintiffs and against Defendants for three times the  
5 amount of damages sustained by Plaintiffs as allowed by law, together with the costs of this  
6 action, including reasonable attorneys' fees, pursuant to Sections 4 and 16 of the Clayton Act, 15  
7 U.S.C. §§ 15 and 26 and Section 16700 *et seq.* of the Cartwright Act;

8 F. Plaintiffs be awarded actual damages on pendent claims;

9 G. Plaintiffs be awarded punitive damages on pendent claims;

10 H. Plaintiffs be awarded pre-judgment and post-judgment interest at the highest legal  
11 rate from and after the date of service of this Complaint to the extent provided by law;

12 I. Defendants and their co-conspirators be enjoined from further violations of the  
13 antitrust laws; and,

14 J. Plaintiffs have such other, further or different relief, as this Court may deem just  
15 and proper under the circumstances.

16 Dated: June 18, 2013

COTCHETT, FITRE & McCARTHY, LLP

17 By: 

18 JOSEPH W. COTCHETT  
19 PHILIP L. GREGORY  
20 FRANK C. DAMRELL, JR.  
21 ANNE MARIE MURPHY  
Attorneys for Plaintiffs

22 OFFICE OF THE CITY ATTORNEY

23 By: 

24 NORA TRIMMANN  
25 RICHARD DOYLE  
26 Attorneys for Plaintiffs  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: June 18, 2013

**COTCHETT, PIERRE & McCARTHY, LLP**

By: 

JOSEPH W. COTCHETT

PHILIP L. GREGORY

FRANK C. DAMRELL, JR

ANNE MARIE MURPHY

*Attorneys for Plaintiffs*



# EXHIBIT 1

*Economic Impact Analysis:*

# **Proposed Major League Ballpark**

*Presented to:*

**Redevelopment Agency  
of the  
City of San Jose**

*Presented by:*



*September 2, 2009*



September 2, 2009

Harry S. Mavrogenes  
Executive Director  
San Jose Redevelopment Agency  
200 East Santa Clara Street  
14th Floor Tower  
San Jose, California 95113

Dear Mr. Mavrogenes:

Conventions, Sports & Leisure International (“CSLI”) is pleased to present this report regarding an assessment of the economic and fiscal impacts associated with the Oakland Athletics (“A’s”) playing in a new Major League Baseball (“MLB”) ballpark in the City of San Jose, California (“the City”). The attached report summarizes our research and analyses and is intended to assist project representatives in understanding the benefits, costs and tradeoffs the City can anticipate should the A’s relocate to a new ballpark in San Jose.

The information contained in this report is based on estimates, assumptions and other information developed from research of the market, our knowledge of sports facilities and other factors, including certain information provided by the City. All information provided to us by others was not audited or verified and was assumed to be correct. Because procedures were limited, we express no opinion or assurances of any kind on the achievability of any projected information contained herein and this report should not be relied upon for that purpose. Furthermore, there will be differences between projected and actual results. This is because events and circumstances frequently do not occur as expected, and those differences may be material. We have no responsibility to update this report for events and circumstances occurring after the date of this report.

September 2, 2009

Page 2 of 2

We sincerely appreciate the opportunity to assist you with this project, and would be pleased to be of further assistance in the interpretation and application of the study's findings.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bill Rhoda". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bill Rhoda  
CSL International

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## Executive Summary

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### Introduction

The attached report summarizes Conventions, Sports & Leisure International's ("CSL") research and analyses of the economic and fiscal impacts associated with the Oakland Athletics ("A's") hosting home games in a new Major League Baseball ("MLB") ballpark in San Jose. This report is intended to assist project representatives in understanding the associated economic and fiscal impacts to the City should the A's relocate to a new ballpark in San Jose. For the purposes of this report, quantifiable effects are characterized in terms of economic impacts and fiscal impacts. Economic impacts are conveyed through measures of direct spending, total output, personal earnings, and employment. Fiscal impacts denote changes in tax revenues.

CSL has developed an independent and conservative estimate of the quantifiable impacts generated by the operations of the baseball club and a potential new ballpark located in the Diridon Area of San Jose. In all areas of analysis, CSL has attempted to use conservative assumptions with regard to spending in the local community and the related impacts.



If a new MLB ballpark is not built in San Jose, it is likely that alternative development will occur on the same site in the Diridon Area in the future. The Alternative Development Scenario, presented in Appendix I of this report, assumes the construction of approximately 1.0 million square feet of new office and retail space. There are a number of other locations in downtown and North San Jose able to accommodate this type and scale of office development.

For the purposes of this report, the development of a ballpark is referred to as the "Ballpark Development Scenario". The ballpark site described herein is the only feasible location for a downtown MLB ballpark that has been identified. In addition to the analysis of potential economic impacts associated with a new ballpark, an in depth analyses of Major League Baseball was conducted and is utilized in the findings presented herein. This analysis is presented in full detail in Appendix II of this report.



## **Executive Summary (cont'd)**

### **Key Findings**

#### **Ballpark Construction Period Economic Impacts**

Construction of the ballpark is assumed to take place from 2011 to 2013 with the first year of operations commencing in 2014. It is estimated that the proposed San Jose ballpark will cost approximately \$461 million in 2009 dollars or \$489 million in 2011 dollars, the year construction is expected to commence. The economic impacts resulting from the ballpark construction expenditures depend on the nature of the spending and the extent to which the spending takes place locally. It has been assumed that approximately 25 percent of labor spending and 20 percent of material spending related to construction will directly impact the San Jose economy. Based on these assumptions, the total net new direct spending occurring within San Jose was calculated. The net new economic impacts to the City of San Jose resulting from the anticipated spending levels were estimated by applying multipliers that specifically reflect the unique characteristics of the local construction industry. The following table summarizes the construction period impacts for the Ballpark Development Scenario.

**Ballpark Development Scenario  
Economic Impact Summary  
Net New Impacts - Construction Period <sup>(1)</sup>  
(2009 Dollars)**

<b><u>Category</u></b>	<b><u>Net Present Value</u></b>
Net New Direct Spending	\$96,000,000
Total Output	\$144,946,000
Jobs	350
Earnings	\$65,226,000
Tax Revenues	\$558,000

As shown, the net present value of the net new direct spending estimated to take place within the City of San Jose from 2011 to 2013 as a result of the ballpark's construction is approximately \$96.0 million. This net new direct spending is expected to generate approximately \$144.9 million in total output during the three-year construction period. This level of economic activity is estimated to support 350 annual construction jobs during the construction period, generating personal earnings of approximately \$65.2 million. The net present value of the sales tax revenues generated to the City over the three year construction period is estimated to be approximately \$558,000. Additional taxes generated during the construction period such as construction tax and conveyance tax are excluded from the tax revenues discussed here but have been included in Section 4 of this report (City of San Jose Revenue/Cost Analysis).

## **Executive Summary (cont'd)**

### **Ballpark Annual Operations Economic Impacts**

For the purposes of this report, construction of the ballpark is assumed to be completed in 2013 with the first year of operations commencing in 2014. Throughout this analysis, 2018 is considered to be a stabilized year of operations for the Ballpark Development Scenario and serves as the basis for presenting the associated economic and fiscal impacts. The table below summarizes the net new economic impacts associated with the net new direct spending expected to occur due to the annual operations of the proposed Ballpark Development Scenario.

**Ballpark Development Scenario  
Economic Impact Summary  
Net New Impacts - Annual Ongoing Operations  
(2009 Dollars)**

<b>Category</b>	<b>Stabilized Year</b>	<b>30-Year Net Present Value</b>	<b>50-Year Net Present Value</b>
Net New Direct Spending	\$86,453,000	\$1,906,872,000	\$2,721,674,000
Total Output	\$130,300,000	\$2,873,000,000	\$4,102,000,000
Jobs	980	n/a	n/a
Earnings	\$61,940,000	\$1,371,500,000	\$1,968,400,000

As shown, it is estimated that in a stabilized year of operations, 2018, the Ballpark Development Scenario could generate approximately \$86.5 million in net new direct spending within the City of San Jose. Over a 30-year and 50-year term, it is estimated that the net present value of this net new direct spending could be approximately \$1.9 billion and \$2.7 billion, respectively.

The net new direct spending in the local economy as a result of the annual operations of the proposed ballpark will, in turn, generate approximately \$130.3 million in total net new output in the City of San Jose during a stabilized year of operations. Overall, it is estimated that the net present value of the total net new economic output generated by the spending related to the operations of the ballpark could be approximately \$2.9 billion over a 30-year period and \$4.1 billion over a 50-year period.

Increased economic activity associated with the proposed ballpark is assumed to spur the creation of jobs within the local economy. It is estimated that the Ballpark Development Scenario could support approximately 980 full and part-time jobs in a stabilized year of operations, 2018. The table on the following page outlines the estimated number of jobs created as a result of the Ballpark Development Scenario.

## **Executive Summary (cont'd)**

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<b>Ballpark Development Scenario Employment Summary</b>	
<b>Average Annual Net New Jobs Created <sup>(1)</sup></b>	
<b>Job Type</b>	<b>Average Annual Jobs</b>
Construction Period Jobs <i>(During each of the 3 years of construction.)</i>	350
Annually Recurring Jobs <sup>(2)</sup> <i>(Direct, indirect and induced jobs.)</i>	980

*Notes:*

*(1) Includes both full and part-time employees.*

*(2) Includes 138 net new direct ballpark-specific jobs (50 percent of the anticipated ballpark-specific employees).*

Based on the jobs estimated to be supported by the level of economic output generated by the ballpark, it is estimated that total personal earnings in a stabilized year of operations, 2018, could be approximately \$61.9 million as shown in the previous table. The net present value of the total personal earnings generated by the jobs created as a result of the Ballpark Development Scenario over a 30-year and 50-year period is estimated to be approximately \$1.4 billion and \$2.0 billion, respectively.

### City of San Jose Revenues / Costs

As a result of the direct and indirect economic impacts generated by new developments in San Jose, the public sector (the City of San Jose, Santa Clara County and the State of California) could realize increased tax collections. Based on the estimates of direct spending, the resulting tax collections and associated costs of potential site development have been calculated for the Ballpark Development Scenario. The development of a new ballpark will also increase costs associated with various City services.

For the Ballpark Development Scenario, game-day/event costs for extra policing or emergency services are not included in cost estimates as these will be paid for by the MLB team. Additional costs including City staff regarding normal ongoing management discussions with ballpark administration are also not included in these estimates. The following table provides a summary of the City's General Fund revenues that are anticipated to be generated annually as a result of the ballpark's operations less the associated annual service cost to the City's General Fund.

**Executive Summary (cont'd)**

**Projection of Annual City General Fund Revenues Less Service Expenses  
Ballpark Development Scenario  
City of San Jose, CA  
(2009 Dollars)**

<u>City General Fund Impact</u>	<u>Ballpark Development Scenario</u>		
	<u>Stabilized Year</u>	<u>30-Year Net Present Value</u>	<u>50-Year Net Present Value</u>
<b>Annual Revenue</b>	\$1,496,400	\$31,186,000	\$42,044,000
<b>Annual Service Cost</b>	(\$46,000)	(\$1,009,000)	(\$1,403,000)
<b>Game-day Event Costs</b>	To be Paid by MLB Team		
<b>Net General Fund Revenues</b>	<b><u>\$1,450,400</u></b>	<b><u>\$30,177,000</u></b>	<b><u>\$40,641,000</u></b>

As illustrated above, it is anticipated that a net of approximately \$1.5 million could be generated to the General Fund in a stabilized year of operations under the Ballpark Development Scenario. Furthermore, the net revenue to the City's General Fund attributable to the Ballpark Development Scenario over a 30-year and 50-year period is estimated to be approximately \$30.2 million and \$46.4 million, respectively.

The following table provides a comparison of the property tax revenues generated to jurisdictions other than the City that can be anticipated under the potential Ballpark Development Scenario.

**Property Tax Revenues Generated to Other Jurisdictions  
Ballpark Development Scenario  
(2009 Dollars)**

<u>Other Property Tax Revenues Generated</u>	<u>Stabilized Year</u>	<u>30-Year Net Present Value</u>	<u>50-Year Net Present Value</u>
Redevelopment Agency - Housing	\$706,000	\$13,866,000	\$14,670,000
Redevelopment Agency - Non-housing	912,000	17,479,000	18,425,000
San Jose GO Bonds	109,000	2,143,000	2,790,000
County	948,000	18,172,000	22,113,000
Santa Clara Valley Water District	15,000	331,000	776,000
Bay Area Air Quality Management District	1,000	30,000	64,000
San Jose Unified School District	495,000	10,115,000	12,243,000
San Jose-Evergreen Community College	69,000	1,418,000	1,719,000
County Office of Education	112,000	2,237,000	2,906,000
ERAF & Offsets to State Funding for Schools	166,000	3,596,000	14,803,000
<b>Total Property Tax Revenues</b>	<b><u>\$3,533,000</u></b>	<b><u>\$69,387,000</u></b>	<b><u>\$90,509,000</u></b>

## **Executive Summary (cont'd)**

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### **Key Assumptions**

The results of the analysis provided herein are sensitive to the following assumptions:

- Ballpark Development.** This analysis assumes a ballpark with a seating capacity of approximately 32,000. The construction costs for the facility are assumed to total approximately \$461.0 million in 2009 dollars including \$369.0 million in hard construction costs and \$92.0 million in soft costs including architectural, engineering, legal fees, etc.
- Events and Attendance.** Based on an analysis of the A's historical attendance, the historical attendance of other MLB teams moving into new facilities, the characteristics of the San Jose market and CSL's industry experience, it is estimated that the proposed ballpark would host 81 A's games and three non-MLB events annually, drawing an estimated annual attendance of nearly 2.1 million. The assumption of only three annually recurring non-MLB events at the ballpark is a somewhat conservative estimate given the mild San Jose climate which could allow year round use of the ballpark. In addition, the City of San Jose lacks a large outdoor facility, such as an amphitheater, capable of hosting major events. Therefore, the potential exists for a new ballpark to attract more large-scale outdoor events to the San Jose market.
- Fan Origin.** Fan origin is based on the results of a number of other sports and entertainment studies conducted in San Jose and intercept surveys of other MLB teams conducted by CSL. It is assumed that approximately 50 percent of all attendees to A's games will be non-San Jose residents and will be visiting San Jose with the primary purpose of attending a game. Furthermore, it is assumed that the other 50 percent of attendees will be residents of San Jose or will be non-San Jose residents visiting the City for a purpose other than attending the ball game.
- In-Facility Spending.** Assumptions for in-facility spending are based on an analysis of Major League ballparks, an analysis of A's operations and CSL's experience in the sports and entertainment industry. The specific in-facility spending assumptions utilized in this analysis are outlined in the following table.

**In-Facility Per Capita Daily Spending Estimates  
Proposed San Jose Ballpark  
(2009 Dollars)**

<u>Event Type</u>	<u>Ticket Price</u>	<u>Food &amp; Beverage</u>	<u>Merchandise</u>	<u>Parking</u>	<u>Total</u>
A's Games	\$30	\$15	\$3	\$1	<b>\$49</b>
Non-MLB Events	\$45	\$16	\$10	\$3	<b>\$74</b>

## **Executive Summary (cont'd)**

It should be noted that the estimates of direct spending and associated economic impacts related to the team were based on the A's estimated annual operating expenditures, which are detailed later in this report. The per capita in-facility spending estimates for A's games shown in the previous table were utilized to calculate the direct in-facility spending on taxable items such as concessions and merchandise in order to estimate the associated fiscal impacts generated to the City of San Jose as a result of the in-facility spending that takes place at the ballpark during A's games. However, the direct spending and associated economic/fiscal impacts for non-MLB events was based solely on the per capita spending estimates outlined in the previous table.

- Out-of-Facility Spending.** Assumptions for out-of-facility spending are based on information obtained from fan intercept surveys conducted by CSL at other MLB ballparks and CSL's experience in the sports and entertainment industry. The following table summarizes the average out-of-facility per capita spending figures utilized to calculate the economic impacts for each type of event assumed to be hosted at the proposed ballpark. For purposes of this study, only the out-of-facility spending for *non-San Jose residents* who were assumed to be visiting the City for the sole purpose of attending a ballgame was utilized to estimate the economic impacts of the proposed ballpark. Out-of-facility spending by fans whose primary purpose for visiting the area was assumed to be something other than attending a baseball game has been excluded from these per capita estimates.

**Out-of-Facility Per Capita Daily Spending Estimates  
Proposed San Jose Ballpark  
(2009 Dollars)**

<u>Event Type</u>	<u>Lodging</u>	<u>Entertainment</u>	<u>Food/Beverage</u>	<u>Transportation</u>	<u>Retail</u>	<u>Misc.</u>	<u>Total</u>
A's Games	\$6	\$7	\$19	\$7	\$7	\$1	<b>\$47</b>
Non-MLB Events	\$6	\$3	\$6	\$3	\$5	\$3	<b>\$26</b>

### ***Exclusions and Limitations***

*The information contained in this report is based on estimates, assumptions, and other information developed from research of the market, knowledge of the sports industry and other factors, including certain information provided by third parties. All information provided to us by others was not audited or verified and was assumed to be correct. Because the procedures were limited, we express no opinion or assurances of any kind on the achievability of any projected information contained herein and this report should not be relied upon for that purpose.*

## **Executive Summary (cont'd)**

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*This analysis makes certain assumptions based on the best available information at the time the study was conducted. However, there are certain variables such as the cost of land, potential infrastructure costs and potential land sale/lease proceeds for Redevelopment Agency property for which information was not available, and consequently, was not included in this analysis. In addition, no attempt has been made to assess the qualitative impacts typically associated with the development of professional sports facilities, which could include such factors as improvements in the quality of life among the local population, increased media exposure for the City/local government, an increase in civic pride among local residents and other such factors.*

*Furthermore, there will be differences between projected and actual results. This is because events and circumstances frequently do not occur as expected, and those differences may be material.*

\*\*\*\*\*

This report should be read in its entirety to obtain the background, methods and assumptions underlying the findings presented herein.

## 1. Introduction

---

Conventions, Sports & Leisure International (“CSL”) was retained to provide an analysis of the economic and fiscal impacts associated with the Oakland Athletics (“A’s”) hosting home games in a new Major League Baseball (“MLB”) ballpark in San Jose. The attached report summarizes our research and analyses and is intended to assist project representatives in understanding the associated economic and fiscal impacts to the City should the A’s relocate to a new ballpark in the San Jose.

The Oakland Athletics currently play their home games at Oakland-Alameda County Coliseum (“Coliseum”), located in Oakland, California. The Coliseum has served as the home of the A’s since their move from Kansas City, Missouri in 1968. In 2008, approximately 1.7 million fans attended A’s games at the 35,067-seat Coliseum. Recently, the A’s have begun to consider various ballpark development options in northern California, including the development of a 32,000-seat ballpark in San Jose.

In order to gain an understanding of the impacts that the operations of the A’s may have on the local economy, CSL developed an independent estimate of the quantifiable impacts generated by the operations of the baseball club and new ballpark. Typically, and for the purposes of this report, quantifiable effects are characterized in terms of *economic impacts* and *fiscal impacts*. *Economic impacts* are conveyed through measures of direct spending, total output, personal earnings, and employment. *Fiscal impacts* denote changes in tax revenues.

The assumptions underlying the estimates of economic and fiscal impacts are based on the historical operations of the A’s, fan intercept surveys conducted at MLB games, industry data, the use of IMPLAN multipliers and CSL’s experience in quantifying the economic and fiscal impacts of similar projects.

The study’s findings are presented in the following sections:

1. Introduction
2. Economic Impact Methodology
3. Economic Impacts of Ballpark Development
4. City of San Jose Revenue / Cost Analysis

Appendix I Economic Impacts of Alternative Development

Appendix II Major League Baseball Overview

This report outlines the key highlights of the economic and fiscal impact analysis of the A’s and a new ballpark in San Jose. The study is designed to assist in understanding the impacts that the construction and operations of a major league ballpark will have on the local economy. The report should be read in its entirety to obtain the background, methods and assumptions underlying the findings.



## **2. Economic Impact Methodology**

---

The construction and operation of a new major league ballpark in San Jose would provide certain quantifiable impacts to the local and regional economies. As previously stated, economic impacts are conveyed through measures of direct spending, total output, personal earnings, and employment. Fiscal impacts denote changes in tax revenues. The remainder of this section gives a brief explanation of the methodology utilized herein.

### **Direct Spending**

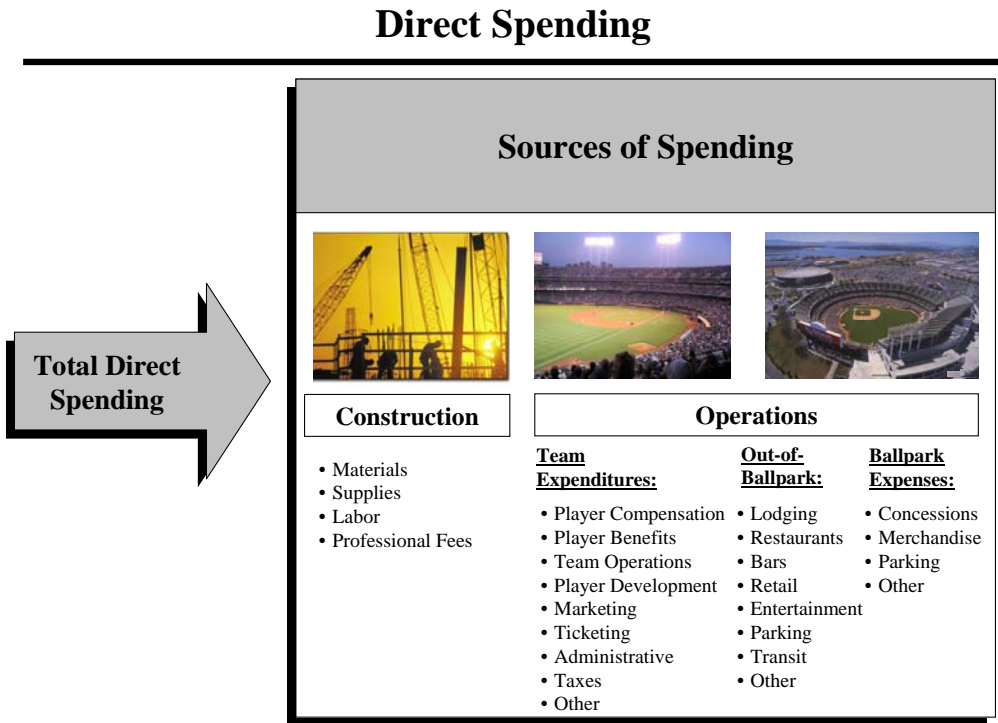
Direct spending represents the initial spending that occurs as a direct result of the operations of a MLB team and new ballpark. During *construction* of the ballpark, direct spending is generated on materials, supplies, labor, professional fees, etc. This spending occurs not only with the initial construction of the ballpark but also with any subsequent capital improvements that are made to the ballpark.

During team and ballpark *operations*, direct spending is generated both inside and outside of the facility. For purposes of this report, the first round of in-facility spending related to the operations of the team was based on the estimated annual expenditures of the A's. However, for non-MLB events, in facility direct spending was estimated based on spending related to tickets, concessions, merchandise, premium seating, advertising, rent, etc. by ballpark attendees, corporate sponsors and any other facility users.

Outside the ballpark, direct spending is generated by fans, event staff, facility users, etc. on lodging, food and beverages, retail, entertainment, transportation, etc. in connection with their usage of the ballpark. Further, the team generates non-fan or ballpark-related direct spending for national television agreements, local radio broadcasts, MLB revenue sharing agreements and other such sources.

The graphic on the following page illustrates the components of direct spending that could be generated by the A's playing in a new ballpark in San Jose.

2. Economic Impact Methodology (cont'd)



Total *gross* direct spending flows to various economic entities including the ballpark, MLB teams, restaurants, hotel operators, retail businesses and other such entities. Focusing on the flow of spending is particularly important when analyzing the unique characteristics of MLB professional sports teams and facilities. As some of the spending that occurs in connection with the construction of the ballpark as well as the ongoing operations of the team and ballpark does not fully impact the local area, reductions in the total *gross* direct spending are made to reflect the amount of spending associated with the team and ballpark that is considered *net new* to the City of San Jose economy.

Several adjustments are made to *gross* spending to determine the *net new* impacts on the San Jose economy. These adjustments include:

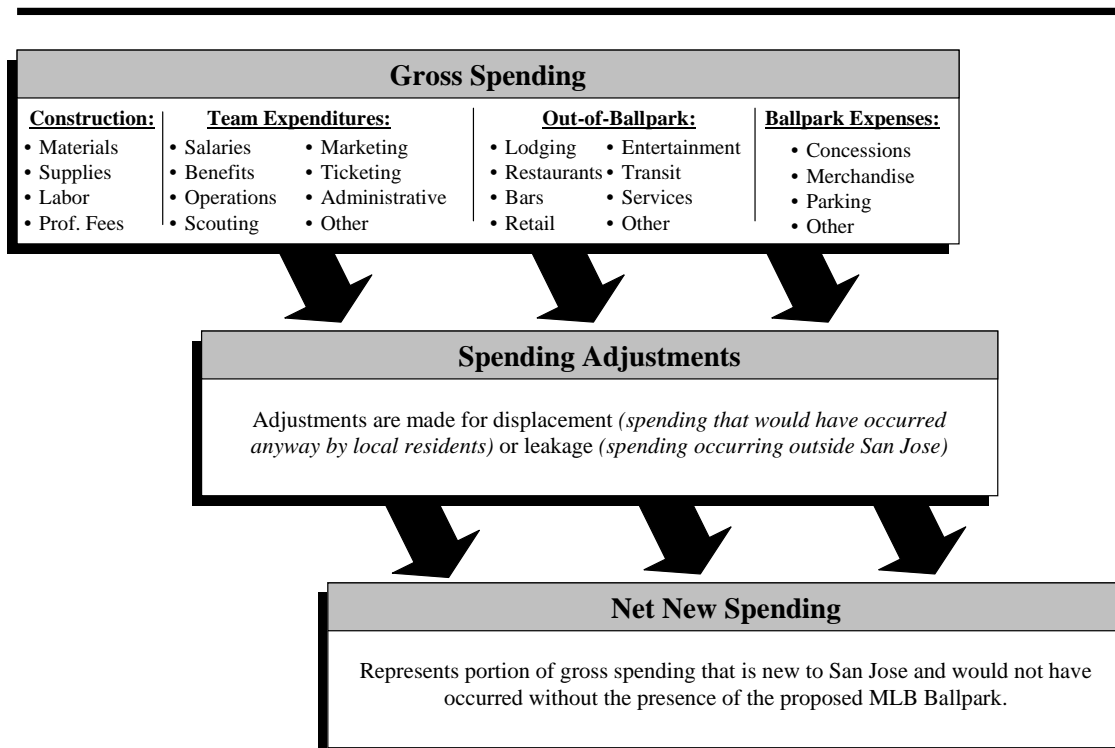
- *Leakage* – Leakage represents the portion of gross spending that occurs outside the local economy, which for purposes of this report is considered the City of San Jose. Leakage can occur in two manners. First, *immediate* leakage occurs when initial direct expenditures occur outside the defined geographic area. Examples of this type of immediate leakage include an out-of-town fan that stays overnight in a hotel or patronizes a restaurant located outside of the San Jose city limits. Secondly, leakage also occurs when initial spending that occurs within the defined geographic area is, in turn, used immediately to pay for non-local goods, services, etc. Examples of this type of secondary leakage include salaries paid to players who live outside of San Jose, concessionaire profits retained by companies operating outside of San Jose, etc.

## 2. Economic Impact Methodology (cont'd)

- *Displacement* – Displacement refers to spending that would have likely occurred anyway in the City without the presence of the team and ballpark. Examples of displaced spending would include spending by San Jose residents in connection with their attendance at the ballpark (tickets, food and beverage, merchandise, etc.) that would have been spent within San Jose on other items (movie, restaurant, shopping, etc.) if they did not attend ballgames. For purposes of this report, all spending by local residents was considered displaced. Another example of displaced spending would include spending at the ballpark by fans from outside of San Jose whose primary purpose for visiting San Jose was something other than attending a baseball game. For the purposes of this report, spending by fans falling into this category was excluded from the analysis herein.

As illustrated in the following graphic, the flow of *gross* direct spending associated with the construction of the ballpark and operation of the ballpark and team is adjusted to reflect only the spending that is considered *net new* to the City of San Jose. The resulting spending, after all adjustments, is referred to throughout the remainder of this analysis as *net new* direct spending.

### Direct Spending Adjustments



## **2. Economic Impact Methodology (cont'd)**

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### **Multiplier Effects**

Economic impacts are further increased through the re-spending of direct spending. The total impact is estimated by applying economic multipliers to net new direct spending to account for the total economic impact. Total output multipliers are used to estimate the aggregate total spending that takes place beginning with *direct spending* and continuing through each successive round of re-spending. Spending impacts beyond initial direct spending are generally discussed in terms of their indirect and induced effects on the surrounding economy. Each is discussed in more detail as follows:

*Indirect effects*- consist of the re-spending of direct expenditures. These indirect impacts extend further as the dollars constituting the direct expenditures continue to change hands. This process, in principle, could continue indefinitely. However, recipients of these expenditures may spend all or part of it on goods and services outside of San Jose, put part of these earnings into savings, or use them to pay taxes. This spending halts the process of subsequent expenditure flows and does not generate additional spending or impact within the community after a period of time. This progression is termed *leakage* and reduces the overall economic impact.

Indirect impacts occur in a number of areas including the following:

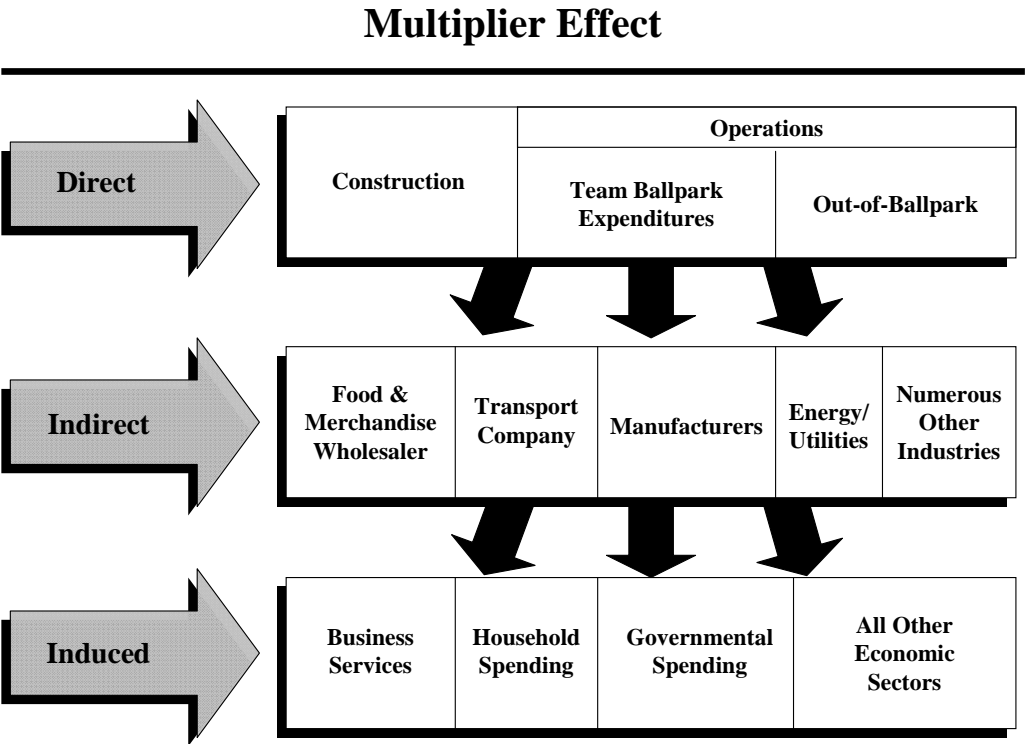
- Wholesale industry as purchases of food and merchandise products are made;
- Transportation industry as the products are shipped from purchaser to buyer;
- Manufacturing industry as products used to service arena, sports franchise(s), vendors and others are produced;
- Utility industry as the power to produce goods and services is consumed; and,
- Other such industries.

*Induced effects* consist of the positive changes in spending, employment, earnings and tax collections generated by personal income associated with the operations of the various facilities. Specifically, as the economic impact process continues, wages and salaries are earned, increased employment and population are generated, and spending occurs in virtually all business, household, and governmental sectors. This represents the induced spending impacts generated by direct expenditures.

The appropriate multipliers to be used are dependent upon certain regional characteristics and also the nature of the expenditure. An area which is capable of producing a wide range of goods and services within its border will have high multipliers, a positive correlation existing between the self-sufficiency of an area's economy and the higher probability of re-spending occurring within the region. If a high proportion of the expenditures must be imported from another geographical region, lower multipliers will result.

**2. Economic Impact Methodology (cont'd)**

The following graphic illustrates the flow of direct spending through the successive rounds of re-spending including indirect and induced effects on the City's economy.



The multiplier estimates used in this analysis are based on the IMPLAN system. IMPLAN, which stands for *Impact Analyses and Planning*, is a computer software package that consists of procedures for estimating local input-output models and associated databases. Input-output models are a technique for quantifying interactions between firms, industries and social institutions within a local economy.

IMPLAN was originally developed by the U.S. Forest Service in cooperation with the Federal Emergency Management Agency and the U.S. Department of the Interior's Bureau of Land Management to assist in land and resource management planning. Since 1993, the IMPLAN system has been developed under exclusive rights by the Minnesota Implan Group, Inc. which licenses and distributes the software to users. Currently, there are hundreds of licensed users in the United States including universities, government agencies, and private companies.

The economic data for IMPLAN comes from the system of national accounts for the United States based on data collected by the U. S. Department of Commerce, the U.S. Bureau of Labor Statistics, and other federal and state government agencies. Data are collected for 528 distinct producing industry sectors of the national economy

## **2. Economic Impact Methodology (cont'd)**

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corresponding to the Standard Industrial Categories (SICs). Industry sectors are classified on the basis of the primary commodity or service produced. Corresponding data sets are also produced for each county and zip code in the United States, allowing analyses at both the city and county level and for geographic aggregations such as clusters of contiguous cities, counties, individual states, or groups of states. For purposes of this analysis, economic multipliers specific to the City of San Jose were used based on local zip codes.

Data provided for each industry sector include outputs and inputs from other sectors, value added, employment, wages and business taxes paid, imports and exports, final demand by households and government, capital investment, business inventories, marketing margins, and inflation factors (deflators). These data are provided both for the 528 producing sectors at the national level and for the corresponding sectors at the county level. Data on the technological mix of inputs and levels of transactions between producing sectors are taken from detailed input-output tables of the national economy. National and county level data are the basis for IMPLAN calculations of input-output tables and multipliers for geographic areas. The IMPLAN software package allows the estimation of the multiplier effects of changes in final demand for one industry on all other industries within a local economic area.

Multiplier-effects estimated in this analysis include:

- *Total output* represents the total direct, indirect, and induced spending effects generated by the A's playing in a new ballpark.
- *Personal earnings* represent the wages and salaries earned by employees of businesses impacted by the A's and ballpark operations.
- *Employment* is expressed in terms of full or part-time jobs.

The economic multipliers specific to the City of San Jose for those industries directly impacted by the potential development are presented in the table on the following page.

## 2. Economic Impact Methodology (cont'd)

City of San Jose Economic Multipliers

Industry	Total Output Multiplier	Personal Earnings Multiplier	Employment Multiplier
Advertising and Related Services	1.59392	0.68704	10.49897
Construction - New Non-Residential	1.51160	0.68022	9.30784
Food and Beverage Services	1.46629	0.53986	18.19416
Hotels and Motels	1.48907	0.53542	12.16139
Amusement and Recreation Industries (Entertainment)	1.50280	0.65853	18.74686
Personal Services	1.49326	0.34804	6.93554
Radio and Television Broadcasting	1.63522	0.73611	6.86089
Retail Stores	1.45365	0.64700	9.53630
Spectator Sports Companies	1.54281	0.86285	7.38274
Transit and Ground Passenger Transportation	1.46150	0.60890	14.46750

### Fiscal Impacts / Costs

In addition to the economic impacts that could be generated throughout San Jose by the A's and a new ballpark, the City would receive tax revenues from a variety of sources and incur certain costs. In preparing estimates of fiscal impacts, total tax revenues attributable to the *direct, indirect and induced spending* were examined. Tax revenues examined and estimated herein include sales, hotel, utility user, franchise, business license, construction & conveyance and property taxes generated to the City of San Jose. It is also anticipated that costs will accrue to the City's General Fund as a result of the development scenarios under consideration. Cost categories estimated and examined herein include general government, finance, economic development, police, fire, capital maintenance and community service costs.

### **3. Economic Impacts of Ballpark Development**

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The purpose of this section is to provide a detailed analysis of the economic impacts associated with the proposed ballpark development. The information presented in this section is divided into the following areas:

- Description of Potential Development Site;
- Estimate of Potential Demand;
- Key Operating Assumptions;
- Direct Economic Impact;
- Indirect and Induced Impacts;
- Construction-Period Economic Impacts; and,
- Potential for Enhanced Ancillary Development.

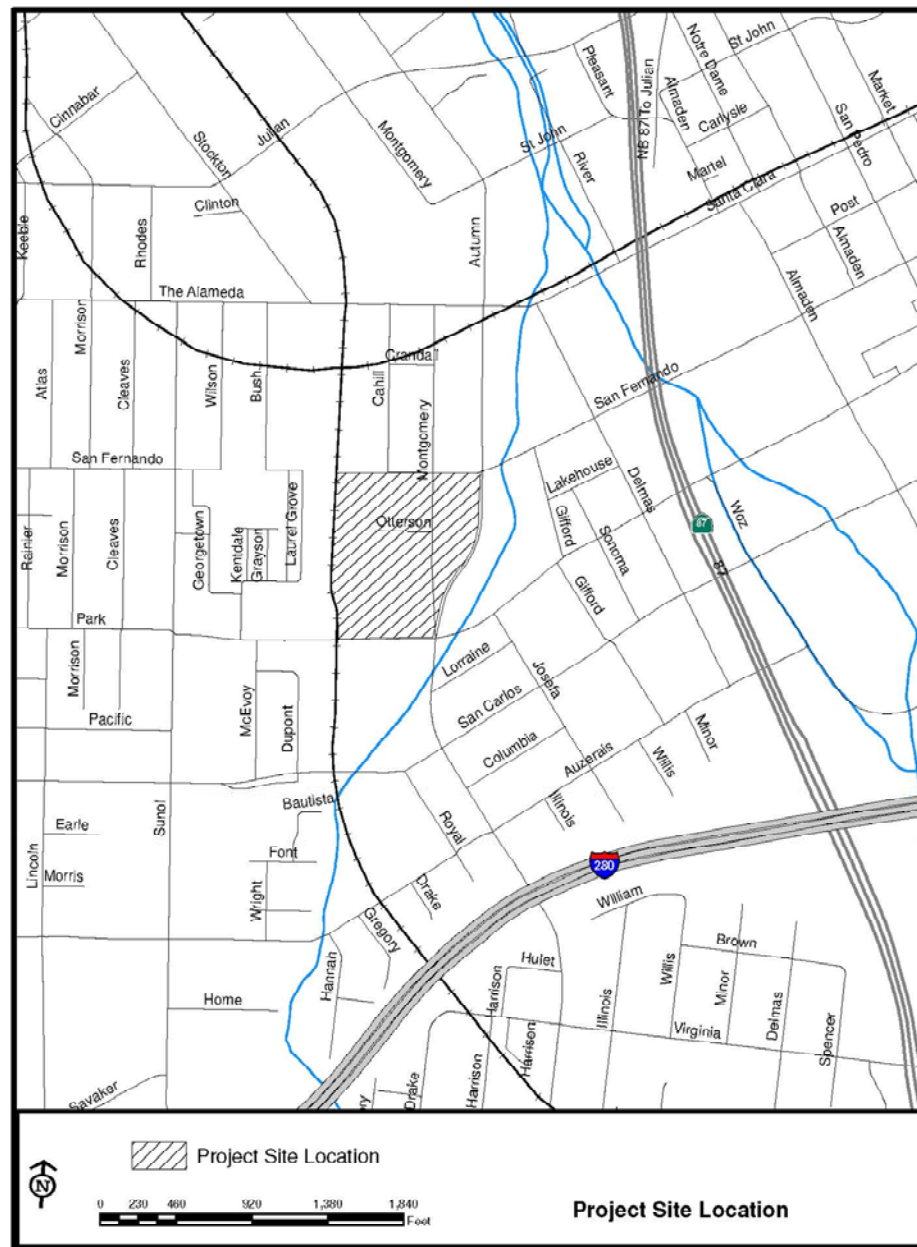
#### **Description of Potential Development Site**

As shown on the map on the following page, the proposed development site is situated in the South San Francisco Bay Area, in the City of San Jose, Santa Clara County. The project site is located along the western edge of the Greater Downtown Area of San Jose, in the Burbank/Del Monte Strong Neighborhoods Initiative Redevelopment Project Area. The development site is bounded by San Fernando Street on the north, Park Avenue on the south, Autumn Street on the east and the Caltrain railroad tracks on the west.



### **3. Economic Impacts of Ballpark Development (cont'd)**

## Potential Development Site



In October 2004, the City of San Jose and the Redevelopment Agency began studying the potential for developing a ballpark in the Diridon Station area. That process culminated in February 2007, with the certification of an Environmental Impact Report for a ballpark project consisting of a 1.5 million square-foot MLB stadium and a parking structure with ground floor commercial uses on approximately 23.1 acres in the City of San Jose. The ballpark proposed in 2007 had a maximum seating capacity of 45,000 and a maximum height of 165 feet, with scoreboards approximately 200 feet and lights approximately 235 feet above finished grade.

### **3. Economic Impacts of Ballpark Development (cont'd)**

In early 2009, the City of San Jose began exploring the development of a modified project. The current ballpark concept reduces the size of the stadium from 45,000 to 32,000 seats. The completion of construction on the Bay Area segment of High Speed Rail (San Francisco to San Jose) and an upgrade to Diridon Station is contemplated for 2016. The extension of BART service to Diridon Station is anticipated to be complete no earlier than 2018. The illustration below includes a preliminary concept of how the ballpark might be situated on the site.





### 3. Economic Impacts of Ballpark Development (cont'd)

#### Estimate of Potential Demand

##### Impact of New MLB Ballparks on Attendance

Typically, the development of a new ballpark has a significant positive impact on an MLB franchise's attendance. The following table summarizes the changes in average per-game attendance that has resulted from the development of new MLB ballparks since 1992.

Impact of New MLB Ballparks on Attendance

Team	New Stadium	Year Open	Prior Year Attendance	First Year Attendance	First-Year Change	Fifth Year Attendance	Fifth-Year Change
Cleveland Indians	Progressive Field	1994	26,888	39,121	45%	42,806	59%
San Francisco Giants	AT&T Park	2000	25,659	40,973	60%	40,307	57%
Philadelphia Phillies	Citizens Bank Park	2004	28,973	40,626	40%	42,254	46%
Baltimore Orioles	Oriole Park at Camden Yards	1992	31,515	44,047	40%	44,475	41%
Milwaukee Brewers	Miller Park	2001	19,427	34,704	79%	27,296	41%
Seattle Mariners	Safeco Field	1999	32,735	36,004	10%	43,740	34%
Texas Rangers	Rangers Ballpark in Arlington	1994	27,711	39,733	43%	36,141	30%
San Diego Padres	Petco Park	2004	25,024	37,243	49%	29,969	20%
Cincinnati Reds	Great American Ballpark	2003	23,199	29,077	25%	25,414	10%
Pittsburgh Pirates	PNC Park	2001	21,591	30,430	41%	22,435	4%
Atlanta Braves	Turner Field	1997	35,818	42,771	19%	34,858	-3%
Detroit Tigers	Comerica Park	2000	25,018	30,106	20%	23,667	-5%
Houston Astros	Minute Maid Park	2000	33,000	37,730	14%	30,299	-8%
Washington Nationals	Nationals Park	2008	24,217	29,005	20%	n/a	n/a
St. Louis Cardinals	Busch Stadium	2006	43,691	42,588	-3%	n/a	n/a
<b>Average</b>		<b>2000</b>	<b>28,298</b>	<b>36,944</b>	<b>34%</b>	<b>34,128</b>	<b>25%</b>

Note: 1. Citi Field (2009) and Yankee Stadium (2009) have been excluded as the New York Mets and New York Yankees have yet to complete a full season in their new ballparks.

2. Coors Field (1995) and Chase Field (1998) have been excluded as the Colorado Rockies and Arizona Diamondbacks were expansion franchises.

3. Sorted by fifth-year change.

4. Excludes Yankee Stadium (2009), Citi Field (2009), Target Field (2010) and new Marlins ballpark (2012).

Source: Major League Baseball.

As shown in the table above, 14 of the 15 new MLB ballparks listed experienced an attendance increase in their first year of operations. On average, first-year ballparks experienced a 34 percent increase in per-game attendance. On a 5-year basis, just three ballparks have experienced a decrease in average per-game attendance. The average fifth-year attendance increase associated with new ballparks is 25 percent. The higher attendance figures of the first year relative to the fifth year can be attributed to the honeymoon period in which new ballparks experience increased attendance from people who would not normally attend games.

Average attendance at Oakland A's games over the past five seasons has been approximately 24,300 fans per game, while average per game attendance for all MLB teams over that same period has been approximately 31,700. (See Appendix II Major League Baseball Overview for detail).

Based on the historical increases in attendance associated with new MLB ballpark development, it is anticipated that the A's average attendance at a new ballpark in San

### **3. Economic Impacts of Ballpark Development (cont'd)**

Jose could be approximately 29,250 fans per game in the first year. This represents an approximate 20 percent increase over the average attendance to A's games in Oakland over the last five years. However, the projected average attendance of 29,250, assumed in the first year, is still nine percent below the average attendance to MLB games over the past five years and 11 percent lower than average MLB attendance in 2008. For purposes of conservatism, it has been assumed that after the first year of operations, attendance will decrease by five percent annually until year six when attendance is assumed to level off at approximately 24,300 per game over the remainder of the 50-year analysis.

This analysis assumes the construction of a ballpark with a seating capacity of approximately 32,000 to be completed in time for the 2014 MLB season. With an average estimated attendance of 24,300, the ballpark would be filled to approximately 76 percent of capacity, on average, but would have the smallest seating capacity in Major League Baseball. By contrast, the average MLB ballpark has a seating capacity of approximately 45,000.

#### **Ticket Price**

The average ticket price for the A's in 2008 was approximately \$29.20. For the purposes of this report, the average 2008 ticket price was inflated at three percent annually to the year 2014, the first year the ballpark is expected to be open. In general, many major league teams realize an increase in ticket prices of approximately 15 to 20 percent after moving into a new facility due to enhanced fan amenities, better sightlines, etc. However, for purposes of conservatism, no increase in the average ticket price for the A's was assumed as a result of playing in a new ballpark. After adjusting for inflation, the average ticket price utilized in this analysis was calculated to be approximately \$35 in 2014 (\$30 in 2009).

#### **Key Operating Assumptions**

The initial step in estimating the economic impacts generated by a sports franchise and facility is to develop assumptions pertaining to annual events and attendance as well as per capita spending levels of ballpark patrons. For purposes of this analysis, assumptions have been developed for two types of ballpark events: A's games and non-MLB events.

#### **In-Facility Assumptions**

The key assumptions related to A's games at the proposed ballpark are based on the team's historical attendance and ticket prices, per capita spending estimates experienced

### 3. Economic Impacts of Ballpark Development (cont'd)

at other San Jose sports and entertainment events as well as the past intercept studies conducted by CSL in various MLB markets, premium seating inventory based on current stadium development plans and other such operating assumptions. These assumptions form the basis for the estimates of in-ballpark spending.

The analysis includes assumptions for A's games as well as various other non-MLB events that are envisioned to utilize the proposed ballpark. The following table summarizes the event and attendance assumptions for all events assumed to be hosted at the ballpark.

**Event and Attendance Estimates - Stabilized Year  
Proposed San Jose Ballpark**

	<b>Average Annual Event Days</b>	<b>Average Event Attendance</b>	<b>Estimated Annual Attendance</b>	<b>Estimated Percent Local <sup>(1)</sup></b>	<b>Estimated Percent Non-Local <sup>(2)</sup></b>
<i>Recurring Events:</i>					
A's Games	81	24,300 <sup>(3)</sup>	1,968,000	50%	50% <sup>(2)</sup>
Non-MLB Events <sup>(4)</sup>	3	30,000	90,000	20%	80%
<b>TOTAL (All Events) <sup>(5)</sup></b>	<b>84</b>	<b>24,500</b>	<b>2,058,000</b>	<b>49%</b>	<b>51%</b>

*Notes:*

*(1) Represents the percentage of attendees assumed to live in the City of San Jose based on previous sports and entertainment studies conducted in San Jose and intercept studies conducted by CSL in other MLB markets.*

*(2) Represents the percentage of attendees assumed to live outside the City of San Jose based on previous sports and entertainment studies conducted in San Jose and intercept studies conducted by CSL in other MLB markets. Only includes non-local attendees whose primary reason for visiting the City is to attend the ballgame. Excludes all other non-local attendees.*

*(3) Based on the A's historical attendance. Assumes attendance will spike 20 percent in year-1 (2014) above historical levels and decrease 5% annually before leveling out in 2018.*

*(4) Based on the operations of other similar MLB ballparks.*

*(5) Average event attendance and percentage of local patron estimates are based on weighted averages.*

*Source:*

*A's historical operations, industry standards and CSL International research.*

As shown, the ballpark is estimated to host 84 events annually, which includes 81 A's home games and three non-MLB events, for total annual attendance of approximately 2.1 million. The assumption of only three annually recurring non-MLB events at the ballpark is a somewhat conservative estimate given the mild San Jose climate which could allow year round use of the ballpark. In addition, the City of San Jose lacks a large outdoor facility, such as an amphitheater, capable of hosting major events. Therefore, the potential exists for a new ballpark to attract more large-scale outdoor events to the San Jose market.

Based on the results of the surveys conducted at MLB ballparks, previous studies conducted at sporting events in San Jose and CSL's experience conducting economic analyses throughout the country, it was estimated that approximately 70 percent of attendees of A's games would not reside in San Jose (non-local attendees). Furthermore,

### 3. Economic Impacts of Ballpark Development (cont'd)

it was assumed that only 70 percent of these non-local attendees would be visiting San Jose with the primary purpose of attending the ballgame. Conversely, 30 percent of non-local attendees were assumed to be visiting San Jose for some other purpose than to attend the ballgame. These individuals who were assumed to be in San Jose for some other purpose than to attend the ballgame were excluded from the analysis as it was assumed that they were already in town and would have spent money in the City regardless of their attendance at the game.

For purposes of this analysis, only those non-local attendees (70 percent of all attendees) whose primary purpose for visiting San Jose was to attend the ballgame (70 percent of non-local attendees) were included in the calculation for out-of-facility ballpark spending. Given these assumptions, it was estimated that approximately 50 percent of A's game attendees would be non-local and be visiting San Jose with the primary purpose of attending the ballgame. Furthermore, it was assumed that 80 percent of attendees of non-MLB events hosted at the proposed ballpark would be non-local.

The number of non-local residents attending the ballgame is important to the net new spending that takes place as a result of the ballpark's existence, as these non-local attendees are bringing dollars into the local economy that would likely be spent elsewhere in the absence of the ballpark.

The overall economic impact from in-facility spending in the ballpark is driven by the number of patrons that visit the facility annually and by the amount each patron spends within the ballpark. The following table outlines the estimated in-facility per capita spending specific to the events held within the proposed ballpark.

**In-Facility Per Capita Daily Spending Estimates <sup>(1)</sup>**  
**Proposed San Jose Ballpark**  
**(2009 Dollars)**

<u>Event Type</u>	<u>Ticket Price</u>	<u>Food &amp; Beverage</u>	<u>Merchandise</u>	<u>Parking</u>	<u>Total</u>
A's Games	\$30	\$15	\$3	\$1 <sup>(2)</sup>	<b>\$49</b>
Non-MLB Events	\$45	\$16	\$10	\$3 <sup>(3)</sup>	<b>\$74</b>

Notes:

(1) Based on other comparable ballparks.

(2) Assumes 30 percent of fans would utilize available parking and that there would be 3 people per car.

(3) Assumes 50 percent of fans would utilize available parking and that there would be 3 people per car.

Source:

Industry standards and CSL International research.

As shown, total per capita in-facility daily spending for A's games is estimated to be approximately \$49, while total per capita in-facility daily spending for non-MLB events is estimated to be approximately \$74. The estimates for in-facility per capita spending

### **3. Economic Impacts of Ballpark Development (cont'd)**

were derived from the historical operations of the A's and industry standards in the sports and entertainment industry.

It should be noted that the estimates of direct spending and associated economic impacts related to the team were based on the A's estimated annual operating expenditures, which are detailed later in this section. The per capita in-facility spending estimates for A's games shown in the previous table were utilized to calculate the direct in-facility spending on taxable items such as concessions and merchandise in order to estimate the associated fiscal impacts generated to the City of San Jose as a result of the in-facility spending that takes place at the ballpark during A's games. However, the direct spending and associated economic/fiscal impacts for non-MLB events was based solely on the per capita spending estimates outlined in the previous table.

#### **Out-of-Facility Spending Assumptions**

While purchases made at the ballpark represent the most visible source of spending related to the A's and the ballpark, spending taking place outside of the ballpark by patrons in conjunction with their attendance at events can also have significant impacts on the local economy. In order to assist in estimating the amount of out-of-facility spending that could take place related to A's games at the proposed ballpark, data from previous sports and entertainment studies conducted in San Jose as well as information from previous intercept studies conducted by CSL for other MLB teams were utilized.

The amount of spending fans make in conjunction with their ballpark visit often depends on the patron's origin. Fans that travel from outside of the local area to attend games may be more likely to spend money on hotels, restaurants, travel expenses and other such expenditures during their visits. In addition, money spent by non-local fans can often be considered new to the economy, as that spending may not have taken place locally if not for the patron's visit to the ballpark.

Based on intercept studies conducted by CSL in other MLB markets, respondents were asked to estimate the amount they intended to spend on each of several types of expenditures in relation to their attendance at the game. The table on the following page summarizes the average spending per respondent captured as part of the previous intercept studies for each spending category as it relates specifically to their attendance at the ballgame. To evaluate the difference in spending patterns, the spending estimates were separated into those fans who came to the city for the day to attend the game and those fans who stayed overnight in the city. It should be noted that the averages presented below for out-of-facility spending include the responses of all non-local respondents and include data from those respondents who indicated that they spend no money outside of the ballpark for each spending category.

### 3. Economic Impacts of Ballpark Development (cont'd)

Out of Facility Spending Comparison - Day Trip vs. Overnight Attendees<sup>(1)</sup>  
All Non-Local Attendees

Attendee Type	Lodging	Entertainment	Food/Beverage	Transportation	Shopping	Misc.	Total
Day Trip	n/a	\$5	\$16	\$7	\$4	\$1	\$33
Overnight	\$36	\$23	\$35	\$14	\$23	\$5	\$137
All (Day Trip and Overnight) <sup>(2)</sup>	\$15	\$12	\$24	\$10	\$12	\$2	\$75

Notes:

(1) Represents out-of-facility spending for all non-local attendees.

(2) Represents the weighted average out-of-facility spending for non-local attendees visiting the city for the day as well as those non-local attendees staying overnight.

Source: Past CSL intercept studies conducted in other comparable MLB markets.

As shown above, the overall average out-of-facility spending reported by respondents of the two intercept groups was approximately \$75 per day. However, these spending estimates include those non-local respondents who were visiting the city for some other purpose than to attend the ballgame.

Due to differences in the spending habits of those non-local respondents who were in town strictly to attend the game and those non-local respondents who were in town for other purposes, a further analysis was completed to ascertain the per capita spending estimates related to only those non-local respondents whose primary purpose for visiting the city was to attend the ballgame. Furthermore, by utilizing the per capita spending estimates only from those non-local respondents whose primary purpose for visiting the city was to attend the game, the out-of-facility spending estimates should better reflect the net new spending that could take place as a result of the ballpark's operations. The following table presents the out-of-facility spending estimates specific to those non-local attendees whose primary purpose for visiting the city was to attend the ballgame.

Out of Facility Spending Comparison - Day Trip vs. Overnight Attendees<sup>(1)</sup>  
Non-Local Attendees Whose Primary Purpose for Visiting City was to Attend Ballgame

Attendee Type	Lodging	Entertainment	Food/Beverage	Transportation	Shopping	Misc.	Total
Day Trip	n/a	\$5	\$16	\$8	\$5	\$1	\$34
Overnight	\$20	\$10	\$24	\$8	\$11	\$2	\$77
All (Day Trip and Overnight) <sup>(2)</sup>	\$6	\$7	\$19	\$7	\$7	\$1	\$47

Notes:

(1) Represents out-of-facility spending for only those non-local attendees whose primary purpose for visiting the city was to attend the ballgame.

(2) Represents the weighted average out-of-facility spending for non-local attendees visiting the city for the day as well as those non-local attendees staying overnight.

Source: Past CSL intercept studies conducted in other comparable MLB markets.

As shown in the previous table, the average out-of-facility per capita spending specific to those non-local attendees whose primary purpose was to attend the ballgame was \$47 per day. As a point of comparison, the average out-of-facility per capita spending captured from the previous intercept studies conducted by CSL was compared to the out-of-facility per capita spending estimates of similar studies conducted at other sports and entertainment events in San Jose. The comparison is shown in the table on the following page.



### 3. Economic Impacts of Ballpark Development (cont'd)

**Daily Out-of-Facility Per Capita Spending Comparison  
Previous San Jose Sporting Event Studies vs. CSL Studies**

<u>Source</u>	<u>Study Year</u>	<u>Daily Per Capita Spending</u>	<u>Daily Per Capita Spending Inflated to 2009</u> <sup>(1)</sup>
San Jose Sharks Study	2008	\$63	\$65
San Jose MLS Study	2007	\$77	\$82
San Jose CAHA Study	2007	\$123	\$130
San Jose NCAA Study	2007	\$142	\$151
CSL Intercept Studies <sup>(2)</sup>	2009	\$47 <sup>(3)</sup>	\$47 <sup>(3)</sup>

Notes:

(1) Inflated at 3% annually.

(2) Based on the results of the intercept studies conducted at other MLB ballparks.

(3) Represents out-of-facility spending for non-local visitors only. Does not include out-of-facility spending from local residents.

As shown, the total estimated out-of-facility spending reported for the other sports and entertainment events previously hosted in San Jose ranged from a low of \$65 to high of \$151, in 2009 dollars. The following table summarizes the detailed out-facility per capita spending estimates utilized to project the economic impacts associated with all out-of-facility spending estimated to take place in the City of San Jose as result of the events hosted at the proposed ballpark.

**Out-of-Facility Per Capita Daily Spending Estimates  
Proposed San Jose Ballpark  
(2009 Dollars)**

	<u>Lodging</u>	<u>Entertainment</u>	<u>Food/Beverage</u>	<u>Transportation</u>	<u>Retail</u>	<u>Misc.</u>	<u>Total</u>
<i>Recurring Events:</i>							
A's Games <sup>(1)</sup>	\$6	\$7	\$19	\$7	\$7	\$1	<b>\$47</b>
Non-MLB Events	\$6	\$3	\$6	\$3	\$5	\$3	<b>\$26</b>

Notes:

(1) Per capita spending numbers are specific to non-local attendees whose primary purpose for visiting the City is to attend the ballgame.

Source:

Previous CSL MLB intercept surveys, prior sports and entertainment spending studies conducted in San Jose and industry standards.

In addition to the detailed adjusted out-of-facility spending estimates for A's games in San Jose, the detailed out-of-facility spending estimates for non-MLB events envisioned to be hosted at the proposed San Jose ballpark is estimated to be approximately \$26 per person daily, as shown in the previous table. These spending figures form the basis for calculating the out-of-facility spending estimates associated with the events hosted at the proposed ballpark in San Jose. Furthermore, for purposes of calculating the total direct spending that is estimated to take place outside the ballpark, it was assumed that 60 percent of all out-of-facility spending as a result of the ballpark's operations would take place within the City of San Jose. This estimate was based on an analysis of the

### **3. Economic Impacts of Ballpark Development (cont'd)**

percentage of corporations and population within the City of San Jose relative to Santa Clara County.

#### **Direct Economic Impact**

The direct impact discussed in this report includes team and ballpark expenditures as well as spending by ballpark patrons before and after events taking place outside of the ballpark at local establishments such as restaurants, hotels, retail shops and other such places. CSL developed an economic model for an MLB team and ballpark to calculate the initial round of spending related to team operations. The assumptions related to attendance and spending levels at non-MLB events were used to estimate direct spending related to the ballpark but not directly attributable to the team.

Estimates related to out-of-ballpark spending are based on fan-intercept surveys conducted by CSL at MLB ballparks, historical survey data collected in San Jose at other events and venues and CSL's industry experience. This data was used to develop an understanding of fan spending before and after A's games. Spending estimates for other events at the proposed ballpark were developed based on industry averages and CSL's experience conducting similar studies throughout the country. In addition to fan spending before and after home games, other areas of economic activity that have been used to calculate the impact associated with the A's include team expenditures and visiting team/media spending.

#### **Spending Adjustment**

Adjustments to the gross direct spending sources related to A's games have been made to reflect the fact that spending patterns of professional sports teams vary significantly from those in other more typical industries, as a portion of the initial spending immediately leaves the local economy. Traditionally, multipliers that are used in economic impact studies are designed to reflect such leakage. As such, many economists argue that it is not necessary to adjust the initial round of spending since the multipliers take this into account. However, because the largest expense of a professional sports franchise, players' salaries, does not necessarily fully impact the local area (players often do not reside in the local area year-round), the initial round of spending has been adjusted downward in this analysis.

A gross direct spending adjustment was made to the portion of A's expenditures allocated to player salaries and the percentage of player spending that is assumed to take place locally. It is assumed that approximately 10 percent of A's' players will live within the

### **3. Economic Impacts of Ballpark Development (cont'd)**

City of San Jose and that those players will spend approximately 50 percent of their income within the City San Jose.

Players not residing in San Jose are assumed to spend significantly less of their income within the City. Specifically, it is assumed that players that are not San Jose residents will spend approximately five percent of their income within the City. Overall, it is estimated that approximately \$5.1 million, or seven percent, of the estimated \$70 million in total players' salaries would be spent within San Jose.

In addition to the player salary adjustment, it is also necessary to adjust other team expenditures to reflect the fact that not all team expenditures occur locally. In total, gross direct spending related to team operations has been reduced by approximately 62 percent in order to estimate the adjusted economic impacts expected to occur within the City.

#### **Adjusted Net New Direct Spending (A's Games)**

Based on the assumptions discussed herein, estimates of the adjusted net new direct spending related to the A's have been developed and are presented in the table on the following page.

### 3. Economic Impacts of Ballpark Development (cont'd)

**Estimated Net New Direct Spending - A's Games <sup>(1)</sup>**  
**(After Spending Adjustment)**  
**Ballpark Development Scenario**  
**(2009 Dollars) <sup>(2)</sup>**

<b>Category</b>	<b>Stabilized Year <sup>(3)</sup></b>	<b>30-Year Net Present Value <sup>(4)</sup></b>	<b>50-Year Net Present Value <sup>(4)</sup></b>
<b><i>Team Ballpark Expenditures <sup>(5)</sup></i></b>			
Major League Player Compensation	\$4,359,000	\$123,948,000	\$223,692,000
Player Benefit Plan	2,899,000	82,429,000	148,760,000
Major League Team Operations	4,975,000	106,178,000	147,527,000
Scouting and Player Development	9,950,000	212,357,000	295,054,000
Stadium Operations	7,462,000	159,268,000	221,290,000
Marketing, Publicity and Ticket Operations	3,234,000	69,016,000	95,893,000
General and Administrative	5,970,000	127,414,000	177,032,000
Ballpark Property Tax	3,992,000	78,398,000	102,072,000
Concessions <sup>(6)</sup>	8,809,000	191,871,000	265,092,000
Merchandise <sup>(6)</sup>	2,349,000	51,166,000	70,691,000
Parking <sup>(6)</sup>	215,000	4,705,000	6,488,000
<b>Total In-Facility</b>	<b>\$54,214,000</b>	<b>\$1,206,750,000</b>	<b>\$1,753,591,000</b>
<b><i>Out-of-Facility Spending <sup>(7)</sup></i></b>			
Lodging	\$3,724,000	\$81,117,000	\$112,072,000
Restaurant	10,977,000	239,089,000	330,328,000
Retail	3,890,000	84,726,000	117,058,000
Local Transit	4,354,000	94,823,000	131,008,000
Entertainment	3,952,000	86,067,000	118,911,000
Other	626,000	13,643,000	18,849,000
<b>Total Out-of-Facility</b>	<b>\$27,523,000</b>	<b>\$599,465,000</b>	<b>\$828,226,000</b>
<b><i>Visiting Team Spending <sup>(8)</sup></i></b>			
Lodging	\$810,000	\$17,280,000	\$24,009,000
Per Diem	269,000	5,748,000	7,987,000
Transportation	105,000	2,247,000	3,123,000
<b>Total Visiting Team</b>	<b>\$1,184,000</b>	<b>\$25,275,000</b>	<b>\$35,119,000</b>
<b>TOTAL NET NEW SPENDING</b>	<b>\$82,921,000</b>	<b>\$1,831,490,000</b>	<b>\$2,616,936,000</b>

*Notes:*

(1) Net new direct spending represents the portion of gross direct spending that is considered to be newly created in the San Jose economy as a result of the A's operations.

(2) Presented in 2009 dollars, discounted at 3 percent annually.

(3) The year 2018 is presented as a stabilized year of operations.

(4) Net present value calculation assumes a discount rate of 5.2 percent.

(5) In-facility spending figures represent all expenditures related to the operations of the team.

(6) Represents the cost of goods and labor related to this revenue source.

(7) Out-of-facility spending figures are only for non-local attendees whose sole purpose for visiting the City is to attend the ballgame.

(8) Visiting team spending represents all spending assumed to take place within the City that is directly attributable to the players and personnel of the visiting team.

As shown, the net new *annual* direct spending estimated to take place within San Jose related to A's games in a stabilized year of operations (2018), is estimated to be total approximately \$82.9 million in 2009 dollars while the 30-year and 50-year net present value of this net new spending is estimated to be approximately \$1.8 billion and \$2.6 billion, respectively.

### 3. Economic Impacts of Ballpark Development (cont'd)

#### Adjusted Net New Direct Spending (Non-MLB Events)

Based on the assumptions discussed herein, estimates of the adjusted spending related to non-MLB events were developed and are presented in the following table.

<b>Estimated Net New Direct Spending - Non-MLB Events <sup>(1)</sup></b> <b>Ballpark Development Scenario</b> <b>(2009 Dollars) <sup>(2)</sup></b>			
<b>Category</b>	<b>Stabilized Year <sup>(3)</sup></b>	<b>30-Year Net Present Value <sup>(4)</sup></b>	<b>50-Year Net Present Value <sup>(4)</sup></b>
<b><i>In-Facility Spending <sup>(5)</sup></i></b>			
Ticket Revenue	\$380,000	\$8,119,000	\$11,281,000
Concessions	1,353,000	28,868,000	40,110,000
Merchandise	845,000	18,043,000	25,069,000
Parking	282,000	6,014,000	8,356,000
<b>Total In-Facility</b>	<b>\$2,860,000</b>	<b>\$61,044,000</b>	<b>\$84,816,000</b>
<b><i>Out-of-Facility Spending <sup>(6)</sup></i></b>			
Lodging	\$188,000	\$4,009,000	\$5,571,000
Restaurant	145,000	3,099,000	4,305,000
Retail	121,000	2,582,000	3,588,000
Local Transit	73,000	1,549,000	2,153,000
Entertainment	77,000	1,653,000	2,296,000
Other	68,000	1,446,000	2,009,000
<b>Total Out-of-Facility</b>	<b>\$672,000</b>	<b>\$14,338,000</b>	<b>\$19,922,000</b>
<b>TOTAL NET NEW SPENDING</b>	<b>\$3,532,000</b>	<b>\$75,382,000</b>	<b>\$104,738,000</b>

*Notes:*

(1) Net new direct spending represents the portion of gross direct spending that is considered to be newly created in the San Jose economy as a result of the ballpark's existence.

(2) Presented in 2009 dollars, discounted at 3 percent annually.

(3) The year 2018 is presented as a stabilized year of operations.

(4) Net present value calculation assumes a discount rate of 5.2 percent.

(5) In-facility spending figures include all spending assumed to take place within the stadium attributable to all events other than A's games.

(6) Out-of-facility spending figures are only for non-local attendees at all non-MLB events.

As shown above, the net new *annual* direct spending related to non-MLB events during a stabilized year of operations is estimated to total approximately \$3.5 million in 2009 dollars within San Jose while the 30-year and 50-year net present value of this net new spending is estimated to be approximately \$75.4 million and \$104.7 million, respectively.

### 3. Economic Impacts of Ballpark Development (cont'd)

Overall, it is estimated that A's games and the other events hosted at the ballpark could generate approximately \$86.5 million in adjusted net new direct spending in a stabilized year of operations (2018) in 2009 dollars within the City of San Jose. As shown in the following table, the 30-year and 50-year net present value of all adjusted direct spending related to the Ballpark Development Scenario is estimated to be approximately \$1.9 billion and \$2.7 billion, respectively.

Total Estimated Adjusted Net New Direct Spending <sup>(1)</sup> Ballpark Development Scenario (2009 Dollars) <sup>(2)</sup>			
Category	Stabilized Year <sup>(3)</sup>	30-Year Net Present Value <sup>(4)</sup>	50-Year Net Present Value <sup>(4)</sup>
A's Games <sup>(5)</sup>	\$82,921,000	\$1,831,490,000	\$2,616,936,000
Non-MLB Events <sup>(5)</sup>	3,532,000	75,382,000	104,738,000
<b>TOTAL NET NEW SPENDING</b>	<b>\$86,453,000</b>	<b>\$1,906,872,000</b>	<b>\$2,721,674,000</b>

*Notes:*

(1) Net new direct spending represents the portion of gross direct spending that is considered to be newly created in the San Jose economy as a result of the ballpark's existence.

(2) Presented in 2009 dollars, discounted at 3 percent annually.

(3) The year 2018 is presented as a stabilized year of operations.

(4) Net present value calculation assumes a discount rate of 5.2 percent.

(5) Includes in-facility and out-facility net new direct spending.

The following section discusses the impacts of these adjusted net new direct spending levels as they flow through the local economy and outlines the indirect and induced economic impacts.

#### Indirect and Induced Impacts

The initial spending of new dollars in an economy begins a series of spending in which the dollars are cycled and recycled through the economy. The indirect spending represents the impact that the various rounds of re-spending of the direct expenditures has on the defined economies.

As money leaves the economy due to exportation or leakage, the input-output model adjusts each successive round of spending, recognizing only the impact that the spending has on the defined economy. The re-spending of the dollars is estimated by utilizing economic multipliers and applying them to the amount of direct, or initial spending.

### 3. Economic Impacts of Ballpark Development (cont'd)

#### Total Output

Total output represents the total direct, indirect, and induced spending effects generated by the proposed Ballpark Development Scenario. Total output is calculated by multiplying the adjusted net new direct spending for each spending category by the proper economic multiplier, which represents the successive rounds of additional spending in the local economy. The following table outlines the estimated total output related to the proposed Ballpark Development Scenario.

Estimated Total Net New Output <sup>(1)</sup> Ballpark Development Scenario (2009 Dollars) <sup>(2)</sup>			
Category	Stabilized Year <sup>(3)</sup>	30-Year Net Present Value <sup>(4)</sup>	50-Year Net Present Value <sup>(4)</sup>
<i>A's Games</i>			
Team Ballpark Expenditures	\$82,800,000	\$1,842,000,000	\$2,678,000,000
Total Out-of-Facility	40,500,000	883,000,000	1,219,000,000
Total Visiting Team	1,800,000	37,000,000	53,000,000
<b>Total A's</b>	<b>\$125,100,000</b>	<b>\$2,762,000,000</b>	<b>\$3,950,000,000</b>
<i>Non-MLB Events</i>			
Total In-Facility	\$4,200,000	\$90,000,000	\$124,000,000
Total Out-of-Facility	1,000,000	21,000,000	28,000,000
<b>Total Non-MLB Events</b>	<b>\$5,200,000</b>	<b>\$111,000,000</b>	<b>\$152,000,000</b>
<b>TOTAL OUTPUT <sup>(3)</sup></b>	<b>\$130,300,000</b>	<b>\$2,873,000,000</b>	<b>\$4,102,000,000</b>

*Notes:*

(1) Total net new output includes direct, indirect and induced spending. Net new total output is calculated by applying the appropriate output multipliers to each net new direct spending category. (*Indirect* spending is created as a result of the re-spending of direct expenditures throughout the local economy. *Induced* spending consists of the positive changes in spending, employment, earnings and tax collections generated by personal income associated with the operations of the ballpark.)

(2) Presented in 2009 dollars, discounted at 3 percent annually.

(3) The year 2018 is presented as a stabilized year of operations.

(4) Net present value calculation assumes a discount rate of 5.2 percent.

*Source:*

CSL net new direct spending estimates and IMPLAN.

As shown, in 2009 dollars the levels of adjusted net new direct spending previously discussed are estimated to generate approximately \$130.3 million in total output in San Jose during a stabilized year of operations (2018).

Overall, it is estimated that the net present value over a 30-year and 50-year period of the total economic output generated by spending related to events hosted at the ballpark is approximately \$2.9 billion and \$4.1, respectively. Furthermore, it is estimated that approximately 96 percent of the total economic output generated by spending related to the development of the ballpark would be generated as a result of A's games, and the remaining total economic output generated by the ballpark would be attributable to the non-MLB events hosted at the ballpark.

### 3. Economic Impacts of Ballpark Development (cont'd)

#### Employment

Increased economic activity associated with the proposed ballpark development is assumed to spur the creation of jobs within the local economy. As illustrated in the following table, the level of economic activity previously presented is estimated to support approximately 980 total jobs in a stabilized year of ballpark operations (2018).

<b>Estimated Total Net New Jobs<sup>(1)</sup> Ballpark Development Scenario</b>	
<b>Category</b>	<b>Stabilized<sup>(2)</sup> Year</b>
<b><i>A's Games</i></b>	
Team Ballpark Expenditures	490
Total Out-of-Facility	420
Total Visiting Team	20
<b>Total A's</b>	<b>930</b>
<b><i>Non-MLB Events</i></b>	
Total In-Facility	40
Total Out-of-Facility	10
<b>Total Non-MLB Events</b>	<b>50</b>
<b>TOTAL JOBS</b>	<b>980</b>

*Notes:*

(1) Represents the number of job estimated to be created within San Jose as result of the ballpark's operations. Total net new jobs are calculated by applying the appropriate employment multipliers to each net new direct spending category.

(2) The year 2018 is presented as a stabilized year of operations.

#### Personal Earnings

Personal earnings represent the wages and salaries earned by employees of businesses impacted by the ballpark development. Based on the jobs estimated to be supported by the level of economic output generated by the ballpark development, it estimated that total earnings in a year of stabilized operations (2018) could be approximately \$61.9 million in 2009 dollars as shown in the table on the following page.



### 3. Economic Impacts of Ballpark Development (cont'd)

Estimated Total Net New Earnings <sup>(1)</sup> Ballpark Development Scenario (2009 Dollars) <sup>(2)</sup>			
Category	Stabilized Year <sup>(3)</sup>	30-Year Net Present Value <sup>(4)</sup>	50-Year Net Present Value <sup>(4)</sup>
<i>A's Games</i>			
Team Ballpark Expenditures	\$43,400,000	\$968,000,000	\$1,411,000,000
Total Out-of-Facility	15,900,000	347,000,000	479,000,000
Total Visiting Team	640,000	13,800,000	19,100,000
<b>Total A's</b>	<b>\$59,940,000</b>	<b>\$1,328,800,000</b>	<b>\$1,909,100,000</b>
<i>Non-MLB Events</i>			
Total In-Facility	\$1,630,000	\$34,700,000	\$48,200,000
Total Out-of-Facility	370,000	8,000,000	11,100,000
<b>Total Non-MLB Events</b>	<b>\$2,000,000</b>	<b>\$42,700,000</b>	<b>\$59,300,000</b>
<b>TOTAL EARNINGS</b>	<b>\$61,940,000</b>	<b>\$1,371,500,000</b>	<b>\$1,968,400,000</b>

*Notes:*

(1) Represents the total net new personal earnings estimated to be created in San Jose as result of the ballpark's operations.

Total net new earnings are calculated by applying the appropriate earnings multipliers to each net new direct spending category.

(2) Presented in 2009 dollars, discounted at 3 percent annually.

(3) The year 2018 is presented as a stabilized year of operations.

(4) Net present value calculation assumes a discount rate of 5.2 percent.

*Source:*

CSL net new direct spending estimates and IMPLAN.

As shown above, it is estimated that the net present value of the total earnings generated by the proposed Ballpark Development Scenario over a 30-year and 50-year period could be approximately \$1.4 billion and \$2.0 billion, respectively.

A detailed analysis of the specific tax revenues generated to the City of San Jose's General Fund and specific City costs associated with the Ballpark Development Scenario is provided in a subsequent section of this report entitled City of San Jose Revenue / Cost Analysis.

The table on the following page summarizes the net new economic impacts associated with the estimated net new direct spending expected to occur due to the operations of the proposed ballpark.

### 3. Economic Impacts of Ballpark Development (cont'd)

**Ballpark Development Scenario <sup>(1)</sup>**  
**Economic Impact Summary**  
**Net New Impacts - Annual Ongoing Operations**  
**(2009 Dollars) <sup>(2)</sup>**

<b>Category</b>	<b>Stabilized Year <sup>(3)</sup></b>	<b>30-Year Net Present Value <sup>(4)</sup></b>	<b>50-Year Net Present Value <sup>(4)</sup></b>
Net New Direct Spending <sup>(5)</sup>	\$86,453,000	\$1,906,872,000	\$2,721,674,000
Total Output <sup>(6)</sup>	\$130,300,000	\$2,873,000,000	\$4,102,000,000
Jobs <sup>(7)</sup>	980	n/a	n/a
Earnings	\$61,940,000	\$1,371,500,000	\$1,968,400,000

*Notes:*

*(1) Construction of the ballpark is assumed to take place from 2011 to 2013 and open in 2014. These impacts are excluded from this table.*

*(2) Presented in 2009 dollars, discounted at 3 percent annually.*

*(3) The year 2018 is presented as a stabilized year of operations.*

*(4) Net present value calculation assumes a discount rate of 5.2 percent.*

*(5) Net new direct spending represents the portion of gross direct spending that is considered to be newly created in the San Jose economy as a result of the ballpark's existence. Assumes 60 percent of all out-of-facility direct spending related to the operations of the ballpark takes place within San Jose. Overall, it is estimated that 34 percent of all spending occurring because of the ballpark will be net new to the San Jose economy.*

*(6) Total net new output includes direct, indirect and induced spending. Net new total output is calculated by applying the appropriate output multipliers to each net new direct spending category. (Indirect spending is created as a result of the re-spending of direct expenditures throughout the local economy. Induced spending consists of the positive changes in spending, employment, earnings and tax collections generated by personal income associated with the operations of the ballpark.)*

*(7) Represents the number of full and part time jobs estimated to be created within San Jose as result of ballpark development operations. Total net new jobs are calculated by applying the appropriate employment multipliers to each net new direct spending category.*

### Construction-Period Economic Impacts

The economic impact of the construction phase of a project is determined by the volume and nature of construction and other development-related expenditures as well as the region in which they take place.

In order to estimate construction costs for the proposed San Jose ballpark, an analysis of comparable MLB ballparks was conducted. For the purposes of this analysis, comparable ballparks were defined as recently constructed open-air ballparks. Due to their considerable development costs, Yankee Stadium and Citi Field were excluded from this analysis. The following exhibit depicts the construction cost and the cost per seat for each of the comparable ballparks. These costs include both hard costs and soft costs such

### 3. Economic Impacts of Ballpark Development (cont'd)

as engineering costs. It should be noted that construction costs exclude the cost of land and off-site improvements for all facilities presented below. Adjusted construction costs presented below were determined by first normalizing the original construction costs to 2009 dollars using the Turner Construction Cost Index. These construction costs were then adjusted to San Jose construction costs using cost of living indices.

**Comparable Open-Air MLB Ballparks  
Construction Costs per Seat**

<b>Stadium</b>	<b>Team</b>	<b>Opening Year</b>	<b>Original Cost (millions)</b>	<b>Adjusted<sup>(1)</sup> Cost</b>	<b>Seating Capacity</b>	<b>Cost Per Seat</b>
Target Field	Minnesota Twins	2010	\$559.4	\$785.5	40,000	\$19,636
Busch Stadium	St. Louis Cardinals	2006	368.0 <sup>(2)</sup>	760.7	46,900	16,219
Nationals Park	Washington Nationals	2008	581.2 <sup>(3)</sup>	698.8	41,888	16,682
PETCO Park	San Diego Padres	2004	449.4	519.7	42,000	12,375
Great American Ballpark	Cincinnati Reds	2003	296.7	498.9	45,000	11,088
AT&T Park	San Francisco Giants	2000	290.0	421.2	41,503	10,149
<b>Average</b>		<b>2005</b>	<b>\$424.1</b>	<b>\$614.1</b>	<b>42,882</b>	<b>\$14,400</b>

(1) Represents the original construction cost adjusted to 2009 dollars via the Turner Construction Cost Index and then adjusted to reflect the differences in the cost of living between San Jose and each respective market. Projected cost of stadiums opening after 2009 have not been adjusted due to lack of future indices.

(2) Land costs of \$20 million were deducted from total development costs of \$388.0 million.

(3) Land costs of \$111.6 million were deducted from total development costs of \$692.8 million.

Source: ACCRA Cost of Living Index, municipal authorities, facility management, public records, and industry publications. Amounts have not been audited or otherwise verified.

As shown in the table above, the average adjusted construction cost for the comparable ballparks analyzed is \$614.1 million, with a high of \$785.5 million at Target Field and a low of \$421.2 million at AT&T Park. The adjusted cost per seat ranged from a high of \$19,636 at Target Field to a low of \$10,149 at AT&T Park with an average cost of \$14,400 per seat in San Jose construction dollars.

Using the average adjusted cost per seat as a proxy, an estimate of the construction costs for the proposed San Jose Ballpark was developed as outlined in the table below.

**Proposed San Jose Ballpark  
Estimated Construction Cost**

Average Cost per Seat - Comparable Facilities		\$14,400
Number of Seats in Proposed San Jose Ballpark		32,000
Construction Cost Estimate (2009 Dollars)		\$460,800,000 <sup>(1)</sup>
Hard Construction Costs	@ 80%	\$369,000,000
Soft Construction Costs	@ 20%	\$92,000,000
Construction Cost Estimate (2011 Dollars)		\$489,000,000 <sup>(2)</sup>
Hard Construction Costs	@ 80%	\$391,000,000
Soft Construction Costs	@ 20%	\$98,000,000

(1) Rounded to nearest million.

(2) Inflated 3 percent annually from 2009 estimate.

### **3. Economic Impacts of Ballpark Development (cont'd)**

As shown, it is estimated that the proposed San Jose ballpark could cost approximately \$461 million in 2009 dollars. This includes approximately \$369.0 million in hard construction costs and \$92.0 million in soft costs which are typically comprised of architectural, engineering, legal fees, etc. In 2011 dollars, the year construction of the ballpark is expected to commence, it is anticipated that total construction costs will be approximately \$489 million.

The economic impacts resulting from the ballpark construction expenditures depend on the nature of the spending and the extent to which the spending takes place locally. It has been assumed that approximately 25 percent of labor spending and 20 percent of material spending related to construction will directly impact the San Jose economy. Based on these assumptions, it is estimated that approximately \$112 million of the \$489 million ballpark construction expenditures would be spent on materials and labor derived from within the City of San Jose. For the purposes of this analysis, it is assumed that this spending would occur over a period of three years commencing in 2011 with approximately \$37 million spent each year.

Based on the assumptions for construction costs related to the Ballpark Development Scenario, the total direct spending occurring within San Jose was calculated. The net new economic impacts to the City of San Jose resulting from the anticipated spending levels were estimated by applying multipliers that specifically reflect the unique characteristics of the local construction industry. The table below summarizes these impacts.

**Ballpark Development Scenario  
Economic Impact Summary  
Net New Impacts - Construction Period <sup>(1)</sup>  
(2009 Dollars)**

<b>Category</b>	<b>Net Present Value <sup>(2)</sup></b>
Net New Direct Spending	\$96,000,000
Total Output	\$144,946,000
Jobs <sup>(3)(4)</sup>	350
Earnings	\$65,226,000
Tax Revenues	\$558,000

*Notes:*

*(1) Assumes a three-year construction period (2011-2013).*

*(2) Shown in 2009 dollars, discounted at 5.2 percent annually. Represents NPV of construction impacts over the three-year construction period.*

*(3) Represents jobs created during each of the 3 years that construction occurs.*

*(4) Represents the average number of annually recurring full and part time jobs created during the construction period.*

### **3. Economic Impacts of Ballpark Development (cont'd)**

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As shown, the net present value of the total net new direct spending expected to take place as result of the ballpark's construction from 2011 to 2013 is estimated to be \$96.0 million. This level of direct spending is expected to generate approximately \$144.9 million in total output during the three-year construction period. This level of economic activity is estimated to support 350 annual construction jobs during the construction period generating personal earnings of approximately \$65.2 million. Furthermore, it is estimated that the construction of the ballpark could generate net new City sales tax revenues of \$558,000. Additional taxes generated during the construction period such as construction tax and conveyance tax are excluded from the tax revenues discussed here but have been included in Section 4 of this report (City of San Jose Revenue/Cost Analysis).

It should be noted that unlike the other economic impact figures presented in this report, the impacts related to the construction of the Ballpark Development Scenario are not measured over the entire 50-year analysis. Rather, the construction related impacts presented herein represent the total impacts taking place only during the construction period, which is estimated to be from 2011 through 2013.

#### **Potential for Enhanced Ancillary Development**

As has been the case with the construction and development of similar projects throughout the country it is anticipated that the development of the ballpark will help to spur ancillary development in the Diridon Area. Although not included in the economic impact estimates provided in this report, it is likely that the ballpark development will accelerate potential commercial development on properties adjacent to the ballpark site. This catalytic effect is likely to increase the overall impacts associated with the development of a ballpark. Petco Park in San Diego and AT&T Park in San Francisco are two examples of the positive effect a new ballpark can have on adjacent development. Without the development of a ballpark, the development of adjacent properties would likely occur over a longer period of time.

PETCO Park opened in 2004 in the East Village neighborhood of San Diego, California. The Park was built at a cost of approximately \$449 million, with approximately \$387 financed by the City of San Diego. As part of the agreement, the City issued \$225 million in municipal bonds secured by hotel/motel taxes, with team ownership agreeing to help jump-start area development by building a 512-room Omni Hotel through their real estate company, JMI Realty. Since the construction of the Park, nearly \$2 billion of public and private investment has



### **3. Economic Impacts of Ballpark Development (cont'd)**

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transformed the 26 blocks surrounding the Park into a thriving mixed-use, mixed-income community. Projects planned or currently under development include the addition of more than 4,500 homes, 750 hotel rooms, 3,000 public parking spaces and 640,000 square feet of commercial space. The ballpark development also resulted in the clean-up of approximately 75,000 tons of contaminated soil and waste, as well as the construction of a new main library and a new fire station. In 2005, Petco Park received a Catalyst Project award at the Urban Land Institute San Diego/Tijuana chapter's Smart Growth Awards for Excellence. The award was presented to Petco Park for its positive affect on the surrounding neighborhood and its alleviation of contaminated soils.

Since its construction in 2000, AT&T Park in San Francisco, has laid the groundwork for a dramatic urban transformation of the City's Mission Bay neighborhood. The 303-acre area includes approximately 4,000 new housing units, with another 2,000 in the planning stages. In addition to residential developments, it also includes six million square feet of new commercial, office and technology space, 800,000 square feet of City and neighborhood-serving retail space and a 500-room hotel with 50,000 square feet of retail and entertainment space. Residents also directly benefit from the 49 acres of public open space and parks, a new public school and new fire and police stations. Completing the Mission Bay transformation is the \$1.7 billion University of California-San Francisco research and hospital complex, set to open in 2014. Mission Bay has also become the home to the vast majority of biotechnology companies currently headquartered in San Francisco. Costs of the Mission Bay development are expected to amount to approximately \$4 billion.



#### **4. City of San Jose Revenue / Cost Analysis**

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As a result of the direct and indirect economic impacts generated by new developments in San Jose, the public sector (the City of San Jose, Santa Clara County and the State of California) realizes increased tax collections. Based on the estimates of direct spending, the resulting tax collections and associated costs of potential site development have been calculated for the Ballpark Development Scenario. The following analysis describes the annual revenue and cost impacts to the City's General Fund. All revenue and expenditure forecasts are presented in 2009 dollars for a stabilized year for the Ballpark Development Scenario. In addition, the 30-year and 50-year net present value of the revenue and expenditure forecasts have been provided in full detail.

##### **General Fund Revenues**

The table on the following page summarizes the revenues expected to accrue to the City's General Fund as a result of the potential Ballpark Development Scenario. This table also provides estimates of the potential tax revenues generated to other municipal taxing jurisdictions under the Ballpark Development Scenario. A general description of the method used for this analysis is provided for each revenue item. The remainder of this section describes the methodology and assumptions used for each City General Fund revenue item.



#### 4. City of San Jose Revenue / Cost Analysis (cont'd)

**Projection of Annual City General Fund Revenue Impact  
Fiscal and Economic Impact Analysis  
Ballpark Development Scenario  
City of San Jose, CA  
(2009 Dollars)<sup>(1)</sup>**

<u>Revenue Source</u>	<u>Stabilized Year</u> <sup>(2)</sup>	<u>30-Year Net Present Value</u> <sup>(3)</sup>	<u>50-Year Net Present Value</u> <sup>(3)</sup>
<b>Property Tax</b> <sup>(4)(5)(6)(7)</sup>	\$459,000	\$9,013,000	\$11,565,000
<b>Property Tax in Lieu of VLF</b> <sup>(8)</sup>	193,000	3,782,000	4,924,000
Total Property Taxes	\$652,000	\$12,795,000	\$16,489,000
<b>Sales Tax</b> <sup>(9)</sup>			
Ballpark/Team Related <sup>(10)</sup>	1.0% City share	\$505,000	\$11,020,000
		\$11,020,000	\$15,358,000
<b>Transient Occupancy Tax</b> <sup>(11)</sup>	4.00%	156,000	3,405,000
		156,000	4,706,000
	<i>Revenue Factor (\$2009)</i>		
<b>Utility User Tax</b> <sup>(12)</sup>	124,400	2,656,000	3,690,000
<b>Franchise Tax</b> <sup>(14)</sup>	54,000	1,153,000	1,602,000
<b>Business License Tax</b> <sup>(15)</sup>	applied to daily population \$36.60 <sup>(13)</sup>	5,000	107,000
		107,000	149,000
<b>Conveyance Tax</b>			
Secured Property Value	0	0	0
Annual Turnover Rate	0%	0%	0%
Taxable Amount	0	0	0
Tax Rate	\$3.3 per \$1,000 of value <sup>(16)</sup>		
General Fund Share <sup>(17)</sup>	9.6%	9.6%	9.6%
Total Conveyance Tax	0	0	0
<b>Construction Tax</b> <sup>(18)</sup>	\$0.08 per square foot	0	50,000
		50,000	50,000
<b>Total Annual Revenue Impact to City General Fund</b>	<b>\$1,496,400</b>	<b>\$31,186,000</b>	<b>\$42,044,000</b>
	<b>\$1,496,400</b>	<b>\$31,186,000</b>	<b>\$42,044,000</b>
	<b>Stabilized Year</b> <sup>(1)(2)</sup>	<b>30-Year Net Present Value</b> <sup>(3)</sup>	<b>50-Year Net Present Value</b> <sup>(3)</sup>
<b>Other Municipal Property Tax Revenues Generated</b>			
Redevelopment Agency - Housing	\$706,000	\$13,866,000	\$14,670,000
Redevelopment Agency - Non-housing	912,000	17,479,000	18,425,000
City GO Bonds	109,000	2,143,000	2,790,000
County	948,000	18,172,000	22,113,000
Santa Clara Valley Water District	15,000	331,000	776,000
Bay Area Air Quality Management District	1,000	30,000	64,000
San Jose Unified School District	495,000	10,115,000	12,243,000
San Jose-Evergreen Community College	69,000	1,418,000	1,719,000
County Office of Education	112,000	2,237,000	2,906,000
ERAF & Offsets to State Funding for Schools	166,000	3,596,000	14,803,000
<b>Total Property Tax Revenues</b> <sup>(19)</sup>	<b>\$3,533,000</b>	<b>\$69,387,000</b>	<b>\$90,509,000</b>
	<b>\$3,533,000</b>	<b>\$69,387,000</b>	<b>\$90,509,000</b>

**Notes:**

- (1) Presented in 2009 dollars, discounted at 3 percent annually.
- (2) The year 2018 is presented as a stabilized year of operations.
- (3) Net present value calculation assumes a discount rate of 5.2 percent.
- (4) Property tax includes payments from the Redevelopment Agency to the City based on a percentage of property tax.
- (5) Allocation of property taxes has been adjusted to reflect the tax increment revenue distribution anticipated in the Diridon Project Area from 2009 to 2048.
- (6) In 2048 the Diridon Project Area will cease to collect tax increment. Therefore, current property tax rates are applied in years 2048 through 2063.
- (7) Assessed property value is based on hard construction costs which account for approximately 80 percent of total construction costs.
- (8) Property tax in lieu of Vehicle License Fees is assessed at a rate of \$0.57 per \$1,000 of assessed property value.
- (9) 1.0 percent City of San Jose Sales Tax levied on goods and services.
- (10) Net new sales taxes generated as a result of ballpark operations.
- (11) Based on 10 percent transient occupancy tax of which 6 percent is allocated to the TOT Fund and 4 percent of which is allocated to the City's General Fund.
- (12) Utility User tax is based on 5 percent of estimated utilities (telephone, electric and gas) for the proposed ballpark.
- (13) Technical Memorandum "Updated Fiscal and Economic Impact Analysis of Major League Soccer Stadium" by Economic Planning Systems (March 2009).
- (14) Franchise Fee tax is based on 2 percent of estimated utilities (water, electric and gas) for the proposed ballpark.
- (15) Business license tax is applied using the average revenue approach and applied to the daily service population.
- (16) The City receives \$3.30 per \$1,000 value of properties that are resold in conveyance tax.
- (17) Currently, 9.6 percent of the City's conveyance tax revenue can be used for parks operations and maintenance purposes.
- (18) Construction tax for business, commercial, or industrial uses, or for any other use other than dwelling unit use. The construction tax rate is \$0.08 per square foot of completed construction.
- (19) Excludes tax increment revenues allocated to the City General Fund.



#### **4. City of San Jose Revenue / Cost Analysis (cont'd)**

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As illustrated, under the Ballpark Development Scenario, it is estimated that the annual revenues generated to the City of San Jose in a stabilized year of operations would be approximately \$1.5 million in 2009 dollars. The net present value of the City tax revenues generated by the Ballpark Development Scenario over a 30-year and 50-year period is estimated to be approximately \$31.2 million and \$42.0 million, respectively.

##### Property Tax

The City's General Fund will receive increased property tax revenues from the Ballpark Development Scenario. Property taxes collected under this scenario are based on current tax rates for the City of San Jose. Under the Ballpark Development Scenario, the hard construction costs of the stadium are used as a proxy for the assessed value. The total estimated construction cost for the ballpark is \$489 million in 2011 dollars including \$391 million in hard costs and \$98 million in soft costs. Starting in 2009, it is expected that the Diridon Area could be designated as a tax increment redevelopment area for a forty-year period. Under this scenario, it is assumed that 2047 would be the last year in which the Diridon Project Area would collect tax increment. Therefore, taxes will start to accrue to the City in 2048 and have been calculated at current tax rates for years 2048 through 2063. Also included are payments by the Agency to the City, in an amount calculated based on a percentage of property taxes, that compensate the City for parking rights granted to the County pursuant to a proposed agreement with the County.

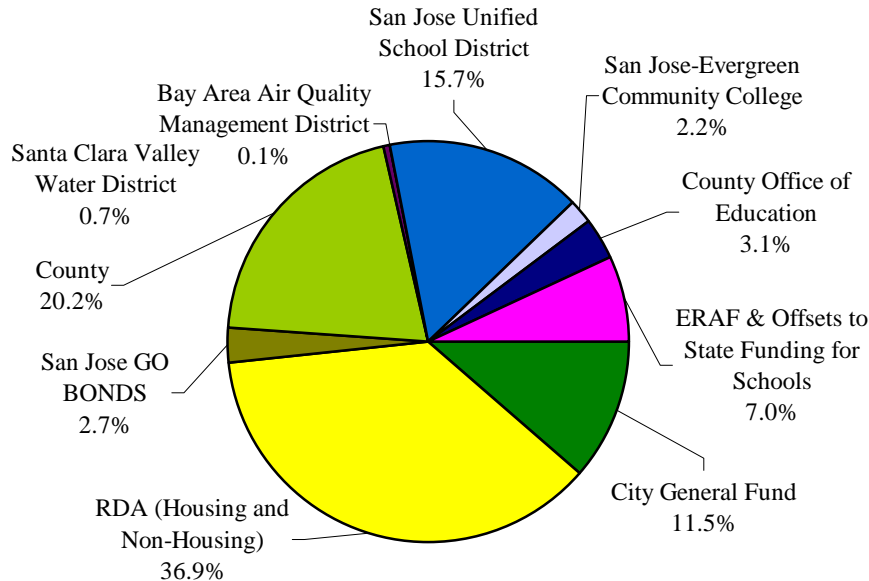
##### Property Tax in Lieu of Vehicle License Fees

Property Tax in-Lieu of Vehicle License Fee ("VLF") is based on the starting or base backfill and the proportionate growth of assessed value in the City associated with the project. More specifically, SB 1096 adopted in 2004 established a formula which ties this revenue to increases in the aggregate assessed value of the City. The formula translates into approximately \$0.57 in additional property tax in-lieu of VLF for every \$1,000 in additional assessed value.

The following chart illustrates the projected allocation of property tax revenues to various taxing jurisdictions during the period for which the Diridon Area will be treated as a tax increment area.

#### 4. City of San Jose Revenue / Cost Analysis (cont'd)

**Property Tax Revenue Allocation**



#### Sales Tax

The State of California assesses a 7.25 percent sales tax on goods and services. In addition to the statewide sales tax, the City of San Jose levies an additional sales tax of 1.0 percent and an additional 1.0 percent is levied for the County/MTA Transportation Fund for a total sales tax levy on all consumer goods and services of 9.25 percent.

Ballpark and team related sales taxes generated to the City General Fund are based on taxable sales related to in-facility and out-of-facility spending associated directly with ballpark operations.

#### Transient Occupancy Tax

The City of San Jose levies a transient occupancy tax for all stays in a hotel. A portion of the revenue collected from this tax is earmarked to fund the fine arts and cultural programs and to provide a subsidy to the convention and cultural facilities of the City of San Jose.

Estimates for nightly stays associated with baseball games are based on fan intercept surveys previously conducted by CSL at MLB baseball games as well as the anticipated non-local attendance at all ballpark events.

#### **4. City of San Jose Revenue / Cost Analysis (cont'd)**

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The City's Transient Occupancy Tax rate is currently 10 percent, six percent of which is placed in the Transient Occupancy Tax Fund and four percent of which is deposited in the General Fund. The calculation in the previous table includes only the four percent allocated to the City's General Fund revenues.

##### Utility Users' Tax

The utility users' tax is calculated at five percent of utility bills for all telephone, gas, and electric service. For the Ballpark Development Scenario, the tax is based on five percent of estimated utilities (telephone, electric and gas) for the proposed ballpark.

##### Business License Tax

The Business License Tax is calculated per employee and based on total business taxes expected to be collected and divided by the number of employees in the City of San Jose. It is estimate that each employee will generate approximately \$36.60 per year.

##### Franchise Fee

The City collects franchise fees for cable television service in the amount of five percent of gross receipts annually; fees for gas and electric are the equivalent of two percent of gross receipts annually. Additionally, franchise fees are collected for water at a rate of two percent of gross annual receipts. For the Ballpark Development Scenario, the tax is based on two percent of estimated utilities (water, electric and gas) for the proposed ballpark.

##### Conveyance Tax Transfer

The City of San Jose collects conveyance tax, of which 64 percent is allocated to the Parks, Recreation and Neighborhood Services Department. Of this amount, 15 percent may be used for park maintenance activities (or roughly 9.6 percent of the total tax revenue). Therefore, it is assumed that 9.6 percent of the conveyance tax generated from a new development would be transferred to the City's General Fund. The City receives \$3.30 per \$1,000 value of properties that are resold in conveyance tax. For purposes of this analysis it was assumed that there would be no annual turnover related to the Ballpark Development Scenario and no associated conveyance tax revenue.

#### **4. City of San Jose Revenue / Cost Analysis (cont'd)**

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##### Construction Tax

A one-time collection is made at the time of construction of any building, or portion thereof, planned or designed for use for business, commercial, or industrial uses, or for any other use other than dwelling unit use. The construction tax rate is \$0.08 per square foot of completed construction.

#### 4. City of San Jose Revenue / Cost Analysis (cont'd)

##### General Fund Expenditures

While neither the City nor the Redevelopment Agency will be responsible for the costs to operate ballpark, the development of a new ballpark will likely impact various City services. The following table summarizes the cost expected to accrue to the City's General Fund as a result of the potential development scenario. A general description of the method used for this analysis is provided for each cost item. The remainder of this section describes the methodology and assumptions used for each City General Fund cost item. The net new fiscal impacts for the City's General Fund have been estimated for the potential Ballpark Development Scenario under consideration as presented in the following table.

<b>Projection of Annual City General Fund Service Costs</b> <b>Fiscal and Economic Impact Analysis</b> <b>Ballpark Development Scenario</b> <b>City of San Jose, CA</b> <b>(2009 Dollars)<sup>(1)</sup></b>					
		<b>Stabilized</b>	<b>30-Year</b>	<b>50-Year</b>	
		<b>Year</b> <sup>(2)</sup>	<b>Net Present</b>	<b>Net Present</b>	
			<b>Value</b> <sup>(3)</sup>	<b>Value</b> <sup>(3)</sup>	
<b>Service Population</b>					
ballpark employees		275 <sup>(4)</sup>	n/a	n/a	
daytime service population		137	n/a	n/a	
<b>Service Costs</b>					
	<b>2009 Costs</b>	<b>Service Cost Factors</b>			
General Government <sup>(5)</sup>	\$17.00 <sup>(6)</sup>	per daytime service population	\$2,000	\$50,000	\$69,000
Finance <sup>(7)</sup>	\$3.00 <sup>(6)</sup>	per daytime service population	0	9,000	12,000
Economic Development <sup>(8)</sup>	\$2.00 <sup>(6)</sup>	per daytime service population	0	6,000	8,000
Police <sup>(9)</sup>	\$160,856 <sup>(6)</sup>	per officer with 1.19 per 1,000 daytime svc. pop'n	26,000	561,000	780,000
Fire <sup>(10)</sup>	\$154,421 <sup>(6)</sup>	per firefighter with 0.64 per 1,000 daytime svc. pop'n	14,000	290,000	403,000
<b>Capital Maintenance</b>					
General Services	\$16.00 <sup>(6)</sup>	per daytime service population	2,000	47,000	65,000
Public Works	\$8.00 <sup>(6)</sup>	per daytime service population	1,000	23,000	33,000
Transportation	\$14,333 <sup>(6)</sup>	per road mile	no change	no change	no change
<b>Community Service</b>					
Library	\$10.56 <sup>(6)</sup>	per resident	no change	no change	no change
Parks, Rec. & Neighborhood Services	\$15,000 <sup>(6)</sup>	per acre of park	no change	no change	no change
Planning, Building and Code Enforcement	\$8.00 <sup>(6)</sup>	per daytime service population	1,000	23,000	33,000
<b>Game-Day/Event Costs <sup>(11)</sup></b>					
			to be paid by MLB team		
<b>Total Annual City General Fund Costs</b>			<b>\$46,000</b>	<b>\$1,009,000</b>	<b>\$1,403,000</b>

**Notes:**

(1) Presented in 2009 dollars, discounted at 3 percent annually.

(2) The year 2038 is presented as a stabilized year of operations.

(3) Net present value calculation assumes a discount rate of 5.2 percent.

(4) Represents the weighted average of daily employees assuming 200 full-time staff and 600 part-time employees on the assumed 84 event nights. Does not include the jobs estimated to be created as a result of the indirect/induced economic impacts of the project.

(5) Includes city attorney, auditor, clerk, manager, mayor, council, emergency services, employee services and information technology.

(6) Technical Memorandum "Updated Fiscal and Economic Impact Analysis of Major League Soccer Stadium" by Economic Planning Systems, Inc. (March 2009).

(7) Includes independent police auditor.

(8) Includes Redevelopment Agency expenses.

(9) Includes salary, benefits, uniform, safety equipment, and an overhead cost equivalent to 10 percent of the expenditure per officer.

(10) Includes salary, benefits, uniform, safety equipment, and an overhead cost equivalent to 10 percent of the expenditure per firefighter.

(11) It is anticipated that game-day/event costs such as the need for extra policing and emergency services will be paid by the MLB team.

#### **4. City of San Jose Revenue / Cost Analysis (cont'd)**

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As illustrated, under the Ballpark Development Scenario, it is estimated that service costs to the City of San Jose in a stabilized year of operations would be approximately \$46,000 in 2009 dollars. The net present value of the anticipated service costs attributable to the Ballpark Development Scenario over a 30-year and 50-year period is estimated to be approximately \$1.0 million and \$1.4 million, respectively.

For the Ballpark Development Scenario, game-day/event costs for extra policing or emergency services are not included in cost estimates as these will be paid for by the MLB team. Additional costs including City staff regarding normal ongoing management discussions with ballpark administration are also not included in these estimates.

##### Daytime Service Population

Many of the City related costs were calculated using the daytime service population. Based on the methodology used in similar studies conducted for the City of San Jose, the daytime service population was estimated to be half of the weighted average number of full and part-time ballpark employees. For purposes of this analysis, the weighted average number of full and part-time ballpark employees was estimated to be 275, which implies a daytime service population of 137. It should be noted that the weighted average number of full and part-time ballpark employees is not the same figure as the number of full and part-time jobs created as result of the economic impacts associated with the ballpark presented earlier in this report.

##### General Government Services

According to the City's Adopted Budget, the City spends approximately \$17.00 per daytime service population to provide general government services, which include the services of the City Attorney, Auditor, Clerk, Manager, Mayor, and Council, as well as emergency services, employee services, and information technology.

##### Finance and Economic Development

Services provided by the Department of Finance and Economic Development include financial management of the City's resources, financial reporting and disbursements. According to the City's Adopted Budget, the City spends approximately \$3.00 per daytime service population to provide finance services and approximately \$2.00 per daytime service population to provide economic development services.

#### **4. City of San Jose Revenue / Cost Analysis (cont'd)**

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##### Police Services

The increased daytime service population generated by a new development will require additional police officers to provide policing and security services. It is assumed that the City's current service level of roughly 1.19 police officers per 1,000 daytime service population will be applied to each scenario. For the purposes of this analysis, an annual cost estimate of \$146,200 per officer has been assumed. An additional 10 percent is included to cover administrative costs, for total policing costs per police officer of approximately \$161,900. The police service cost estimates provided in this report do not include game-day/event costs for extra policing as it is anticipated that these will be paid by the MLB team.

##### Fire Protection Services

The increased daytime service population generated by a new development will require additional firefighters to provide fire protection services. It is assumed that the City's current service level of roughly 0.64 firefighters per 1,000 daytime service population will be applied to the scenario. For the purposes of this analysis, an annual cost estimate of \$140,400 per firefighter has been assumed. An additional 10 percent is included to cover administrative costs, for total fire protection costs per firefighter of approximately \$154,500. The fire protection service cost estimates provided in this report do not include game-day/event costs for extra emergency services as it is anticipated that these will be paid by the MLB team.

##### General Service

The General Service Department provides various types of maintenance services that assist general City operations such as facility management, fleet and equipment services, and parks and civic grounds management. Associated costs are based on department costs of \$16.00 per daytime service population.

##### Public Works

The Public Works Department plans and designs public facilities, but does not provide any operation or maintenance services. In cases where private developers design and construct a facility dedicated for public use, the department staff is responsible for reviewing the design and performing building inspection. Associated costs are based on department costs of approximately \$8.00 per daytime service population.

#### **4. City of San Jose Revenue / Cost Analysis (cont'd)**

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##### Transportation

The Department of Transportation is responsible for various road maintenance related services, sewer maintenance, parking services, transportation planning and strategic support. The cost of providing transportation services is estimated to be approximately \$15,000 per road mile. For the purpose of this analysis, it is assumed Department costs will not be increased through either of the development scenarios. Transportation costs provided in this report do not include game-day/event costs as it is anticipated that these will be paid by the MLB team.

##### Community Services

The Community Services category includes library services; parks, recreation, and Neighborhood Services; Planning, Building, and Code Enforcement; and other community services. Environmental services are not estimated because any incremental costs resulting from a new development are assumed to be covered through user fees. Library services are assumed to have per capita operations and maintenance costs of approximately \$10.00 per City resident. Park costs are assumed to be approximately \$14,333 per acre of park. The planning, building, and code enforcement costs are assumed to cost \$8.00 per daytime service population.



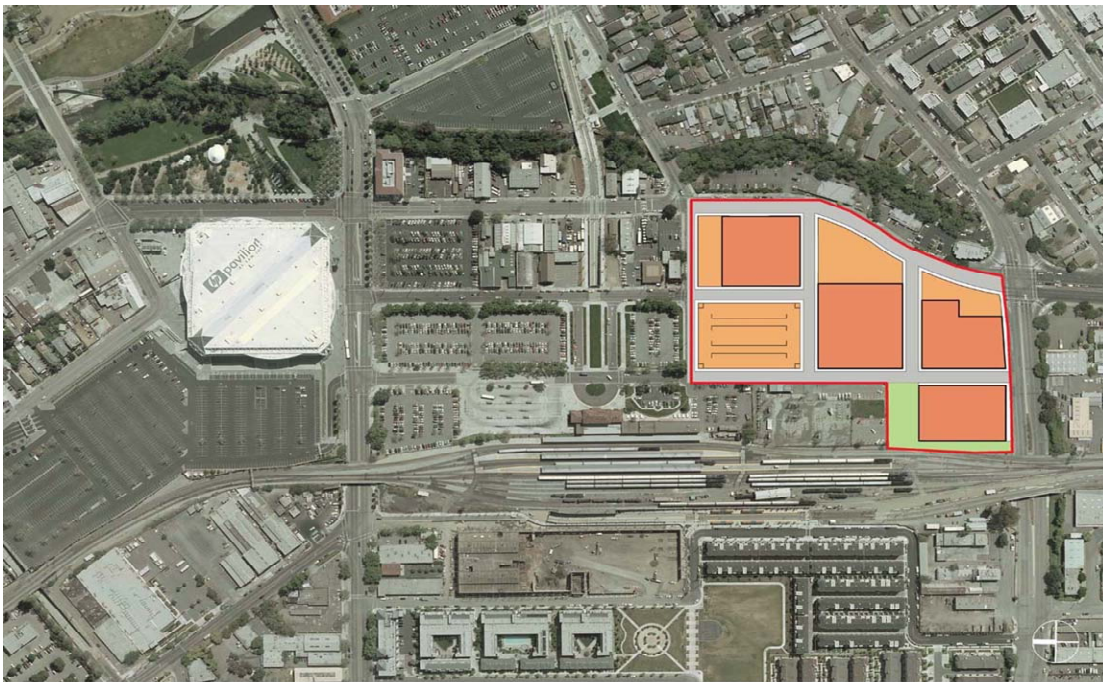
## **Appendix I Economic Impacts of Alternative Development**

If a new MLB ballpark was not built in San Jose, it is likely that an alternative development would occur on the same site in the Diridon Area at some point. As such, the purpose of this analysis is to provide an evaluation of the “opportunity cost” if the City decides to pursue the Ballpark Development Scenario.

The most likely alternative use of the proposed ballpark development site would be the development of new office and retail space. For the purposes of this report, this scenario is referred to as the Alternative Development Scenario. Under this scenario, it is assumed that approximately four office buildings with approximately 1.0 million square feet of office space and 43,000 square feet of retail space would be developed over a period of approximately 18 years. It has been assumed that every five years one of the four planned office buildings will become available with construction commencing in 2018. Full build-out of the Alternative Development Scenario is expected to be completed in the year 2035. Based on standard industry density ratios, it is assumed that each office building will be able to accommodate approximately one employee per 250 square feet of office space.

It can be argued that the Alternative Development Scenario, as presented, is very optimistic based on the historic absorption of office space in San Jose and the fact that a good portion of the 1.5 million square feet of new office space (Riverpark Towers, Oracle Building) or entitled property (Boston Properties) would need to be absorbed before new construction in the Diridon Area would be feasible. Moreover, any decision to move forward with an office and retail development would likely wait until all construction related to the high speed rail and BART was complete.

It is assumed the Alternative Development would be located on the parcel of land in the Diridon Area illustrated in the diagram on the following page.

**Appendix I Economic Impacts of Alternative Development (cont'd)****Alternative Development Site**

Office Buildings
  Parking

Specific assumptions related to the Alternative Development Scenario are presented in the following table.

**Alternative Development Scenario Assumptions**

Construction Start Date	2018
Construction Completion Date	2035
Number of Buildings	4 buildings
Office Space	986,467 sq. feet
Retail	43,333 sq. feet
Total Square Footage (1)	1,029,800 sq. feet
Parking Spaces	2,086 spaces
Parking Spaces per 1000 sq. feet	2.0

**Other Assumptions:**

- Parking Level Floor-to-Floor Heights: 10'-0"
- Retail Level Floor-to-Floor Heights: 20'-0"
- Office Level Floor-to-Floor Heights: 13'-0"
- All buildings include 2 levels of parking below grade.
- Building heights measured from grade to roof deck, not including mechanical penthouses.
- Typical Building Height, excluding mechanical penthouse, is 124'-0" for Phase 1

## **Appendix I Economic Impacts of Alternative Development (cont'd)**

As with the proposed Ballpark Development Scenario, the Alternative Development Scenario would provide certain quantifiable benefits to the local and regional economies. The primary economic impact associated with the alternative development would be the disposable spending of each new employee that would reside in the City of San Jose. For the purpose of this analysis, it has been assumed that 50 percent of the employees are new to the City of San Jose and 50 percent of their spending occurs within the City.

As construction of the Alternative Development Scenario will occur over a 20-year period, the economic impacts presented herein are shown for a stabilized year of operations for the entire development, 2038. Furthermore, the economic impacts are presented in year 2009 dollars and were discounted at 3.0 percent annually.

The table on the following page summarizes the net new economic impacts to the City associated with the Alternative Development Scenario in a stabilized year of operations (2038), presented in 2009 dollars, and the net present value of those cumulative impacts over a 30-year and 50-year period.

## **Appendix I Economic Impacts of Alternative Development (cont'd)**

### **Alternative Development Scenario <sup>(1)</sup>**

#### **Economic Impact Summary**

#### **Net New Impacts (2009 Dollars) <sup>(2)</sup>**

<b>Category</b>	<b>Stabilized Year <sup>(3)</sup></b>	<b>30-Year Net Present Value <sup>(4)</sup></b>	<b>50-Year Net Present Value <sup>(4)</sup></b>
Net New Direct Spending <sup>(5)</sup>	\$71,586,000	\$826,260,000	\$1,421,253,000
Total Output <sup>(6)</sup>	\$104,097,000	\$1,201,511,000	\$2,066,717,000
Earnings	\$46,204,000	\$533,268,000	\$917,296,000
Indirect and Induced Jobs <sup>(7)</sup>	690	n/a	n/a

*Notes:*

*(1) Includes 1.0 million square feet of office space and 43,000 square feet of retail space. Construction of the alternative development will take place from 2018 to 2035. These impacts are excluded from this table.*

*(2) Presented in 2009 dollars, discounted at 3 percent annually.*

*(3) The year 2038 is presented as a stabilized year of operations.*

*(4) Net present value calculation assumes a discount rate of 5.2 percent.*

*(5) Net new direct spending represents the portion of gross direct spending that is considered to be newly created in the San Jose economy as a result of the alternative development's existence.*

*Assumes 50 percent of all employees in the office space are new to the City and 50 percent of their spending will take place within San Jose.*

*(6) Total net new output includes direct, indirect and induced spending. Net new total output is calculated by applying the appropriate output multipliers to each net new direct spending category. (Indirect spending is created as a result of the re-spending of direct expenditures throughout the local economy. Induced spending consists of the positive changes in spending, employment, earnings and tax collections generated by personal income associated with the operations of the alternative development.)*

*(7) Represents the number of full and part time jobs estimated to be created within San Jose as result of the operations of the alternative development. Total net new jobs are calculated by applying the appropriate employment multipliers to each net new direct spending category.*

As illustrated, the impacts associated with the Alternative Development Scenario during a stabilized year of operations include approximately \$71.6 million in direct spending and approximately \$104.1 million in total output (direct, indirect and induced spending). These expenditure levels, in turn, are expected to support approximately 690 jobs that could generate approximately \$46.2 million in personal earnings during a stabilized year of operations.

Over a 30-year period, the present value of the cumulative net new impacts generated to the City of San Jose include approximately \$826.3 million in direct spending generating approximately \$1.2 billion in total output and \$533.3 million in personal earnings.

## **Appendix I Economic Impacts of Alternative Development (cont'd)**

Over a 50-year period, the present value of the cumulative net new impacts generated to the City of San Jose include approximately \$1.4 billion in direct spending generating approximately \$2.1 billion in total output and \$917.3 million in personal earnings. The following table outlines the estimated number of jobs created as a result of the Alternative Development Scenario.

<b>Alternative Development Scenario Employment Summary Average Annual Net New Jobs Created <sup>(1)</sup></b>	
<b>Job Type</b>	<b>Average Annual Jobs</b>
Construction Period Jobs <i>(During each of the 12 years of construction.)</i>	80
Annually Recurring Jobs <sup>(2)</sup> <i>(Direct, indirect and induced jobs.)</i>	2,663

*Notes:*

*(1) Includes both full and part-time employees.*

*(2) Includes 1,973 net new direct development-specific jobs (50 percent of the anticipated office and retail development-specific employees) and 690 indirect and induced jobs.*

It should be noted that the spending estimates for the Alternative Development Scenario do not include the spending of businesses that would occupy the potential office and retail space. This is because spending levels vary widely based on business types and it is difficult to estimate the amount of business spending that will take place with any reliable accuracy. For example, if the offices are occupied by professional services, the economic impact would be relatively low compared to the impacts if those same offices were occupied by driving industries.

### **Construction-Period Economic Impacts**

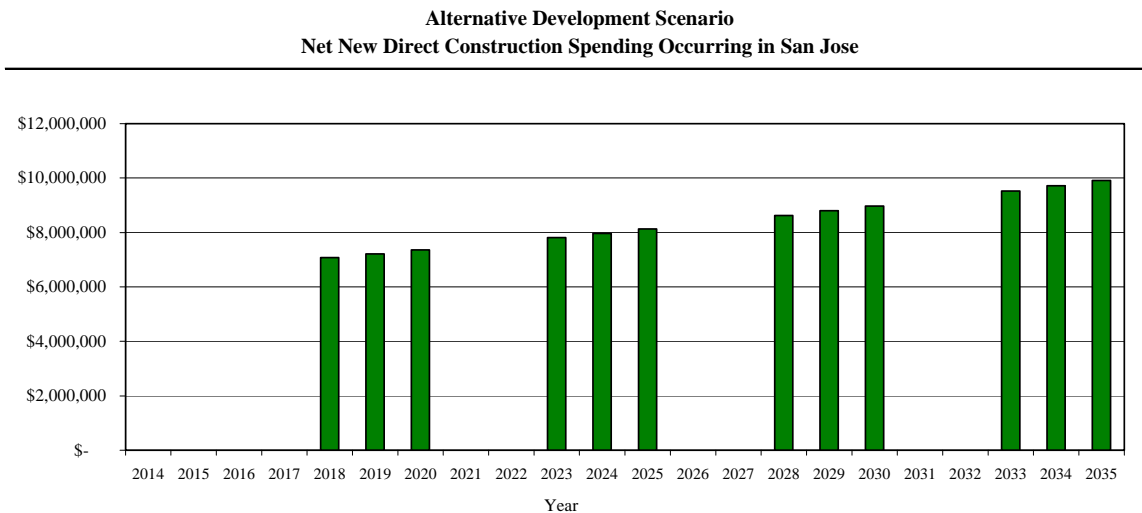
The economic impact of the construction phase of a project is determined by the volume and nature of construction and other development-related expenditures as well as the region in which they take place.

The economic impacts resulting from the Alternative Development Scenario construction expenditures depend on the nature of the spending and the extent to which the spending takes place locally. For the purposes of this analysis, a construction cost of \$300 per square foot (including all associated parking structures), in 2009 dollars, has been assumed for the construction of the office and retail space. This cost per square foot estimate excludes all soft construction costs and the cost of land. It is estimated that approximately 25 percent of labor spending and 20 percent of material spending related to the construction of the development will directly impact the San Jose economy.

## **Appendix I Economic Impacts of Alternative Development (cont'd)**

It is anticipated that construction of the Alternative Development Scenario will commence in 2018 and be completed in 2035. As previously stated, it is envisioned that a total of approximately 1.0 million square feet of office and 43,000 square feet of retail space will be developed. It has been assumed that the first of the four planned office buildings will be constructed over a three year period starting in 2018 and ending in 2020. It is assumed that construction of the second office buildings will commence in 2023, two years after the completion of the first. Similarly, it is anticipated that construction on the third and fourth buildings would start two years after completion of the previous building, with construction of the all four buildings being completed in 2035. As it is assumed that the office and retail space will require some time to attract tenants, it was assumed that the first stabilized year of operations for the Alternative Development Scenario would be 2038, which is the year for which all associated impacts are presented herein.

The annual net new construction spending anticipated to take place in San Jose for the Alternative Development Scenario is presented in the chart below.



Note:

Assumes each building constructed over three-year periods commencing in 2018 with completion of all 4 office buildings in 2038.

The net new construction spending presented above does not represent total construction spending but rather the amount estimated to directly impact the City of San Jose.

Based on the assumptions for construction costs related to the Alternative Development Scenario, the total direct spending occurring within San Jose was calculated. The net new economic impacts to the City of San Jose resulting from the anticipated spending levels were estimated by applying multipliers that specifically reflect the unique characteristics of the local construction industry. These impacts are summarized in the table on the following page.



## **Appendix I Economic Impacts of Alternative Development (cont'd)**

### **Net New Construction Period Economic Impacts<sup>(1)</sup> Alternative Development Scenario (2009 Dollars)**

<b>Category</b>	<b>Net Present Value<sup>(2)</sup></b>
Net New Direct Spending	\$44,000,000
Total Output	\$67,102,000
Jobs <sup>(3)(4)</sup>	80
Earnings	\$30,196,000
Tax Revenues	\$834,000

*Notes:*

*(1) Assumes construction will begin in 2018 and be completed in 2035.*

*(2) Shown in 2009 dollars, discounted at 5.2 percent annually. Represents NPV of construction impacts over the eighteen-year construction period.*

*(3) Represents jobs created during each of the 12 years that construction occurs.*

*(4) Represents the average number of annually recurring full and part time jobs created during the construction period.*

As shown, the net present value of the net new direct spending expected to occur between 2018 and 2035, the period in which construction of the Alternative Development is anticipated to take place, is estimated to be \$44.0 million. This level of direct spending is expected to generate approximately \$67.1 million in total output during the construction period. During the construction period, this level of economic activity is estimated to support 80 annual construction jobs and generate personal earnings of approximately \$30.2 million. Furthermore, the net present value of the net new City tax revenues generated during the construction period are estimated to be approximately \$834,000. Additional taxes generated during the construction period such as construction tax and conveyance tax are excluded from this discussion, but they are included in a table at the end of this section.

It should be noted that unlike the other economic impact figures presented in this report, the impacts related to the Alternative Development Scenario construction are not measured for the entire 50-year analysis. Rather, the construction related impacts presented herein represent the total impacts taking place only during the 18-year construction period, which is estimated to last from 2018 through 2035.

### **General Fund Revenues & City Costs**

The following tables provide estimates for the annual revenue and cost impacts to the City's General Fund. All revenue and expenditure forecasts are presented in 2009 dollars for a stabilized year for the Alternative Development Scenario. In addition, the 30-year and 50-year net present value of the scenario has been provided in full detail. For the purpose of evaluating the value of the fiscal impact, this analysis considers the program absorption.

**Appendix I Economic Impacts of Alternative Development (cont'd)**

**Projection of Annual City General Fund Revenue Impact  
Fiscal and Economic Impact Analysis  
Alternative Development Scenario  
City of San Jose, CA  
(2009 Dollars)<sup>(1)</sup>**

<b>Revenue Source</b>		<b>Stabilized Year<sup>(2)</sup></b>	<b>30-Year Net Present Value<sup>(3)</sup></b>	<b>50-Year Net Present Value<sup>(3)</sup></b>
<b>Property Tax<sup>(4)(5)(6)(7)</sup></b>		\$313,000	\$3,903,000	\$6,036,000
<b>Property Tax in Lieu of VLF<sup>(8)</sup></b>		133,000	1,645,000	2,601,000
Total Property Taxes		\$446,000	\$5,548,000	\$8,637,000
<b>Sales Tax<sup>(9)</sup></b>				
Office and Retail Development <sup>(10)</sup>	1.0% City share	358,000	4,029,000	7,008,000
<b>Transient Occupancy Tax<sup>(11)</sup></b>	4.00%	40,200	474,000	809,000
	<i>Revenue Factor (\$2009)</i>			
<b>Utility User Tax<sup>(12)</sup></b>	<i>applied to daily population</i>	\$71.46 <sup>(13)</sup>	141,000	2,833,000
<b>Franchise Tax<sup>(12)</sup></b>	<i>applied to daily population</i>	\$35.54 <sup>(13)</sup>	70,000	1,409,000
<b>Business License Tax<sup>(12)</sup></b>	<i>applied to daily population</i>	\$36.60 <sup>(13)</sup>	72,000	1,451,000
<b>Conveyance Tax</b>				
Secured Property Value		232,809,000	2,885,797,000	4,563,271,000
Annual Turnover Rate <sup>(14)</sup>		0	0	0
Taxable Amount		11,640,450	144,289,850	228,163,550
Tax Rate			\$3.3 per \$1,000 of value <sup>(15)</sup>	
General Fund Share <sup>(16)</sup>		0	0	0
Total Conveyance Tax		3,700	46,000	72,000
<b>Construction Tax<sup>(17)</sup></b>	\$0.08 per square foot	0	36,000	36,000
<b>Total Annual Revenue Impact to City General Fund</b>		<b>\$1,131,000</b>	<b>\$13,472,000</b>	<b>\$22,255,000</b>
		<b>Stabilized Year<sup>(2)</sup></b>	<b>30-Year Net Present Value<sup>(3)</sup></b>	<b>50-Year Net Present Value<sup>(3)</sup></b>
<b>Other Municipal Property Tax Revenues Generated</b>				
Redevelopment Agency - Housing		\$481,000	\$6,005,000	\$6,671,000
Redevelopment Agency - Non-housing		524,000	6,760,000	7,469,000
City GO Bonds		74,000	928,000	1,469,000
County		549,000	7,060,000	10,277,000
Santa Clara Valley Water District		18,000	203,000	581,000
Bay Area Air Quality Management District		2,000	18,000	47,000
San Jose Unified School District		426,000	5,112,000	6,955,000
San Jose-Evergreen Community College		59,000	714,000	975,000
County Office of Education		85,000	1,043,000	1,609,000
ERAF & Offsets to State Funding for Schools		191,000	2,207,000	11,647,000
<b>Total Property Tax Revenues<sup>(22)</sup></b>		<b>\$2,409,000</b>	<b>\$30,050,000</b>	<b>\$47,700,000</b>

**Notes:**

- (1) Presented in 2009 dollars, discounted at 3 percent annually.
- (2) The year 2038 is presented as a stabilized year of operations.
- (3) Net present value calculation assumes a discount rate of 5.2 percent.
- (4) Property tax rates based on currently projected tax rates obtained from the City of San Jose and the County of Santa Clara.
- (5) Allocation of property taxes has been adjusted to reflect the tax increment revenue distribution anticipated in the Diridon Project Area from 2009 to 2048.
- (6) In 2048 the Diridon Project Area will cease to collect tax increment. Therefore, current property tax rates are applied in years 2048 through 2063.
- (7) Property tax assessment is based on construction costs of \$300 per square foot. This assessed value excludes soft construction costs and land.
- (8) Property tax in lieu of Vehicle License Fees is assessed at a rate of \$0.57 per \$1,000 of assessed property value.
- (9) 1.0 percent City of San Jose Sales Tax levied on goods and services.
- (10) Net new sales taxes generated as a result of office and retail operations.
- (11) Based on 10 percent transient occupancy tax of which 6 percent is allocated to the TOT Fund and 4 percent of which is allocated to the City's General Fund.
- (12) service population.
- (13) Technical Memorandum "Updated Fiscal and Economic Impact Analysis of Major League Soccer Stadium" by Economic Planning Systems (March 2009).
- (14) Based on City of San Jose estimate.
- (15) The City receives \$3.30 per \$1,000 value of properties that are resold in conveyance tax.
- (16) Currently, 9.6 percent of the City's conveyance tax revenue can be used for parks operations and maintenance purposes.
- (17) construction.
- (18) Excludes tax increment revenues allocated to the City General Fund.



## Appendix I Economic Impacts of Alternative Development (cont'd)

**Projection of Annual City General Fund Service Costs  
Fiscal and Economic Impact Analysis  
Alternative Development Scenario  
City of San Jose, CA  
(2009 Dollars)<sup>(1)</sup>**

			<b>Stabilized</b>	<b>30-Year</b>	<b>50-Year</b>
			<b>Year</b> <sup>(2)</sup>	<b>Net Present</b>	<b>Net Present</b>
				<b>Value</b> <sup>(3)</sup>	<b>Value</b> <sup>(3)</sup>
<b>Service Population</b>					
office and retail employees			3,946	n/a	n/a
daytime service population			1,973	n/a	n/a
<b>Service Costs</b>					
	<b>2009 Costs</b>	<b>Service Cost Factors</b>			
General Government <sup>(5)</sup>	\$17.00 <sup>(6)</sup>	per daytime service population	\$34,000	\$395,000	\$674,000
Finance <sup>(7)</sup>	\$3.00 <sup>(6)</sup>	per daytime service population	6,000	70,000	119,000
Economic Development <sup>(8)</sup>	\$2.00 <sup>(6)</sup>	per daytime service population	4,000	47,000	79,000
Police <sup>(9)</sup>	\$160,856	<sup>(6)</sup> per officer with 1.19 per 1,000 daytime svc. pop'n	378,000	4,451,000	7,590,000
Fire <sup>(10)</sup>	\$154,421	<sup>(6)</sup> per firefighter with 0.64 per 1,000 daytime svc. pop'n	195,000	2,298,000	3,919,000
<b>Capital Maintenance</b>					
General Services	\$16.00 <sup>(6)</sup>	per daytime service population	32,000	360,000	636,000
Public Works	\$8.00 <sup>(6)</sup>	per daytime service population	16,000	179,000	332,000
Transportation	\$14,333	<sup>(6)</sup> per road mile	no change	no change	no change
<b>Community Service</b>					
Library	\$10.56 <sup>(6)</sup>	per resident	no change	no change	no change
Parks, Rec. & Neighborhood Services	\$15,000	<sup>(6)</sup> per acre of park	no change	no change	no change
Planning, Building and Code Enforcement	\$8.00 <sup>(6)</sup>	per daytime service population	16,000	186,000	317,000
<b>Total Annual City General Fund Costs</b>			<b>\$681,000</b>	<b>\$7,986,000</b>	<b>\$13,666,000</b>

**Notes:**

(1) Presented in 2009 dollars, discounted at 3 percent annually.

(2) The year 2038 is presented as a stabilized year of operations.

(3) Net present value calculation assumes a discount rate of 5.2 percent.

(4) Represents the weighted average of daily employees assuming 200 full-time staff and 600 part-time employees on the assumed 84 event nights.

(5) Includes city attorney, auditor, clerk, manager, mayor, council, emergency services, employee services and information technology.

(6) Technical Memorandum "Updated Fiscal and Economic Impact Analysis of Major League Soccer Stadium" by Economic Planning Systems, Inc. (March 2009).

(7) Includes independent police auditor.

(8) Includes Redevelopment Agency expenses.

(9) Includes salary, benefits, uniform, safety equipment, and an overhead cost equivalent to 10 percent of the expenditure per officer.

(10) Includes salary, benefits, uniforms, safety equipment, and an overhead cost equivalent to 10 percent of the expenditure per firefighter.

## Appendix II Major League Baseball Overview

The purpose of this section is to provide a general overview of Major League Baseball (“MLB”). The information presented in this section is divided into the following areas:

- League Overview;
- Fan Demographics;
- MLB Attendance;
- MLB Ballpark Development;
- MLB Ticket Prices;
- MLB Premium Seating;
- Media and Sponsorships;
- Franchise Valuations;
- Player Salaries; and,
- Review of Recently Planned/Built Ballparks.

### League Overview

MLB has 30 teams that each play 162 games per year, divided between a 16-team National League and 14-team American League. Each league has three geographical divisions. Despite the two league structure, MLB operates as a single major professional sports league under the office of the Commissioner of Baseball.

MLB’s current league structure has been in place since 1998 when expansion teams began play in Arizona and Tampa. A divisional realignment was completed prior to the 1998 season to accommodate the new franchises and to align teams within similar time zones, potentially increasing regional rivalries, fan interest and the attractiveness of broadcasting rights. MLB’s current divisional alignment is summarized below.

Major League Baseball Division Alignment

American League		
East	Central	West
Baltimore Orioles	Chicago White Sox	LA Angels of Anaheim
Boston Red Sox	Cleveland Indians	<b>Oakland Athletics</b>
New York Yankees	Detroit Tigers	Seattle Mariners
Tampa Bay Rays	Kansas City Royals	Texas Rangers
Toronto Blue Jays	Minnesota Twins	
National League		
East	Central	West
Atlanta Braves	Chicago Cubs	Arizona Diamondbacks
Florida Marlins	Cincinnati Reds	Colorado Rockies
New York Mets	Houston Astros	Los Angeles Dodgers
Philadelphia Phillies	Milwaukee Brewers	San Diego Padres
Washington Nationals	Pittsburgh Pirates	San Francisco Giants
	St. Louis Cardinals	

## **Appendix II Major League Baseball Overview (cont'd)**

According to the Collective Bargaining Agreement that expires in 2011, MLB teams pay 31 percent of their locally-generated revenues into a sharing fund each season. These funds are then evenly distributed among the 30 teams. Teams in larger markets such as New York or Chicago will typically contribute more to the revenue sharing fund than teams in Kansas City or Cincinnati, for example. The MLB also distributes a portion of their Central Fund among the 30 teams with teams having the lowest local revenue getting a larger proportion of the funds distributed. The Central Fund is comprised of revenues generated via sources such as national TV contracts and MLB website revenue.

In addition, Major League Baseball utilizes a luxury tax system to share revenue between the teams, wherein a team must pay a tax on the portion of their payroll that exceeds a pre-set limit. For example, in the 2008 season the New York Yankees paid \$26.9 million in luxury taxes for exceeding the payroll threshold of the luxury tax in 2008. The payroll threshold for the 2009 season is set at \$162 million and will increase to \$170 million for the 2010 and 2011 seasons. Luxury tax funds are distributed on a sliding scale with teams having the lowest payrolls receiving a higher proportion of the funds.

### **Fan Demographics**

Major League Baseball appeals to a broad fan base that reaches across numerous demographic categories. In the table on the following page, MLB fans are indexed by level of interest, using gender, age and race as criteria for segmentation.

## Appendix II Major League Baseball Overview (cont'd)

### Major League Baseball Fan Demographics

		Level of Interest in MLB		
		Very	Somewhat	Slightly
<b>Gender</b>				
<b>Men</b>	% of U.S. Adults*	21%	42%	61%
	% of MLB Fans^	65%	61%	57%
<b>Women</b>	% of U.S. Adults	10%	26%	43%
	% of MLB Fans	35%	39%	43%
<b>Age</b>				
<b>18-24</b>	% of U.S. Adults	13%	29%	48%
	% of MLB Fans	11%	11%	12%
<b>25-34</b>	% of U.S. Adults	15%	32%	51%
	% of MLB Fans	17%	17%	18%
<b>35-44</b>	% of U.S. Adults	15%	34%	54%
	% of MLB Fans	19%	19%	20%
<b>45-54</b>	% of U.S. Adults	17%	37%	55%
	% of MLB Fans	21%	21%	21%
<b>55-64</b>	% of U.S. Adults	16%	35%	53%
	% of MLB Fans	15%	15%	15%
<b>65+</b>	% of U.S. Adults	16%	34%	48%
	% of MLB Fans	18%	17%	16%

\* Percent of US residents in that demographic category who identify as an MLB fan.

^ Percent of self-identified MLB fans who are members of that demographic category.

Source: Sports Business Resource Guide & Fact Book 2009.

As illustrated above, approximately 61 percent of U.S. adult males and 43 percent of U.S. adult females identify themselves as at least slightly interested in MLB. Of those fans that identify themselves as very interested in Major League Baseball, approximately 65 percent are male versus 35 percent female.

Adults of all ages identify themselves as MLB fans, with all of the age categories in the table having at least 48 percent of their members as slightly interested in MLB. Of those fans that identify themselves as very interested in MLB, a high of 21 percent are aged 45 to 54, versus a low of 12 percent who are aged 18 to 24.

## Appendix II Major League Baseball Overview (cont'd)

### MLB Attendance

Attendance patterns vary significantly across Major League Baseball franchises. The following table presents MLB attendance statistics from the 2008 season, sorted by average attendance per game.

2008 Major League Baseball Attendance

Team	Total Attendance	Average Attendance	Attendance Rank	Seating Capacity	Percent of Capacity
New York Yankees	4,298,655	53,069	1	56,936 <sup>(1)</sup>	93%
New York Mets	4,042,047	51,165	2	57,333 <sup>(2)</sup>	89%
Los Angeles Dodgers	3,730,553	46,056	3	56,000	82%
St. Louis Cardinals	3,430,660	42,353	4	46,900	90%
Philadelphia Phillies	3,422,583	42,254	5	43,000	98%
Los Angeles Angels	3,336,744	41,194	6	45,050	91%
Chicago Cubs	3,300,200	40,743	7	41,118	99%
Detroit Tigers	3,202,645	39,538	8	40,000	99%
Milwaukee Brewers	3,068,458	37,882	9	42,500	89%
Boston Red Sox	3,048,250	37,632	10	37,400	101%
San Francisco Giants	2,863,837	35,356	11	41,503	85%
Houston Astros	2,779,287	34,741	12	42,000	83%
Colorado Rockies	2,650,218	33,127	13	50,200	66%
Atlanta Braves	2,532,834	31,269	14	49,000	64%
Arizona Diamondbacks	2,509,924	30,986	15	48,500	64%
Chicago White Sox	2,501,103	30,877	16	40,615	76%
San Diego Padres	2,427,535	29,969	17	42,000	71%
Toronto Blue Jays	2,399,786	29,626	18	49,539	60%
Washington Nationals	2,320,400	29,005	19	41,888	69%
Seattle Mariners	2,329,702	28,761	20	47,000	61%
Minnesota Twins	2,302,431	28,425	21	46,564 <sup>(3)</sup>	61%
Cleveland Indians	2,169,760	27,122	22	42,865	63%
Cincinnati Reds	2,058,632	25,415	23	45,000	56%
Baltimore Orioles	1,950,075	25,000	24	48,262	52%
Texas Rangers	1,945,677	24,320	25	49,178	49%
Tampa Bay Rays	1,780,791	22,259	26	36,973	60%
Oakland Athletics	1,665,256	20,558	27	35,067	59%
Pittsburgh Pirates	1,609,076	20,113	28	38,000	53%
Kansas City Royals	1,578,922	19,986	29	40,625	49%
Florida Marlins	1,335,075	16,688	30	38,560 <sup>(4)</sup>	43%
<b>Average</b>	<b>2,619,704</b>	<b>32,516</b>		<b>44,653</b>	<b>73%</b>

(1) Capacity is representative of old Yankee Stadium.

(2) Capacity is representative of Shea Stadium.

(3) Capacity is representative of Hubert H. Humphrey Metrodome.

(4) Capacity is representative of Dolphin Stadium.

Note: Sorted by average attendance.

Source: Major League Baseball.

As shown above, MLB franchises averaged approximately 2.6 million fans over the course of the 2008 season. Per-game attendance ranged from a low of approximately 17,000 for the Florida Marlins to a high of approximately 53,000 for the New York Yankees. Average attendance as a percentage of total seating capacity ranged from a low of 43 percent for the Florida Marlins to a high of 101 percent for the Boston Red Sox (due to the sale of “standing room” tickets).

## Appendix II Major League Baseball Overview (cont'd)

Attendance for MLB franchises often fluctuates from year to year. The following table details average attendance for each franchise over each of the past five seasons, sorted by five-year average.

**Average Major League Baseball Attendance: 2004 to 2008**

<b>Team</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>5-year Average</b>
New York Yankees	47,788	50,502	52,392	52,279	53,069	51,206
Los Angeles Dodgers	43,065	44,489	46,401	47,617	46,056	45,526
St. Louis Cardinals	37,634	43,691	42,588	43,854	42,353	42,024
Los Angeles Angels	41,675	42,033	42,059	41,551	41,194	41,702
New York Mets	28,979	35,374	43,327	47,579	51,165	41,285
Chicago Cubs	39,138	38,749	39,040	40,153	40,743	39,565
San Francisco Giants	40,208	39,271	38,639	39,792	35,356	38,653
Philadelphia Phillies	40,626	33,316	34,200	38,374	42,254	37,754
Houston Astros	38,121	34,626	37,318	37,288	34,741	36,419
Boston Red Sox	35,028	35,159	36,189	36,679	37,632	36,137
San Diego Padres	37,243	35,429	32,836	34,445	29,969	33,984
Seattle Mariners	36,305	33,648	30,634	32,993	28,761	32,468
Detroit Tigers	23,962	25,306	32,048	37,619	39,538	31,695
Atlanta Braves	29,399	31,514	31,881	33,891	31,269	31,591
Milwaukee Brewers	25,461	27,296	28,835	35,421	37,882	30,979
Chicago White Sox	24,437	28,923	36,511	33,140	30,877	30,778
Texas Rangers	31,818	31,565	29,490	29,795	24,320	29,398
Baltimore Orioles	34,344	32,404	26,581	27,060	25,000	29,078
Arizona Diamondbacks	31,105	25,416	25,829	28,708	30,986	28,409
Washington Nationals	n/a	33,728	26,580	24,217	29,005	28,383
Colorado Rockies	29,595	23,929	25,979	28,978	33,127	28,322
Toronto Blue Jays	23,457	24,876	28,422	29,143	29,626	27,105
Minnesota Twins	23,597	25,114	28,210	28,349	28,425	26,739
Cincinnati Reds	28,237	23,988	26,353	25,414	25,415	25,881
Cleveland Indians	22,400	24,861	24,666	28,448	27,122	25,499
<b>Oakland Athletics</b>	<b>27,179</b>	<b>26,038</b>	<b>24,402</b>	<b>23,276</b>	<b>20,558</b>	<b>24,291</b>
Pittsburgh Pirates	21,107	23,003	23,269	22,141	20,113	21,927
Kansas City Royals	21,031	17,356	17,157	19,961	19,986	19,098
Florida Marlins	16,139	22,871	14,372	16,919	16,688	17,398
Tampa Bay Rays	16,139	14,232	16,925	17,130	22,259	17,337
Montreal Expos*	9,356	-	-	-	-	-
<b>Average</b>	<b>30,152</b>	<b>30,957</b>	<b>31,438</b>	<b>32,740</b>	<b>32,516</b>	<b>31,688</b>

\* Relocated to Washington after the 2004 season.

Note: Sorted by five-year average.

Source: Major League Baseball.

As depicted above, MLB teams have drawn an average of nearly 31,700 fans per game over the past five seasons, with a high of approximately 51,200 for the New York Yankees and a low of approximately 17,300 for the Tampa Bay Rays.

## **Appendix II Major League Baseball Overview (cont'd)**

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### **MLB Ballpark Development**

Due to the current economic structure of MLB, the ability of a franchise to generate revenues locally, from local media agreements as well as ballpark revenues, plays a significant role in the financial viability of a franchise. Facility-generated revenues such as ticket sales, premium seating, naming rights, sponsorships and other such revenues typically comprise the largest portion of a team's revenues. In order to maximize franchise revenues, many teams have worked toward the development of new ballparks.

### **MLB Ballpark Summary**

It is widely considered that the modern era of ballpark development began in 1992 with the opening of Oriole Park at Camden Yards. The table on the following page provides a breakdown of MLB ballpark development, including facilities built or renovated since 1992, ballparks currently under development and teams with no announced development plans.

## Appendix II Major League Baseball Overview (cont'd)

MLB Ballpark Summary						
Team	Stadium	Construction	Roof Type	Year Opened	Capacity	Other Tenants
<b>Facilities Built Since 1992</b>						
Number of Teams		19				
Percentage of Teams		63%				
New York Yankees	Yankee Stadium ( <i>new</i> )	New	Open-air	2009	51,000	none
New York Mets	Citi Field	New	Open-air	2009	42,500	none
Washington Nationals	Nationals Park	New	Open-air	2008	41,888	none
St. Louis Cardinals	Busch Stadium	New	Open-air	2006	46,900	none
San Diego Padres	Petco Park	New	Open-air	2004	42,000	none
Philadelphia Phillies	Citizens Bank Park	New	Open-air	2004	43,000	none
Cincinnati Reds	Great American Ballpark	New	Open-air	2003	45,000	none
Milwaukee Brewers	Miller Park	New	Retractable	2001	42,500	none
Pittsburgh Pirates	PNC Park	New	Open-air	2001	38,000	none
Detroit Tigers	Comerica Park	New	Open-air	2000	40,000	none
Houston Astros	Minute Maid Park	New	Retractable	2000	42,000	none
San Francisco Giants	AT&T Park	New	Open-air	2000	41,503	none
Seattle Mariners	Safeco Field	New	Retractable	1999	47,000	none
Arizona Diamondbacks	Chase Field	New	Retractable	1998	48,500	none
Atlanta Braves	Turner Field	New	Open-air	1997	49,000	none
Colorado Rockies	Coors Field	New	Open-air	1995	50,200	none
Cleveland Indians	Progressive Field	New	Open-air	1994	42,865	none
Texas Rangers	Rangers Ballpark in Arlington	New	Open-air	1994	49,178	none
Baltimore Orioles	Oriole Park at Camden Yards	New	Open-air	1992	48,262	none
<b>Facilities Renovated Since 1992</b>						
Number of Teams		7				
Percentage of Teams		23%				
Kansas City Royals	Kauffman Stadium	Renovated	Open-air	2009	40,625	none
Tampa Bay Rays	Tropicana Field	Renovated	Dome	2006-2007	36,973	none
Toronto Blue Jays	Rogers Centre	Renovated	Retractable	2006	49,539	CFL, CIS, NCAA <sup>(1)</sup>
Los Angeles Dodgers	Dodger Stadium	Renovated	Open-air	2005	56,000	none
Boston Red Sox	Fenway Park	Renovated	Open-air	2003-2009	37,400	none
Chicago White Sox	US Cellular Field	Renovated	Open-air	2001-2009	40,615	none
Los Angeles Angels	Angel Stadium of Anaheim	Renovated	Open-air	1997	45,050	none
<b>Facilities Planned/Under Construction</b>						
Number of Teams		2				
Percentage of Teams		7%				
Florida Marlins	New Marlins Ballpark	New	Retractable	2012	37,000	none
Minnesota Twins	Target Field	New	Open-air	2010	40,000	none
<b>Teams with No Announced Plans</b>						
Number of Teams		2				
Percentage of Teams		7%				
Oakland Athletics	Oakland-Alameda County Coliseum		Open-air	1966	35,067*	NFL <sup>(2)</sup>
Chicago Cubs	Wrigley Field		Open-air	1914	41,118	none

(1) Other tenants include the Canadian Football League's Toronto Argonauts, the Canadian Interuniversity Sport's Vanier Cup and the NCAA International Bowl.

(2) Other tenant includes the NFL's Oakland Raiders.

\* The majority of the upper deck is closed for baseball games. NFL football capacity is 63,026.

Note: Sorted by year.

Of the 30 MLB franchises, 26 teams (approximately 86 percent) are currently playing in ballparks that have been opened or significantly renovated since 1992. Two franchises have new ballparks currently under construction, which would leave the Oakland Athletics and Chicago Cubs as the only two franchises whose ballparks have not been built or significantly updated in the modern era of ballpark development. Additionally, when the new ballparks for the Minnesota Twins and Florida Marlins open in 2010 and 2012 respectively, the Toronto Blue Jays and Oakland Athletics would be the only remaining MLB franchises that do not play in baseball-only ballparks. The Tampa Bay Rays have also developed plans to replace Tropicana Field with a new ballpark, however the project has been delayed indefinitely due to a lack of a viable site or public financing support.



## Appendix II Major League Baseball Overview (cont'd)

### MLB Ballpark Financing

Financing for MLB ballpark development has typically involved both private and public sources. The following table summarizes construction costs for each ballpark opened since 1992, with a breakdown of the percentage public and private funding for each facility.

MLB Ballpark Development Cost Summary

Stadium	Team	Opening Year	Original Cost (millions)	Adjusted Cost <sup>(1)</sup>	Financing Participation Dollars <sup>(2)</sup>	
					Public	Private
Yankee Stadium	New York Yankees	2009	\$1,358.2	\$1,368.6	\$1,055.7	\$299.5
Safeco Field	Seattle Mariners	1999	\$511.0	1079.3	\$372.0	\$139.0
Chase Field	Arizona Diamondbacks	1998	\$354.6	958.3	\$238.0	\$116.6
Citi Field	New York Mets	2009	\$932.5	939.7	\$177.2	\$755.3
Nationals Park	Washington Nationals	2008	\$692.8	833.0	\$661.8	\$31.0
Minute Maid Park	Houston Astros	2000	\$299.0	829.3	\$220.0	\$79.0
Busch Stadium	St. Louis Cardinals	2006	\$388.0	802.1	\$89.2	\$298.8
Target Field	Minnesota Twins	2010	\$559.4	785.5	\$392.0	\$167.4
Great American Ballpark	Cincinnati Reds	2003	\$296.7	765.7	\$266.7	\$30.0
Turner Field <sup>(3)</sup>	Atlanta Braves	1997	\$260.0	761.9	\$209.0	\$51.0
Petco Park	San Diego Padres	2004	\$449.4	756.2	\$386.5	\$62.9
Progressive Field	Cleveland Indians	1994	\$230.0	745.0	\$160.0	\$70.0
Miller Park <sup>(4)</sup>	Milwaukee Brewers	2001	\$295.0	712.6	\$248.0	\$47.0
New Marlins Ballpark	Florida Marlins	2012	\$515.0	697.0	\$360.5	\$154.5
Coors Field	Colorado Rockies	1995	\$231.0	671.4	\$190.0	\$41.0
Rangers Ballpark in Arlington	Texas Rangers	1994	\$191.5	654.5	\$143.5	\$48.0
Comerica Park	Detroit Tigers	2000	\$260.0	649.6	\$115.0	\$145.0
Oriole Park at Camden Yards	Baltimore Orioles	1992	\$234.0	632.6	\$210.6	\$23.4
Citizens Bank Park	Philadelphia Phillies	2004	\$346.0	629.9	\$195.8	\$150.2
PNC Park	Pittsburgh Pirates	2001	\$228.6	599.6	\$188.6	\$40.0
AT&T Park	San Francisco Giants	2000	\$290.0	421.1	\$15.0	\$275.0
<b>Average</b>		<b>2002</b>	<b>\$424.9</b>	<b>\$775.8</b>	<b>\$280.7</b>	<b>\$144.0</b>
<b>Average (Excl. Yankee Stadium)</b>		<b>2001</b>	<b>\$378.2</b>	<b>\$746.2</b>	<b>\$242.0</b>	<b>\$136.3</b>

(1) Original cost adjusted to 2009 dollars via the Turner Construction Cost Index. Projected cost of stadiums opening after 2009 have not been adjusted due to lack of future indices.

Costs were then normalized and adjusted using the ACCRA Cost of Living Index and are presented in San Jose dollars.

(2) Dollars shown represent proportions as it relates to original cost.

(3) Public cost allocation represents the contribution of the Atlanta Committee of the Olympic Games.

(4) Private sector contribution adjusted to reflect annual operating subsidy received by Brewers.

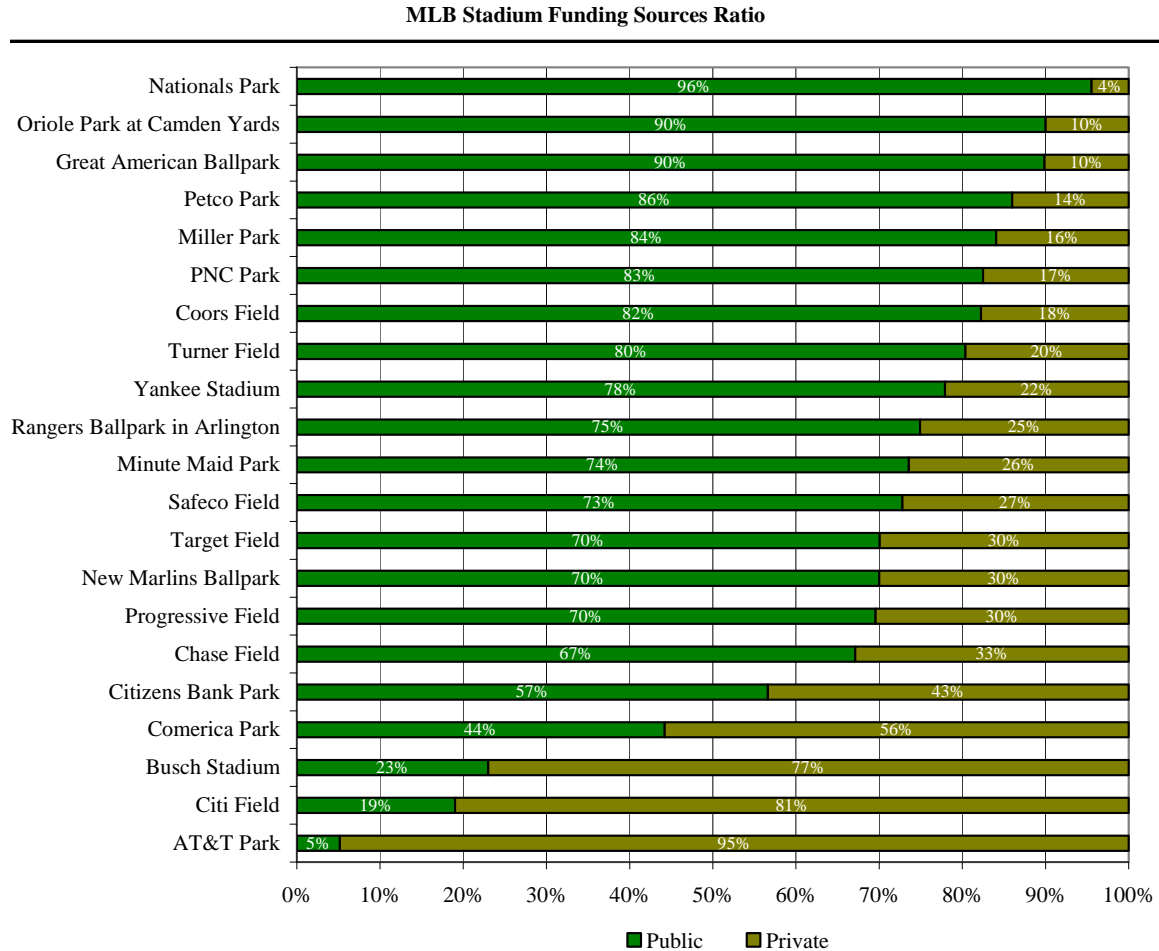
Note: Sorted by adjusted cost.

Source: Municipal authorities, facility management, public records, and industry publications. Amounts have not been audited or otherwise verified.

In order to provide a comparative analysis of the development costs, the original ballpark construction costs were adjusted using construction cost indices and then normalized and adjusted to San Jose dollars using the ACCRA cost of living index. On average, the adjusted construction cost of new ballparks since 1992 has been approximately \$746 million in 2009 San Jose dollars (excluding Yankee Stadium). Adjusted ballpark construction costs have ranged from a high of approximately \$1.4 billion for Yankee Stadium to a low of \$421.1 million for AT&T Park.

## Appendix II Major League Baseball Overview (cont'd)

The following chart illustrates the public/private contribution ratios for stadium funding for each of the MLB stadiums.



Source: Municipal authorities, facility management, public records, and industry publications.  
 Amounts have not been audited or otherwise verified.

As shown above, public funding was a major contributor to MLB stadium financing. On average, 67 percent of funding for MLB stadiums came from public sources. Approximately 33 percent of funding was provided by private sources.

## Appendix II Major League Baseball Overview (cont'd)

### Impact of New MLB Ballparks on Attendance

The development of a new ballpark can have a significant impact on a franchise's attendance. The following table summarizes the changes in average per-game attendance that has resulted from the development of new MLB ballparks since 1992.

Impact of New MLB Ballparks on Attendance

Team	New Stadium	Year Open	Prior Year Attendance	First Year Attendance	First-Year Change	Fifth Year Attendance	Fifth-Year Change
Cleveland Indians	Progressive Field	1994	26,888	39,121	45%	42,806	59%
San Francisco Giants	AT&T Park	2000	25,659	40,973	60%	40,307	57%
Philadelphia Phillies	Citizens Bank Park	2004	28,973	40,626	40%	42,254	46%
Baltimore Orioles	Oriole Park at Camden Yards	1992	31,515	44,047	40%	44,475	41%
Milwaukee Brewers	Miller Park	2001	19,427	34,704	79%	27,296	41%
Seattle Mariners	Safeco Field	1999	32,735	36,004	10%	43,740	34%
Texas Rangers	Rangers Ballpark in Arlington	1994	27,711	39,733	43%	36,141	30%
San Diego Padres	Petco Park	2004	25,024	37,243	49%	29,969	20%
Cincinnati Reds	Great American Ballpark	2003	23,199	29,077	25%	25,414	10%
Pittsburgh Pirates	PNC Park	2001	21,591	30,430	41%	22,435	4%
Atlanta Braves	Turner Field	1997	35,818	42,771	19%	34,858	-3%
Detroit Tigers	Comerica Park	2000	25,018	30,106	20%	23,667	-5%
Houston Astros	Minute Maid Park	2000	33,000	37,730	14%	30,299	-8%
Washington Nationals	Nationals Park	2008	24,217	29,005	20%	n/a	n/a
St. Louis Cardinals	Busch Stadium	2006	43,691	42,588	-3%	n/a	n/a
<b>Average</b>		<b>2000</b>	<b>28,298</b>	<b>36,944</b>	<b>34%</b>	<b>34,128</b>	<b>25%</b>

Note: 1. Citi Field (2009) and Yankee Stadium (2009) have been excluded as the New York Mets and New York Yankees have yet to complete a full season in their new ballparks.

2. Coors Field (1995) and Chase Field (1998) have been excluded as the Colorado Rockies and Arizona Diamondbacks were expansion franchises.

3. Sorted by fifth-year change.

4. Excludes Yankee Stadium (2009), Citi Field (2009), Target Field (2010) and new Marlins ballpark (2012).

Source: Major League Baseball.

As shown in the table above, 14 of the 15 new MLB ballparks listed above experienced an attendance increase in their first year of operations. On average, first-year ballparks experienced a 34 percent increase in per-game attendance. On a 5-year basis, just three ballparks have experienced a decrease in average per-game attendance. The average fifth-year attendance increase associated with new ballparks is 25 percent. The higher attendance figures of the first year relative to the fifth year can be attributed to the honeymoon period in which new ballparks experience increased attendance from people who would not normally attend games.

### MLB Ticket Prices

Ticket prices vary greatly among the various MLB ballparks. The price range offered by each franchise is dependent on a variety of factors, including specific market characteristics as well as the inclusion or exclusion of seat licenses for specific seating areas. The table on the following page presents the range of ticket prices for each MLB franchise, including individual game tickets and season ticket packages. It should be noted that the prices shown do not include premium seating ticket prices.

## Appendix II Major League Baseball Overview (cont'd)

Major League Baseball Ticket Prices

Team	Average Per-Game Ticket Price	Single-Game		Season Tickets	
		Low	High	Low	High
Boston Red Sox	\$48.80	\$12	\$325	\$1,710	\$7,290
Chicago Cubs	\$42.49	\$16	\$70	\$240	\$2,790
New York Mets <sup>(3)</sup>	\$36.58	\$11	\$105	\$1,109	\$13,095
New York Yankees <sup>(4)</sup>	\$34.05	\$12	\$400	\$972	\$26,325
Chicago White Sox	\$30.28	\$17	\$51	\$1,134	\$3,726
Los Angeles Dodgers	\$29.66	\$6	\$75	\$486	\$4,050
St. Louis Cardinals	\$29.32	\$13	\$90	\$972	\$3,240
<b>Oakland Athletics</b>	<b>\$29.20</b>	<b>\$9</b>	<b>\$48</b>	<b>\$584</b>	<b>\$3,280</b>
Houston Astros	\$28.73	\$7	\$52	\$913	\$4,233
Toronto Blue Jays	\$28.37	\$9	\$60	\$636	\$4,293
Philadelphia Phillies	\$28.14	\$16	\$60	\$1,458	\$4,860
San Diego Padres	\$27.43	\$10	\$65	\$972	\$3,240
Cleveland Indians	\$25.72	\$8	\$75	\$567	\$4,455
Seattle Mariners	\$25.29	\$7	\$55	\$1,053	\$3,240
Detroit Tigers	\$25.28	\$5	\$65	\$405	\$4,860
Washington Nationals	\$25.00	\$7	\$105	\$810	\$4,050
Baltimore Orioles	\$23.85	\$8	\$45	\$729	\$3,645
San Francisco Giants	\$22.06	\$20	\$105	\$840	\$2,772
Los Angeles Angels	\$20.78	\$12	\$150	\$656	\$2,200
Minnesota Twins <sup>(2)</sup>	\$20.68	\$7	\$50	\$250	\$3,402
Milwaukee Brewers	\$19.88	\$14	\$48	\$729	\$5,022
Colorado Rockies	\$19.50	\$6	\$49	\$648	\$2,835
Cincinnati Reds	\$19.41	\$7	\$77	\$592	\$4,257
Florida Marlins <sup>(1)</sup>	\$18.69	\$12	\$93	\$547	\$4,994
Texas Rangers	\$18.01	\$15	\$109	\$405	\$8,100
Kansas City Royals	\$17.54	\$9	\$240	\$567	\$2,754
Tampa Bay Rays	\$17.23	\$6	\$75	\$650	\$7,200
Pittsburgh Pirates	\$17.07	\$9	\$210	\$399	\$1,944
Atlanta Braves	\$17.05	\$12	\$70	\$830	\$4,980
Arizona Diamondbacks	\$15.96	\$5	\$200	\$415	\$7,055
<b>Average</b>	<b>\$25</b>	<b>\$10</b>	<b>\$107</b>	<b>\$743</b>	<b>\$5,273</b>

(1) Prices represent those for Dolphin Stadium.

(2) Prices represent those for Hubert H. Humphrey Metrodome.

(3) Prices represent those for Citi Field.

(4) Prices represent those for the new Yankee Stadium.

Note: Sorted by average per-game ticket price.

Note: Oakland Athletics ticket prices represent current ballpark, rather than projections for new ballpark.

Sources: Team Marketing Report, 2009 Revenues From Sports Venues.

As shown above, the average MLB franchise has individual ticket prices ranging from \$10 to \$107, with an average ticket price of \$25 in 2008. For season tickets, the average prices range from \$743 to \$5,273. Some teams, such as the Baltimore Orioles, Colorado Rockies, Milwaukee Brewers and Oakland Athletics, offer a relatively small range of ticket prices. Others, such as the Boston Red Sox and New York Yankees, offer a wide range of ticket prices.

## Appendix II Major League Baseball Overview (cont'd)

### MLB Premium Seating

Premium seating amenities, such as private suites and club level seating are significant sources of revenue for MLB franchises. The following table summarizes the premium seating inventories for each MLB ballpark, sorted alphabetically by team.

Major League Baseball Premium Seating

Team	Private Suites			Club Seats		
	Quantity	Low Price	High Price	Quantity	Low Price	High Price
Arizona Diamondbacks	70	\$95,000	\$125,000	4,500	\$2,241	\$9,960
Atlanta Braves	59	\$210,000	\$308,000	5,372	\$2,656	\$2,656
Baltimore Orioles	75	\$90,000	\$180,000	4,000	\$2,673	\$2,835
Boston Red Sox	40	\$250,000	\$350,000	406	\$12,150	\$22,275
Chicago Cubs	67	\$110,000	\$182,000	-	-	-
Chicago White Sox	102	\$110,000	\$300,000	1,822	\$2,896	\$3,058
Cincinnati Reds	57	\$52,000	\$150,000	3,000	\$4,110	\$5,730
Cleveland Indians	122	\$54,000	\$139,000	2,064	\$4,941	\$4,941
Colorado Rockies	52	\$81,000	\$128,000	4,400	\$2,835	\$3,078
Detroit Tigers	108	\$100,000	\$125,000	2,000	\$4,050	\$4,860
Florida Marlins	183	\$50,000	\$300,000	10,209	\$1,250	\$3,250
Houston Astros	62	\$84,000	\$112,000	5,000	\$3,320	\$3,984
Kansas City Royals	19	\$53,000	\$60,000	2,487	\$4,455	\$5,670
Los Angeles Angels	74	\$57,000	\$189,000	5,000	\$1,640	\$3,444
Los Angeles Dodgers	33	\$150,000	\$300,000	565	\$2,592	\$2,592
Milwaukee Brewers	70	\$95,000	\$102,000	3,500	\$3,200	\$4,200
Minnesota Twins	72	\$110,000	\$110,000	3,400	\$3,888	\$4,860
New York Mets	54	\$250,000	\$500,000	4,600	\$4,860	\$40,095
New York Yankees	67	\$600,000	\$850,000	4,374	\$8,100	\$202,500
<b>Oakland Athletics</b>	<b>143</b>	<b>\$30,000</b>	<b>\$150,000</b>	<b>9,000</b>	<b>\$1,260</b>	<b>\$1,510</b>
Philadelphia Phillies	71	\$115,000	\$200,000	3,600	\$4,200	\$9,000
Pittsburgh Pirates	65	\$60,000	\$150,000	3,374	\$2,430	\$10,125
San Diego Padres	50	\$85,000	\$170,000	6,580	\$2,916	\$3,888
San Francisco Giants	67	\$75,000	\$120,000	5,300	\$4,500	\$7,500
Seattle Mariners	69	\$100,000	\$189,000	4,271	\$2,997	\$3,483
St. Louis Cardinals	63	\$105,000	\$185,000	3,600	\$7,290	\$8,910
Tampa Bay Rays	63	\$60,000	\$140,000	3,600	\$2,430	\$8,910
Texas Rangers	129	\$75,000	\$175,000	5,699	\$3,888	\$8,100
Toronto Blue Jays	120	\$60,000	\$235,000	5,700	\$2,933	\$4,127
Washington Nationals	66	\$150,000	\$400,000	2,500	\$3,645	\$4,455
<b>Average</b>	<b>76</b>	<b>\$117,200</b>	<b>\$220,800</b>	<b>4,135</b>	<b>\$3,800</b>	<b>\$13,800</b>

Note: Sorted alphabetically.

Note: Oakland Athletics premium seating information represents current ballpark, rather than projections for a new ballpark.

Source: 2009 Revenues From Sports Venues.

As shown in the table above, all 30 MLB teams offer private suites. The average MLB franchise has 76 luxury suites that range in price from approximately \$117,000 to \$221,000 per season. The Oakland Athletics have the lowest priced private suite in the league (\$30,000 annually), whereas the New York Yankees have the highest priced suite (\$850,000 annually).

## **Appendix II Major League Baseball Overview (cont'd)**

Club level seating is offered in 29 of the 30 MLB ballparks. On average, MLB franchises that offer club seats have 4,135 club seats that range from \$3,800 to \$13,800 per season. The Florida Marlins offer the lowest priced club seating (\$1,250 annually), and the New York Yankees offer the highest priced club seats (\$202,500 annually).

### **Media and Sponsorship**

Major League Baseball's 29 U.S.-based teams are all located within the nation's 40 largest media markets, including eight teams that are located in the nation's four largest markets (New York, Los Angeles, Chicago and San Francisco). In addition, the Toronto Blue Jays are located in Canada's largest media market.

MLB currently has national TV contracts with FOX, TBS and ESPN, with all three contracts running through the 2013 season. FOX owns the exclusive rights to televise the World Series and the All-Star Game, the American League Championship Series (ALCS) and National League Championship Series (NLCS) in alternating years, and 26 regional Saturday Game of the Week broadcasts. MLB's deal with FOX was undisclosed, however it was an extension of a previous deal that was worth \$2.4 billion over six years. TBS owns the rights to televise a Sunday afternoon Game of the Week, as well as the ALCS and NLCS in alternating years, and the exclusive rights to the Division Series in both leagues. TBS' contract terms with MLB are believed to be similar to those agreed upon by FOX. ESPN has the right to televise MLB games on Sunday, Monday and Wednesday evenings, under an eight year, \$2.4 billion contract.

MLB launched its own cable TV network, MLB Network, in January 2009, following in the foot steps of the other American major league sports, the NBA, NFL and NHL. MLB Network provides 24-hour coverage of Major League Baseball, including live games on Thursday and Saturday nights. According to industry sources, MLB expects the network to be profitable by the end of 2009, with projected revenue from cable subscriber fees and advertising of more than \$210 million by 2015.

Major League Baseball Advanced Media (MLBAM) is a subsidiary of Major League Baseball that was established in 2000 to operate MLB's internet and interactive media initiatives. Today, MLBAM operates MLB.com and websites for all 30 MLB teams, MiLB.com, MLB Radio and MLB.TV, a subscription service that allows users to view live games via the internet.

MLB does not disclose league sponsorship revenue, however sponsorship valuation firm IEG estimates that MLB and its 30 teams will generate global sponsorship revenue in excess of \$510 million in 2009. In 2008, overall revenue generated by MLB was approximately \$6.5 billion.

## Appendix II Major League Baseball Overview (cont'd)

One of the largest sources of local sponsorship revenue for Major League Baseball franchises can be the sale of ballpark naming rights. There are currently 19 MLB ballparks for which naming rights have been sold, as shown in the following table.

MLB Ballpark Naming Rights

Stadium	Team	City	Total Cost (millions)	Years	Annual Average	Expiration Year
Citi Field	New York Mets	Queens, NY	\$400.0	25	\$16.0	2028
Minute Maid Park	Houston Astros	Houston, TX	\$178.0	28	\$6.4	2029
Citizens Bank Park	Philadelphia Phillies	Philadelphia, PA	\$95.0	25	\$3.8	2029
Progressive Field	Cleveland Indians	Cleveland, OH	\$57.6	16	\$3.6	2023
U.S. Cellular Field	Chicago White Sox	Chicago, IL	\$68.0	23	\$3.0	2025
Petco Park	San Diego Padres	San Diego, CA	\$60.0	22	\$2.7	2025
Great American Ballpark	Cincinnati Reds	Cincinnati, OH	\$75.0	30	\$2.5	2032
Chase Field	Arizona Diamondbacks	Phoenix, AZ	\$66.4	30	\$2.2	2028
Comerica Park	Detroit Tigers	Detroit, MI	\$66.0	30	\$2.2	2030
AT&T Park	San Francisco Giants	San Francisco, CA	\$50.0	24	\$2.1	2024
Miller Park	Milwaukee Brewers	Milwaukee, WI	\$41.2	20	\$2.1	2020
PNC Park	Pittsburgh Pirates	Pittsburgh, PA	\$40.0	20	\$2.0	2021
Safeco Field	Seattle Mariners	Seattle, WA	\$40.0	20	\$2.0	2019
Rogers Centre	Toronto Blue Jays	Toronto, ON	\$17.7	10	\$1.8	2014
Tropicana Field	Tampa Bay Rays	St. Petersburg, FL	\$46.0	30	\$1.5	2026
Coors Field	Colorado Rockies	Denver, CO	\$15.0	Indef.	n/a	Indef.*
Busch Stadium	St. Louis Cardinals	St. Louis, MO	n/a	20	n/a	2025
Target Field	Minnesota Twins	Minneapolis, MN	n/a	25	n/a	2034
Land Shark Stadium <sup>(1)</sup>	Florida Marlins	Miami, FL	n/a	1	n/a	2010
<b>Average</b>			<b>\$82.2</b>	<b>22</b>	<b>\$3.6</b>	<b>2025</b>
<b>Median</b>			<b>\$58.8</b>	<b>24</b>	<b>\$2.2</b>	<b>2025</b>

(1) Marlins will move into a new stadium in 2012, and thus obtain a new naming rights deal.

\* Coors was granted naming rights in return for their \$15 million contribution to stadium construction.

Source: SportsBusiness Journal.

As shown in the table above, on average, MLB ballpark naming rights have been sold for a total cost of approximately \$82 million over 22 years, an annual average of approximately \$3.6 million. Citi Field, home of the New York Mets, has the most valuable naming rights deal on both an average annual basis and a total basis. Coors Field, home of the Colorado Rockies, has the smallest naming rights deal, at \$15.0 million.

### Franchise Valuations

As a result of ballpark development, and the growth of revenue streams such as broadcast rights and naming rights, MLB franchise values have generally risen over the past 25 years. The table on the following page presents a summary of current MLB franchise revenues, operating income and estimated value.



**Appendix II Major League Baseball Overview (cont'd)****Major League Baseball Franchise Valuations**

<b>Team</b>	<b>Revenues</b>	<b>Operating Income</b>	<b>Current Value</b>
New York Yankees	\$375	-\$3.7	\$1,500
New York Mets	\$261	\$23.5	\$912
Boston Red Sox	\$269	\$25.7	\$833
Los Angeles Dodgers	\$241	\$16.5	\$722
Chicago Cubs	\$239	\$29.7	\$700
Los Angeles Angels of Anaheim	\$212	\$10.3	\$509
Philadelphia Phillies	\$216	\$16.3	\$496
St Louis Cardinals	\$195	\$6.6	\$486
San Francisco Giants	\$196	\$22.4	\$471
Chicago White Sox	\$196	\$13.8	\$450
Atlanta Braves	\$186	\$4.7	\$446
Houston Astros	\$194	\$17.0	\$445
Seattle Mariners	\$189	\$3.8	\$426
Washington Nationals	\$184	\$42.6	\$406
Texas Rangers	\$176	\$17.4	\$405
San Diego Padres	\$174	\$22.9	\$401
Baltimore Orioles	\$174	\$27.2	\$400
Cleveland Indians	\$181	\$19.5	\$399
Arizona Diamondbacks	\$177	\$3.9	\$390
Colorado Rockies	\$178	\$24.5	\$373
Detroit Tigers	\$186	-\$26.3	\$371
Minnesota Twins	\$158	\$26.8	\$356
Toronto Blue Jays	\$172	\$3.0	\$353
Milwaukee Brewers	\$173	\$11.8	\$347
Cincinnati Reds	\$171	\$17.0	\$342
Tampa Bay Rays	\$160	\$29.4	\$320
Oakland Athletics	\$160	\$26.2	\$319
Kansas City Royals	\$143	\$9.0	\$314
Pittsburgh Pirates	\$144	\$15.9	\$288
Florida Marlins	\$139	\$43.7	\$277
<b>Average</b>	<b>\$194</b>	<b>\$16.7</b>	<b>\$482</b>

Notes: 1. All dollar figures in millions.

2. Team values based on current stadium deal, unless new stadium is pending.

3. Operating income represents earnings before interest, taxes, depreciation, and amortization.

Source: Forbes

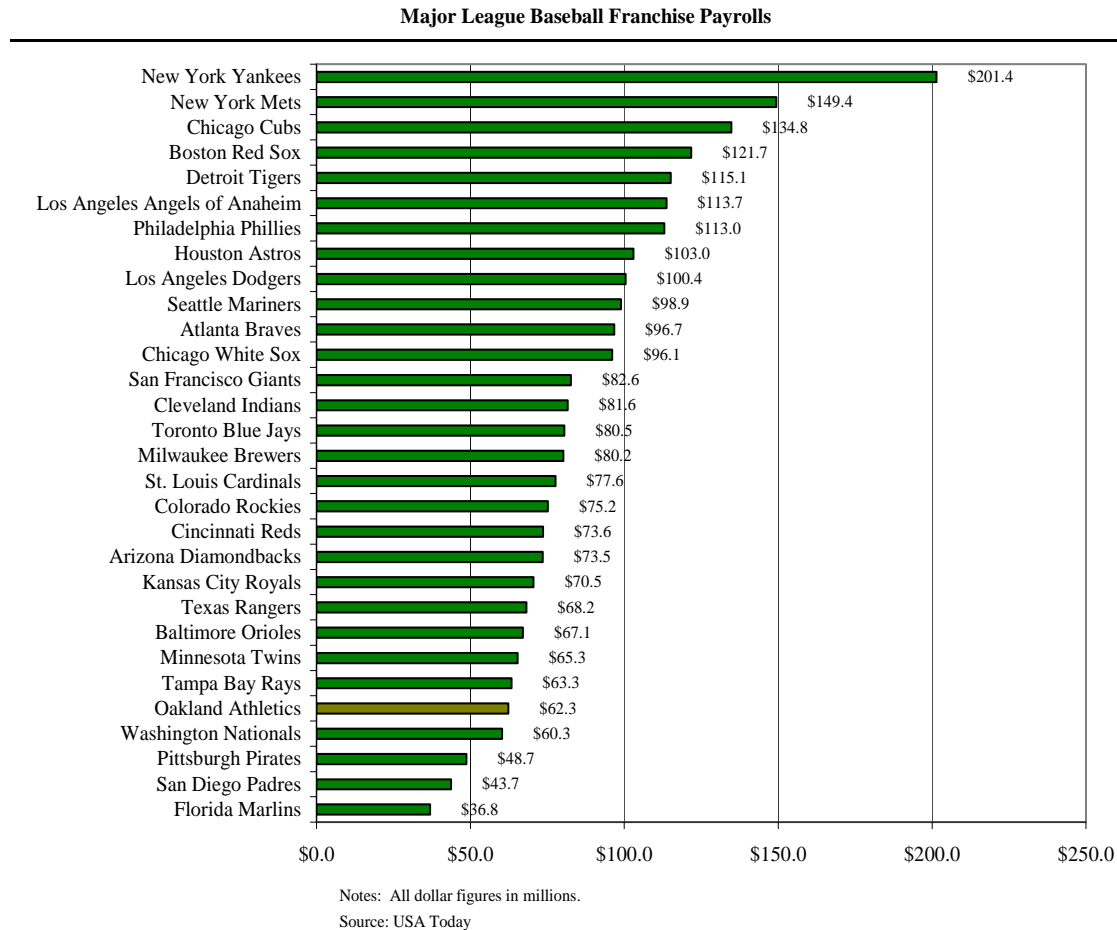
As shown above, the average MLB franchise has annual revenues of approximately \$194 million and operating income of approximately \$17 million, with a total franchise value of approximately \$480 million. The New York Yankees are the most valuable franchise (\$1.5 billion), whereas the Florida Marlins are the least valuable franchise (\$277 million). It should be noted that the above information was obtained from Forbes' annual team valuation study. The information was assumed to be accurate and was not audited or verified by CSL.



## Appendix II Major League Baseball Overview (cont'd)

### Player Salaries

Player salaries are typically an MLB franchise's largest operating expense. The following table summarizes the 2009 payroll for each franchise.



As shown, the average franchise payroll is approximately \$89 million, however there is a wide disparity between the highest and lowest payrolls. The New York Yankees have the highest a total payroll of \$201.4 million, whereas the Florida Marlins have a payroll of \$36.8 million, which represents a difference of nearly \$165 million.

## **Appendix II Major League Baseball Overview (cont'd)**

### **Review of Recently Built/Planned Ballparks**

The purposes of this section is to present an overview of recently built and planned MLB ballparks to provide a benchmark from which to assess the potential operational performance and event levels of the proposed MLB ballpark to be located in San Jose. An assessment of the physical and operational characteristics of comparable ballparks is a critical component in assessing the market potential of the proposed ballpark.

To date, six new ballparks have been built since 2004. In addition, two MLB markets are in the process of developing new ballparks. As a result, the case studies presented herein provide both historical and projected perspectives from which to evaluate the potential operational performance and event levels of the proposed ballpark in San Jose. Physical, financial, and funding statistics were reviewed for the following comparable ballparks:

- Busch Stadium;
- Citi Field;
- Citizens Bank Park;
- Marlins Ballpark;
- Nationals Park;
- PETCO Park;
- Target Field; and,
- Yankee Stadium.

#### **Busch Stadium**



<b>Location:</b>	St. Louis, MO
<b>Year Opened:</b>	2006
<b>Baseball Capacity:</b>	46,900
<b>Suites:</b>	63
<b>Club Seats:</b>	3,600
<b>Owner:</b>	Team
<b>Operator:</b>	Team
<b>Cost:</b>	\$388 million
<b>Financing:</b>	23%
	77%

Busch Stadium is located in St. Louis, Missouri and was completed in 2006. The open-air stadium features a retro design with grass turf and seats 46,900 patrons. The St. Louis Cardinals are the sole tenant of the team-owned and operated facility.

Premium seating at Busch Stadium includes 63 private suites that range in price from \$105,000 to \$185,000 annually. Leases are sold on ten year terms and the suites seat between 10 and 24 patrons. The Stadium has 3,600 club seats which range in price from

## Appendix II Major League Baseball Overview (cont'd)

\$7,290 to \$8,910 per year, while season tickets range from \$972 to \$3,240. Single-game tickets cost between \$13 and \$90 per game.

For the 2008 season, Busch Stadium drew over 3.4 million attendees to its 81 home games, ranking it 4<sup>th</sup> in the league. Average attendance for the season was 42,353, which is approximately 90 percent of capacity.

Team bonds funded \$200 million of the \$388 million stadium, while team equity funded \$50 million. County loans provided \$45 million, state tax credits provided \$30 million, and the Missouri DOT provided \$12.5 million. Revenues from the sale of personal seat licenses funded \$40 million and earning on interest funded the remaining \$10 million.

Naming rights were sold to Anheuser-Busch for 20 years, expiring in 2025. The price of the naming rights is undisclosed.

### Citi Field



<b>Location:</b>	New York, NY
<b>Year Opened:</b>	2009
<b>Baseball Capacity:</b>	42,500
<b>Suites:</b>	54
<b>Club Seats:</b>	4,600
<b>Owner:</b>	City
<b>Operator:</b>	Team
<b>Cost:</b>	\$932.5 million
<b>Financing:</b>	19% Public 71% Private

Citi Field is located in New York City and was completed in 2009. The open-air stadium features a natural grass field and a retro design, which seeks to emulate ballparks from the 1920s. Citi Field has a seating capacity of 42,500. The New York Mets are the sole tenant of the city-owned and team-operated facility.

Premium seating at Citi Field includes 54 private suites that range in price from \$250,000 to \$500,000 annually. Leases are sold on three to ten year terms and the suites seat between 12 and 24 patrons. The ballpark has 4,600 club seats which range in price from \$4,860 to \$40,095 per year, while season tickets range from \$1,109 to \$13,095. Single-game tickets cost between \$11 and \$105 per game.

Naming rights were sold to Citibank for \$400 million over 25 years, expiring in 2028, making this the largest naming rights deal in existence in the United States.

## **Appendix II Major League Baseball Overview (cont'd)**

Approximately \$650 million of the funds used to construct Citi Field were procured through a publicly-issued bond offering, however the Mets have pledged to repay the debt via annual payments in lieu of taxes (PILOT). According to this PILOT program, instead of paying taxes on ballpark revenue, the Mets will make annual debt service payments.

### **Citizens Bank Park**



<b>Location:</b>	Philadelphia, PA
<b>Year Opened:</b>	2004
<b>Baseball Capacity:</b>	43,000
<b>Suites:</b>	71
<b>Club Seats:</b>	3,600
<b>Owner:</b>	Team
<b>Operator:</b>	Global Spectrum
<b>Cost:</b>	\$346.0 Million
<b>Financing:</b>	57% Public 43% Private

Citizens Bank Park is located in Philadelphia, Pennsylvania and opened in 2004. The open-air stadium features a Kentucky Blue Grass playing field and a retro design. Citizens Bank Park has a seating capacity of 43,000. The Philadelphia Phillies are the sole ballpark tenant. The facility is owned by the team and operated by Global Spectrum.

Premium seating at Citizens Bank Park includes 71 private suites that range in price from \$115,000 to \$200,000 annually. Leases are sold on a four to ten year basis and the suites seat between 16 and 23 patrons. The park has 3,600 club seats which range in price from \$4,200 to \$9,000 per year, while season tickets range from \$1,458 to \$4,860. Single-game tickets cost between \$16 and \$60 per game.

For the 2008 season, the Phillies drew over 3.4 million attendees to its 81 home games, ranking it 5<sup>th</sup> in the league. Average attendance for the season was 42,254, putting the venue at 98 percent capacity.

The Phillies contributed \$172 million of the stadium's \$346 costs, while public sources funded the remaining \$174 million.

Naming rights were sold to Citizens Bank for \$95 million over 25 years. The naming rights deal expires in 2029.

## Appendix II Major League Baseball Overview (cont'd)

### Marlins Ballpark



<b>Location:</b>	Miami, FL
<b>Year Opened:</b>	2012
<b>Baseball Capacity:</b>	37,000
<b>Suites:</b>	60
<b>Club Seats:</b>	3,000
<b>Owner:</b>	County
<b>Operator:</b>	Team
<b>Cost:</b>	\$515.0 Million
<b>Financing:</b>	70% Public 30% Private

The new Marlins ballpark will be located in Miami, Florida and is expected to be complete in 2012. The 37,000-seat facility will feature a retractable roof, making it the sixth retractable-roof venue in the league. The Marlins are expected to be the sole tenant of the County-owned, team-operated facility.

Premium seating will consist of 60 private suites and 3,000 club seats, although pricing has not yet been determined.

The financing agreement with the City of Miami and Miami-Dade County requires the Marlins to contribute \$155 million towards construction of the ballpark, as well as change the team's name from Florida Marlins to Miami Marlins prior to beginning play in the new ballpark. The City will contribute \$13 million, and the County has pledged \$347 million, approximately \$297 million of which will be backed by tourist tax dollars.

### Nationals Park



<b>Location:</b>	Washington D.C.
<b>Year Opened:</b>	2008
<b>Baseball Capacity:</b>	41,888
<b>Suites:</b>	66
<b>Club Seats:</b>	2,500
<b>Owner:</b>	DCSEC
<b>Operator:</b>	Team
<b>Cost:</b>	\$692.8 Million
<b>Financing:</b>	96% Public 4% Private

Nationals Park is located in Washington D.C. and was completed in 2008. The open-air stadium features a modern design with natural grass turf and seating for 41,888 patrons. The Washington Nationals are the sole tenant of the facility. Nationals Park is owned by the D.C. Sports and Entertainment Commission ("DCSEC") and is operated by the team.



## **Appendix II Major League Baseball Overview (cont'd)**

Premium seating at Nationals Park consists of 66 private suites that range in price from \$150,000 to \$400,000 annually. Leases are sold on a five to ten year basis and the suites seat between 15 and 24 patrons. The Park has 2,500 club seats which range in price from \$3,645 to \$4,455 per year, while season tickets range from \$810 to \$4,050. Single-game tickets cost between \$7 and \$105 per game.

For the 2008 season, Nationals Park drew over 2.3 million attendees to its 80 home games, ranking it 19<sup>th</sup> in the league. Average attendance for the season was 29,005, putting the venue at 69 percent capacity.

Nationals Ballpark was developed for approximately \$693 million with the majority of the funding provided by the District of Columbia. The team provide cash contributions totaling \$31 million, whereas the District contributed \$39 million in 2005 tax revenues, \$28.7 million in interest earnings, \$51 million in additional cash contributions, and more than \$543 million in ballpark revenue bonds, backed by rent payments, ballpark-related sales taxes, parking taxes, utilities taxes and a new tax on businesses with gross receipts over \$5 million. The Nationals will pay annual rent of \$3.5 million over the course of a 30-year lease agreement, during which time the team will operate the ballpark and retain all revenues, including naming rights.

### **PETCO Park**



<b>Location:</b>	San Diego, CA
<b>Year Opened:</b>	2004
<b>Baseball Capacity:</b>	42,000
<b>Suites:</b>	50
<b>Club Seats:</b>	6,580
<b>Owner:</b>	City / Team
<b>Operator:</b>	Team
<b>Cost:</b>	\$449.4 Million
<b>Financing:</b>	86% Public 14% Private

PETCO Park is located in San Diego, California and was completed in 2004. The open-air stadium departed from the popular retro ballpark architecture and instead features a sandstone and stucco exterior designed to mimic the nearby geographical landscape. PETCO Park contains 42,000 seats and is home to the San Diego Padres. The park is 70 percent owned by the City and 30 percent owned by the team, while the team retains full management rights.

Premium seating at PETCO Park includes 50 private suites that range in price from \$85,000 to \$170,000 annually. Leases are sold on a three to seven year basis and the

## **Appendix II Major League Baseball Overview (cont'd)**

suites seat between 16 and 22 patrons. The park has 6,580 club seats which range in price from \$2,916 to \$3,888 per year, while season tickets range from \$972 to \$3,240. Single-game tickets cost between \$10 and \$65 per game.

For the 2008 season, the Padres drew over 2.4 million attendees to its 81 home games, ranking it 17<sup>th</sup> in the league. Average attendance for the season was 29,969, putting the venue at 71 percent capacity.

Development of Petco Park cost approximately \$449 million. The City of San Diego issued \$225 million in municipal bonds secured by hotel/motel taxes. The Centre City Development Corporation provided another \$21 million from existing funds and \$29 million from tax increment revenues generated by the ballpark and associated redevelopment project. The San Diego Unified Port District also contributed \$21 million.

The Padres committed to providing \$115 million to the project. However, the City committed to provide the team with a subsidy equal to 30 percent of the ballpark's annual operating expenses, not to exceed \$3.5 million, increased annually for CPI. It is estimated that this commitment offsets approximately \$59.3 million of the Padres original \$115 million commitment.

In return for operating control of the stadium, the Padres must pay annual rent to the City of \$500,000 per annum, inflating annually. The City will have the right (without rental obligation) to hold or authorize City or third party events on 240 dates per year, while the Padres will have the right to hold Padres events (including games, concerts, fantasy camps, etc.) on 125 dates each year. The City will receive all revenue from City-related events. The Padres are liable for property taxes on their ownership interest in the ballpark.

Naming rights were sold to Petco Animal Supplies for \$60 million over 22 years. The naming rights deal expires in 2025.

## **Appendix II Major League Baseball Overview (cont'd)**

### **Target Field**



<b>Location:</b>	Minneapolis, MN
<b>Year Opened:</b>	2010
<b>Baseball Capacity:</b>	40,000
<b>Suites:</b>	72
<b>Club Seats:</b>	3,400
<b>Owner:</b>	County
<b>Operator:</b>	Team
<b>Cost:</b>	\$559.4 million
<b>Financing:</b>	70% Public 30% Private

Target Field will be located in Minneapolis, Minnesota and is expected to be completed by 2010. The open-air stadium will feature neither a retro design nor modern design, but rather geographic-specific style that includes local limestone and fir trees. Although a retractable roof was cost prohibitive, the players and spectators are protected from the winter elements via a canopy as well as a heated field and viewing areas. The Minnesota Twins will be the sole tenant of the 40,000-seat venue. Hennepin County will be the owner and the team will operate the facility.

Premium seating at Target Field will include 72 private suites. Although suite terms are not yet finalized, it is anticipated that suite will cost an average of \$110,000 per year. The ballpark will feature 3,400 club seats which will require a membership fee of between \$1,000 and \$2,000.

Estimated construction and development costs for Target Field equal \$559.4 million. The Twins contributed \$130 million in up-front cash, as well as an additional \$37.4 million towards cost overruns. Hennepin County contributed \$392 million that was provided via a County-wide sales tax increase. The Twins will operate the County-owned facility and pay 100 percent of all ballpark operating expenses. The County is projected to collect over \$10 million annually in ballpark-related sales taxes and player income taxes.

As part of the ballpark development agreement, the team also committed \$1 million annually for capital improvements, which will be matched dollar-for-dollar by Hennepin County, and \$250,000 annually for youth activities and amateur sports initiatives, which will be matched by a \$4 million annual contribution from Hennepin County. Should the franchise be sold during the ballpark's 30-year lease agreement, the Twins will share up to 18 percent of franchise sales proceeds with the County.

Naming rights were sold to Target Corporation for 25 years. The terms of the deal are undisclosed.



## **Appendix II Major League Baseball Overview (cont'd)**

### **Yankee Stadium**



<b>Location:</b>	Bronx, NY
<b>Year Opened:</b>	2009
<b>Baseball Capacity:</b>	51,000
<b>Suites:</b>	67
<b>Club Seats:</b>	4,374
<b>Owner:</b>	Team
<b>Operator:</b>	Team
<b>Cost:</b>	\$1.4 billion
<b>Financing:</b>	78% Public 22% Private

Yankee Stadium is located in New York City and was completed in 2009. The open-air stadium features a retro design with grass turf and seats 51,000 patrons. The New York Yankees are the sole tenant of the team-owned and operated facility.

Premium seating at Yankee Stadium includes 67 private suites that range in price from \$600,000 to \$850,000 annually. Leases are sold on a five to ten year basis and the suites seat between 16 and 22 patrons. The Stadium has 4,374 club seats which range in price from \$8,100 to \$202,500 per year, while season tickets range from \$972 to \$26,325. Single-game tickets cost between \$12 and \$400 per game.

Funding for Yankee Stadium was provided in large part via PILOT (payments in lieu of taxes) revenue bonds issued by the City of New York. To retire the PILOT bonds, the City forgoes the receipt of tax revenues related to Yankee Stadium, and rather these payments are applied towards debt service. In all, the City contributed approximately \$1.06 billion in funding for the project, including \$942.5 million in 2006 PILOT bonds, \$259 million in 2009 PILOT bonds and \$46.4 million in interest earnings. The Yankees contributed \$77 million in cash and \$225.5 million in equity contributions, totaling \$302.5 million. The Yankees signed a 40-year operating lease agreement on the ballpark, with the option to extend for up to five consecutive ten-year terms. The team retains all revenues (including naming rights) in excess of operating costs and PILOTs and makes an annual lease payment to the City of just \$10 per year, which enables the team to attain revenue sharing funds from Major League Baseball.

# EXHIBIT 2



224 Airport Parkway, Suite 620  
San Jose, California 95110  
(408)501-7864 Fax (408)501-7861

[www.svlgl.net](http://www.svlgl.net)

CARL GUARDINO

President & CEO

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Affymetrix

PAUL LOCATELLI, S.J.

Santa Clara University

TARKAN MANER

Wyse Technology

KEN MCNEELY

AT&T

LEN PERHAM

Monolithic Systems

KIM POLESE

SpikeSource, Inc.

Jay Glasscock

BD Biosciences

ALAN SALZMAN

VantagePoint-Venture Partners

MAC TULLY

San Jose Mercury News

DAN WARMENHOVEN

NetApp, Inc.

BILL WATKINS

BridgeLux

KENNETH WILCOX

SVB Financial Group

Working Council Chair

SHERRI SAGER

Lucile Packard Children's Hospital

Established in 1978 by

DAVID PACKARD

September 10, 2010

The Office of the Commissioner of Baseball

Allan H. (Bud) Selig, Commissioner

245 Park Avenue, 31<sup>st</sup> Floor

New York, NY 10167

Dear Commissioner Selig,

The Silicon Valley Leadership Group strongly supports a new home for the Athletics baseball team in downtown San Jose. We were encouraged to learn of San Jose Mayor Chuck Reed's positive conversation with Major League Baseball President Bob Dupuy regarding the timing of a possible election next spring should the A's be granted approval to pursue the construction of a baseball-only state of the art Ballpark in downtown San Jose.

By way of background, the Silicon Valley Leadership Group was founded in 1977 by David Packard and has grown to become the largest organization of its kind in Silicon Valley with more than 300 member companies. Combined member companies employ more than 250,000 local workers – nearly one of every three jobs – and generate more than \$2 trillion worth in global revenue.

We, the undersigned CEOs and senior executives, are committed to bringing jobs, revenue, a rich culture, and a thriving business climate to Silicon Valley. We believe that an intimate state of the art ballpark located on a prime downtown San Jose parcel, close to mass transit and major highways will be a catalyst for economic development in our region. We also believe downtown San Jose offers a compelling location for the advancement of Major League Baseball in the 21<sup>st</sup> Century. Silicon Valley is well known throughout the world as the cradle of innovation and the leading incubator of new ideas and new possibilities for human kind. There is no better location than San Jose, located in the heart of Silicon Valley, to advance the Major League Baseball brand on a global basis.

San Jose is a world-class community, and the ballpark proposal not only secures a quality Major League Baseball team for America's 10th largest city, but also creates jobs, strengthens our economy and enhances the cultural opportunities for our workers and their families. According to an economic study commissioned by the City of San Jose, a new ballpark will generate thousands of construction jobs and permanent positions at the ballpark and surrounding area.

The Silicon Valley Leadership Group, along with other respected and diverse organizations, stands ready to offer any support needed to move this important project forward. The Silicon Valley Leadership Group is comprised of both devoted A's and Giants fans and we will continue to enthusiastically support both teams. We strongly believe that both teams will thrive in a vibrant two team market anchored by San Francisco and the Bay Area's largest city, San Jose. Today, the Bay Area is the only two team market in Major League Baseball where the teams don't fully share their common geographic territory. The divided territory was imposed at the request of San Jose baseball boosters in 1992 in a previous attempt to secure a Major League Baseball team. We can only hope moving forward that the Bay Area can be restored to a shared marketplace for the two teams in a manner similar to Chicago, Los Angeles and New York.

It is integral to our mission that we support and promote opportunities to improve the quality of life for families who live and work in Silicon Valley. A new A's ballpark will provide a great entertainment and community asset that will capture the essence of Silicon Valley. It will be a tremendous benefit to our region, with a wide appeal that can help to promote Silicon Valley – and Major League Baseball – on a national and international level. The new venue will be a great source of pride for our innovative region, and deserves your consideration and approval to move forward.

Please call on us to help make this decades old dream to attract a Major League Baseball team to Silicon Valley a reality in the near future.

Sincerely,

**John Chambers**

CEO, Cisco Inc.

**Tom Werner**

CEO, SunPower

**Mike Klayko**

CEO, Brocade Inc.

**Carl Guardino**

CEO, Silicon Valley Leadership Group

**Carol Bartz**

CEO, Yahoo!

**John Donahoe**

CEO, eBay

**John Doerr**

Partner, Kleiner Perkins

**Shantanu Narayen**

CEO, Adobe

**Bill Coleman**, Partner, Alsop Louie Partners  
**Chuck Kissner**, CEO, Aviat Networks  
**Jay Glasscock**, President, BD Biosciences  
**Don Bell**, CEO, Bell Microproducts  
**Jason Wolf**, VP, North America, Better Place  
**Brian NeSmith**, CEO, Blue Coat Systems  
**John Conover**, CEO, Borel Private Bank & Trust Company  
**Bill Watkins**, CEO, Bridgelux  
**Pete Nelson**, CEO, California Water Service  
**Nick Bruckner**, Managing Director, CareerBuilder  
**Chuck Reynolds**, CEO, CH Reynolds  
**Richard Lowenthal**, CEO, Coulomb Technologies  
**David Ketsdever**, Managing Director, Cowen and Company  
**Jason Bright**, CEO, Cyber Switching, Inc.  
**Peter Moran**, General Partner, DCM  
**J. Kim Fennell**, CEO, DeCarta  
**David Lerner**, CEO, Declaration Services  
**Stephen Samuel**, CEO, Design Visionaries  
**Vishal Verma**, Partner, Edgewood Ventures  
**Fred Rosenzweig**, President, Electronics For Imaging  
**Kevin Evans**, CEO, EnergyConnect  
**Tom Hayse**, CEO, ETM Electromatic  
**Terry Clark**, CEO, Finelite  
**Linda Thor**, Chancellor, Foothill-De Anza Community College District  
**Martin Schoeppler**, CEO, FUJIFILM Dimatix  
**Mike Fox Jr.**, CEO, Goodwill of Silicon Valley  
**Sonny Aulakh**, CEO, Greenlight Organic  
**Dave Anderson**, EVP, GridIron Systems  
**Vandana Pant**, Director, The Health Trust  
**Bill DelBiaggio**, Founder, Heritage Bank of Commerce  
**Conrad Burke**, CEO, Innovalight  
**Cecelia McCloy**, CEO, Integrated Science Solutions  
**David Bell**, CEO, Intersil  
**Amir Mashkooori**, CEO, Kovio

**Gary Steele**, CEO, Landec  
**Norman Kline**, CEO, LibraryWorld, Inc.  
**Joseph Moless**, President, Lincoln Law School  
**Sehat Sutardja**, CEO, Marvell  
**Len Perham**, CEO, MoSys  
**Lew Wolff**, Owner, Oakland A's/San Jose Earthquakes  
**Rich Slavin**, President, Palo Alto Medical Foundation  
**Ron Gonzales**, CEO, Presencia LLC  
**Ralph Schmitt**, CEO, PLX Technology  
**Fred Amoroso**, CEO, Rovi Corporation  
**Michael Engh, S.J.**, President, Santa Clara University  
**Kevin Surace**, CEO, Serious Materials  
**James MacGregor**, Publisher, SV/San Jose Business Journal  
**Scott Lang**, CEO, Silver Spring Networks  
**John Gilmore**, General Manager, Sling Media  
**Michael Armsby**, CFO, Soladigm  
**Jim Weldon**, CEO, Solar Junction  
**Mark Crowley**, CEO, SolFocus, Inc.  
**Tim Harris**, CEO, SoloPower  
**Godfrey Sullivan**, CEO, Splunk  
**Celeste Ford**, CEO, Stellar Solutions  
**Bruce McWilliams**, CEO, SuVolta  
**Ken Wilcox**, CEO, SVB Financial Group  
**David Côté**, CEO, Symmetricom  
**Paul Lovoi**, CEO, Tagent  
**Stephen Levers**, CEO, Tecan Systems  
**Barbara Kamm**, CEO, Technology Credit Union  
**Hank Nothhaft**, CEO, Tessera  
**Tom Ayers**, CEO, Tropos Networks  
**George Blumenthal**, President, University of California, Santa Cruz  
**Tim Guertin**, CEO, Varian Medical Systems  
**Tarkan Maner**, CEO, Wyse Technology  
**Chris Cabrera**, CEO, Xactly Corporation

# EXHIBIT 3

**EXECUTORY COPY****OPTION AGREEMENT FOR THE SALE OF PROPERTY  
FROM THE SAN JOSE DIRIDON DEVELOPMENT AUTHORITY TO ATHLETICS  
INVESTMENT GROUP LLC**

This option agreement for the purchase of property ("Agreement" or "Option Agreement") is made as of this 8th of Nov, 2011 by and between the SAN JOSE DIRIDON DEVELOPMENT AUTHORITY, a California Joint Powers Authority created pursuant to the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5, of the California Government Code, Government Code Section 6500 et seq ("AUTHORITY"), and ATHLETICS INVESTMENT GROUP LLC ("OPTIONEE").

**RECITALS**

WHEREAS, the AUTHORITY is the owner of certain property and improvements located at 105 South Montgomery, 150 South Montgomery, 510 West San Fernando, 102 South Montgomery, 115 South Autumn, and 645 Park Avenue, in San José, California more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property is located in the Diridon Redevelopment Project Area ("Diridon Area") and was originally purchased by the Redevelopment Agency of the City of San Jose ("AGENCY") with the intent that the Property, along with other adjacent properties, be developed into a Major League Baseball park or alternatively a mixed use development with housing; and

WHEREAS, both the AGENCY and the City of San Jose, ("CITY") have envisioned many potential future development and redevelopment projects in the Diridon Area including corporate offices, housing, high speed rail, BART, and a potential sports stadium/Major League Baseball park; and

WHEREAS, AGENCY and CITY formed AUTHORITY and transferred the Property to AUTHORITY for the purposes of facilitating future development in the Diridon Area; and

WHEREAS, OPTIONEE is exploring the construction of a Major League Baseball park in the Diridon Area; and

WHEREAS, the AUTHORITY and OPTIONEE desire to enter into this Agreement to grant OPTIONEE an option to purchase the Property, subject to the conditions herein.

NOW, THEREFORE, the parties agree as follows:



# SECTION 1. GRANT OF OPTION.

For consideration in the amount of Fifty Thousand Dollars, (\$50,000), payable by OPTIONEE to AUTHORITY upon execution of this Agreement, and on the terms and conditions set forth herein, AUTHORITY grants to OPTIONEE an irrevocable, exclusive option to purchase the Property. ("Option").

Contemporaneously with the execution of this Agreement, AUTHORITY and OPTIONEE have executed a Memorandum of Option Agreement, in the form attached hereto as Exhibit "B" (the "Memorandum"), in recordable form.

If OPTIONEE does not exercise the Option contained in this Agreement prior to the expiration of the Option Period as defined below, OPTIONEE shall, upon Authority's request, execute a quitclaim deed to the Property, in recordable form, releasing OPTIONEE'S interest in the Property and rights under the Memorandum.

# SECTION 2. TERM OF OPTION.

A. The Option to purchase the Property shall become effective on full execution of this Agreement and the Memorandum and shall expire two years thereafter if not exercised by OPTIONEE prior to such one year anniversary in accordance with Section 3A. ("Option Period"). With the consent of AUTHORITY, OPTIONEE may extend the Option Period for one additional year with the payment of Twenty-five Thousand Dollars, (\$25,000), payable by OPTIONEE to AUTHORITY ten (10) days prior to the expiration of the Option Period, in which event the term "Option Period" shall mean the previous Option Period as so extended.

B. Unless otherwise agreed, this Agreement shall automatically terminate upon the earlier of (i) expiration of the Option Period, as extended pursuant to Section 2.A, or (ii) execution of the Purchase Agreement (as defined below).

# SECTION 3. EXERCISE OF OPTION.

A. Notice. As long as OPTIONEE is not in default under this Agreement and all conditions to the exercise of the option are satisfied or are waived in writing by AUTHORITY, OPTIONEE may exercise the option in accordance with this section and in no other manner. The Option shall be exercised by delivering written notice from OPTIONEE to AUTHORITY before the expiration of the Option Period ("Option Notice"). The Option Notice shall affirmatively state that the OPTIONEE exercises the Option without condition or qualification; provided, however, that the purchase and sale of the Property shall be subject to the closing conditions set forth herein and to be set forth in the Purchase Agreement. .

B. Purchase Price of Property. The Property shall be sold to OPTIONEE for the amount of **SIX MILLION NINE HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED TWENTY-SEVEN DOLLARS (\$6,975,227)** provided the use of the Property



is restricted, to the reasonable satisfaction of AUTHORITY, for use as a Major League Baseball park and uses incidental to the Major League Baseball park, including to host other ticketed events, and use by CITY as provided in the Negotiating Principles noted below, and upon satisfaction of all conditions set forth in Section 4 and the Purchase Agreement.

#### SECTION 4. OPTION CONDITIONS.

##### A. Voter Approval

As a condition to the OPTIONEE's exercise of the Option, AUTHORITY may require a majority vote of the voters of San Jose approving the City, Agency and Authority participation in the building of the ballpark.

##### B. Purchase and Sale Agreement

AUTHORITY and OPTIONEE shall negotiate, in good faith, a purchase and sale agreement for the Property consistent with the terms of this Agreement, it being understood that the AUTHORITY will provide a first draft of the purchase and sale agreement (the "Purchase Agreement") within 90 days after the execution of this Agreement. AUTHORITY and OPTIONEE will thereafter diligently and continuously negotiate in good faith the form of Purchase Agreement to completion such that the definitive Purchase Agreement is ready to be, and shall be, executed by AUTHORITY and OPTIONEE within 15 days after the exercise of the Option by OPTIONEE in accordance with Section 3.A. The Purchase Agreement shall also include the following provisions:

1. The Property shall be restricted for use as a Major League Baseball park and uses incidental to the Major League Baseball park, including hosting other ticketed events, and use by CITY as provided in the Negotiating Principles noted below. .
2. A Transportation and Parking Management Plan ("TPMP") and Construction Management Plan ("CMP") will be required to be developed and agreed to prior to the commencement of construction for the CMP and prior to commencement of operations at the park for the TPMP (or at such other time as may be agreed to).
3. The purchase Agreement shall be consistent with the Negotiating Principles established by City Council Resolution No. 75567 as in effect on the date hereof attached hereto as Exhibit C, and shall contain such other commercially reasonable terms and conditions customary in Santa Clara County real estate sale and purchase agreements.
4. The Purchase Agreement may also include additional properties if acquired by AUTHORITY for a Major League Baseball park and uses incidental to the Major

League Baseball park including hosting other ticketed events, and use by CITY as provided in the Negotiating Principles, provided AUTHORITY and OPTIONEE agree.

SECTION 5. RIGHT OF ENTRY ON PROPERTY.

During the Option Period, OPTIONEE and its designated employees, agents and independent contractors shall have the right to enter on the Property, upon reasonable notice to AUTHORITY, to the extent necessary for the purpose to inspect, investigate, or conduct tests, including tests invasive to the Property. OPTIONEE agrees to repair any damages it or its agents or independent contractors shall cause to the Property, and further agrees to indemnify and hold AUTHORITY harmless from any and all costs, expenses, losses, and liabilities incurred or sustained by AUTHORITY as a result of the acts of OPTIONEE'S agents, or independent contractors pursuant to the rights granted under this Section. Notwithstanding anything to the contrary set forth herein, OPTIONEE shall have no liability to repair damage existing prior to OPTIONEE'S entry and OPTIONEE shall have no liability for any pre-existing conditions, facts or circumstances on, in, under or affecting the Property.

SECTION 6. ASSIGNMENT.

This Option shall not be assigned by OPTIONEE, without Authority's prior written approval, which approval shall be within the sole and absolute discretion of AUTHORITY, provided, however, that no consent shall be required for an assignment to (1) any entity directly or indirectly controlled by Lew Wolff, John Fisher or any member of their immediate families or (2) any entity to whom the Oakland Athletics are transferred or any subsidiary of, parent entity of, or entity under common control with such transferee entity.

SECTION 7. "AS IS" CONDITION.

OPTIONEE is acquiring the Property "AS IS" without any warranty of AUTHORITY, express or implied, as to the nature or condition of or title to the Property or its fitness for OPTIONEE's intended use of same, except as shall be set forth in the purchase and sale agreement described in Section 4.B. hereof. Prior to the exercise of the Option, OPTIONEE shall be familiar with the Property and will be relying solely upon its own, independent inspection, investigation and analysis of the Option Property as it deems necessary or appropriate in so acquiring the Property from AUTHORITY (including, without limitation, any and all matters concerning the condition, use, sale, development or suitability for development of the Property). In the event OPTIONEE shall acquire the Property, OPTIONEE hereby expressly waives any rights which it might have to seek contribution from AUTHORITY under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. § 9601, or any other toxic waste or hazardous waste clean-up statute, law or regulation now or hereafter in existence. OPTIONEE is not relying in any way upon any representations, statements, agreements, warranties, studies, plans, reports,

descriptions, guidelines or other information or material furnished by AUTHORITY or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters, except as shall be set forth in the purchase and sale agreement described in Section 4.B. hereof.

**SECTION 8. ENVIRONMENTAL CONDITIONS**

AUTHORITY makes no representations or warranties regarding any hazardous materials which may be present in, on or under the Property. Upon request of OPTIONEE, AUTHORITY will make available any and all reports or other information it has in its possession or control regarding any hazardous material which may have been identified on the Property. For purposes of this Agreement, "hazardous material" shall mean any material or substance which is regulated by any federal, state or local law or ordinance due to its hazardous, toxic, dangerous, flammable, corrosive or radioactive characteristic, or that may be harmful to persons who are exposed to them.

**SECTION 9. NOTICES.**

All notices, demands, requests, and exercises under this Option by either party shall be hand delivered or sent by United States mail, registered or certified, postage prepaid, addressed to the other party as follows:

**OPTIONEES:** Athletics Investment Group LLC  
7000 Coliseum Way  
Oakland, CA 94621  
Attn: Neil Kraetsch - General Counsel

**AUTHORITY:** San Jose Diridon Development Authority  
City of San Jose  
Office of the City Manager  
200 East Santa Clara Street  
17<sup>th</sup> Floor  
San Jose, CA 95113

Notices, demands, requests and exercises served in the above manner shall be considered sufficiently given or served for all purposes under this Option Agreement at the time the notice, demand, or request is hand delivered or three business days after being postmarked to the addresses shown above.

**SECTION 10. ENTIRE AGREEMENT.**

This Option Agreement, including all exhibits attached hereto, contains the entire agreement between the parties respecting the matters set forth, and supersedes all



prior agreements between the parties respecting such matters and all prior negotiations between the parties are merged herein. No verbal agreements or conversations with any officer, agent or employee of the AUTHORITY prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Option Agreement. Any such verbal agreement shall be considered unofficial information and in no way binding upon either party hereto

SECTION 11. DISTINCTION FROM REGULATORY AUTHORITY OF THE CITY.

OPTIONEE understands and agrees that this Agreement does not and shall not be construed to indicate or imply that the CITY, AGENCY or AUTHORITY, is acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the Property as contemplated by this Agreement.

SECTION 12. BINDING EFFECT.

This Option Agreement shall be binding on and inure to the benefit of the parties to this Option Agreement and their successors and assigns.

SECTION 13. MISCELLANEOUS PROVISIONS.

A. This Option Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of California as the same from time to time exists. In the event that suit shall be brought by either party to this Option Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

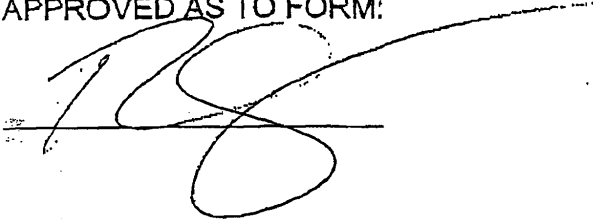
B. Contemporaneously with the execution hereof, the AUTHORITY and OPTIONEE shall execute, acknowledge and record against the Property with the applicable governmental body the Memorandum.

SECTION 14. COUNTERPARTS

This Option Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Option Agreement.

WITNESS THE EXECUTION HEREOF as of the day and year first hereinabove written.

APPROVED AS TO FORM:




"AUTHORITY"



Toni J. Taber, CMC  
Assistant City Clerk

"AUTHORITY"

By:   
Debra Figone  
Executive Director

"OPTIONEE"

By:   
PRESIDENT

EXHIBIT A

Legal Description

105 S. Montgomery Street

APN 261-35-003, -006 & -010

Legal Description – 105 S. Montgomery Street  
APN 261-35-003 & -006

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 21:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAN FERNANDO STREET (FORMERLY KNOWN AS AND CALLED NORTH STREET) WITH THE WESTERLY LINE OF MONTGOMERY STREET, (FORMERLY KNOWN AS AND CALLED EAST STREET); RUNNING THENCE SOUTHERLY ALONG THE WESTERLY LINE OF MONTGOMERY STREET 111.50 FEET; THENCE WESTERLY AND PARALLEL WITH SAN FERNANDO STREET 77.50 FEET; THENCE NORTHERLY AND PARALLEL WITH MONTGOMERY STREET 111.501 FEET TO THE SOUTHERLY LINE OF SAN FERNANDO STREET; AND THENCE EASTERLY ALONG SAID LAST NAMED LINE 77.50 FEET TO THE POINT OF BEGINNING, AND BEING LOT 28 OF THE LOS COCHES RANCHO.

APN: PORTION 261-35-003

PARCEL 22:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAN FERNANDO STREET; DISTANT THEREON 77 FEET AND 6 INCHES WESTERLY FROM THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF SAN FERNANDO STREET WITH THE WESTERLY LINE OF MONTGOMERY STREET, FORMERLY KNOWN AS AND CALLED EAST STREET; RUNNING THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAN FERNANDO STREET 5 FEET 4 INCHES, THENCE SOUTHERLY AND PARALLEL WITH MONTGOMERY STREET 111 FEET AND 6 INCHES, THENCE EASTERLY AND PARALLEL WITH SAN FERNANDO STREET 5 FEET AND 4 INCHES; THENCE NORTHERLY AND PARALLEL WITH MONTGOMERY STREET, 111 FEET AND 6 INCHES TO THE POINT OF BEGINNING, AND BEING A PART OF LOT 28 OF THE LOS COCHES RANCHO.

APN: PORTION OF 261-35-003

PARCEL 23:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAN FERNANDO STREET DISTANT THEREON 82 FEET 10 INCHES WESTERLY FROM THE INTERSECTION OF SAID LINE OF SAN FERNANDO STREET WITH THE WESTERLY LINE OF MONTGOMERY STREET, FORMERLY EAST STREET, AS SAID LINE EXISTED ON MAY 28, 1891; THENCE WESTERLY ALONG SAID LINE OF SAN FERNANDO STREET 52 FEET; THENCE AT RIGHT ANGLES SOUTHERLY ON A LINE PARALLEL WITH SAID WESTERLY LINE OF MONTGOMERY STREET 111 FEET 6 INCHES; THENCE AT RIGHT ANGLES EASTERLY ON A LINE PARALLEL WITH SAID LINE OF SAN FERNANDO STREET 52 FEET; THENCE AT RIGHT ANGLES NORTHERLY ON A LINE PARALLEL WITH SAID WESTERLY LINE OF MONTGOMERY STREET 111 FEET 6 INCHES TO THE POINT OF BEGINNING, AND BEING A PORTION OF LOT 28 OF THE SUBDIVISION OF LOS COCHES RANCHO.

APN: PORTION OF 261-35-003



**PARCEL 24:**

**LOT 1 AS DELINEATED AND SO DESIGNATED UPON MAP ENTITLED, "MAP OF THE OTTERSON LOTS, IN THE LOS COCHES RANCHO", IN WHICH SAID MAP WAS RECORDED OF JUNE 23, 1896 IN THE OFFICE OF THE COUNTY OF RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, IN VOLUME "B" OF MAPS, AT PAGE 35.**

**APN: 261-35-006**

Legal Description; APN 261-35-010

**PARCEL 19:**

BEGINNING AT A POINT ON THE WESTERLY LINE OF MONTGOMERY STREET, FORMERLY KNOWN AS EAST STREET, DISTANT THEREON SOUTHERLY 111.50 FEET FROM THE POINT OF INTERSECTION OF SAID LINE OF MONTGOMERY STREET WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET, FORMERLY KNOWN AS NORTH STREET, AND SAID POINT OF BEGINNING BEING THE SOUTHEASTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM CHARLES J. RYLANDER ET UX TO W.A. RISSLAND ET UX, DATED SEPTEMBER 19, 1914 AND RECORDED SEPTEMBER 19, 1914 IN BOOK 419 OF DEEDS, PAGE 587, THENCE SOUTHERLY AND ALONG SAID LINE OF MONTGOMERY STREET, 42.0 FEET TO THE NORTHEASTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM GEORGE EDWARD RAMER TO BERTHA CAROLINE BRADLEY DATED AUGUST 18, 1903 AND RECORDED JULY 26, 1904 IN BOOK 281 OF DEEDS, PAGE 121; THENCE WESTERLY AND PARALLEL WITH SAID LINE OF SAN FERNANDO STREET, AND ALONG THE NORTHERLY LINE OF LAND DESCRIBED IN THE DEED TO SAID BERTHA CAROLINE BRADLEY, 135.0 FEET TO THE NORTHWESTERLY CORNER THEREOF, AND IN THE EASTERLY LINE OF THE PARCEL OF LAND DISTRIBUTED IN THE ESTATE OF DELIA BRYANT, ALSO KNOWN AS DELIA A. BRYANT, DECEASED, TO HARRIETTE FRANCES BOWMAN AND PRINCE WARREN GODFREY, BY DECREE OF DISTRIBUTION DATED MARCH 31, 1916, A CERTIFIED COPY OF WHICH DECREE WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 03, 1916 IN BOOK 440 OF DEEDS, AT PAGE 265, AND THENCE NORTHERLY AND ALONG SAID LAST REFERRED TO EASTERLY LINE 42.0 FEET TO THE SOUTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM H.H. MADSEN ET UX TO F.B. GILGER, DATED AUGUST 24, 1922 AND RECORDED AUGUST 30, 1922 IN BOOK 561 OF DEEDS, PAGE 143; THENCE EASTERLY AND PARALLEL WITH THE SAID LINE OF SAN FERNANDO STREET, AND ALONG THE SOUTHERLY LINE OF LAND DESCRIBED IN THE DEED TO SAID F.B. GILGER AND THE PROLONGATION OF SAID LINE EASTERLY 135.0 FEET TO THE WESTERLY LINE OF MONTGOMERY STREET; AND THE POINT OF BEGINNING, AND BEING A PORTION OF LOT 28 OF THE LOS COCHES RANCHO.

**PARCEL 20:**

BEGINNING AT A POINT ON THE WESTERLY LINE OF MONTGOMERY STREET, FORMERLY EAST STREET, DISTANT THEREON 153.50 FEET SOUTHERLY FROM THE POINT OF INTERSECTION OF THE WESTERLY LINE OF MONTGOMERY STREET WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET, FORMERLY NORTH STREET, SAID POINT OF BEGINNING BEING THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY AMANDA J. GODFREY, A WIDOW, TO MATTIE E. HOFFMAN, BY DEED DATED APRIL 19, 1898 AND RECORDED APRIL 19, 1898 IN BOOK 208 OF DEEDS, PAGE 176, RECORDS OF SANTA CLARA COUNTY CALIFORNIA; THENCE RUNNING SOUTHERLY AND ALONG THE WESTERLY LINE OF MONTGOMERY STREET, 80 FEET TO THE NORTHEASTERLY CORNER OF THE LANDS SHOWN AND DESIGNATED UPON MAP ENTITLED, "MAP OF THE OTTERSON LOTS IN THE LOS COCHES RANCHO", AND WHICH SAID MAP WAS RECORDED IN THE OFFICE OF THE COUNTY



RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JUNE 23, 1886 IN BOOK B OF MAPS, AT PAGE 35; THENCE RUNNING WESTERLY AND ALONG THE NORTHERLY LINE OF SAID OTTERSON LOTS, 135.00 FEET TO A POINT ON THE EASTERLY LINE OF THAT CERTAIN PARCEL OF LAND DISTRIBUTED IN THE ESTATE OF DELIA BRYANT, ALSO KNOWN AS DELIA A. BRYANT, DECEASED, TO HARRIETTE FRANCES BOWMAN AND PRINCE WARREN GODFREY, BY DECREE OF DISIRIBUTION ENTERED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FORTHE COUNTY OF SANTA CLARA ON MARCH 31, 1916, A CERTIFIED COPY OF WHICH WAS RECORDED ON APRIL 03, 1916 IN BOOK 440 OF DEEDS, PAGE 266, RECORDS OF SAID COUNTY OF SANTA CLARA RUNNING, THENCE NORTHERLY AND ALONG LAST SAID LINE, 80 FEET TO THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO MATTIE E. HOFFMAN, AS HEREINABOVE REFERRED TO; THENCE RUNNING EASTERLY AND ALONG THE SOUTHERLY LINE OF SAID LAND SO DESCRIBED IN THE DEED TO MATTIE E. HOFFMAN, 135 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF LOT 28 OF THE LOS COCHES RANCHO.

102 S. Montgomery Street

APN 259-48-012

Legal Description – 102 S. Montgomery Street  
APN 259-48-012

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 5:

BEGINNING AT THE POINT OF INTERSECTION OF THE EASTERLY LINE OF MONTGOMERY STREET, FORMERLY EAST STREET, WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET; THENCE RUNNING SOUTHERLY AND ALONG THE EASTERLY LINE OF MONTGOMERY STREET, 73.50 FEET; THENCE AT RIGHT ANGLES EASTERLY AND PARALLEL WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET, 86 FEET; THENCE AT RIGHT ANGLES NORTHERLY AND PARALLEL WITH THE EASTERLY LINE OF MONTGOMERY STREET 73.50 FEET TO A POINT ON THE SOUTHERLY LINE OF SAN FERNANDO STREET; THENCE RUNNING WESTERLY AND ALONG THE SOUTHERLY LINE OF SAN FERNANDO STREET, 86 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF THE LOS COCHES RANCHO.

510 W. San Fernando Street  
115 South Autumn Street

APN 259-48-011  
APN 259-48-013

Legal Description -- 510 W. San Fernando Street  
APN 259-48-011 & -013

Real property in the City of San Jose, County of Santa Clara, State of California,  
described as follows:

PARCEL 1:

ALL OF LOTS 16 AND 17, AND A PORTION OF LOTS 14 AND 15, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE GILLESPIE SUBDIVISION", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 18, 1911 IN BOOK N OF MAPS, AT PAGE 48 AND A PORTION OF THE LOS COCHES RANCHO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAN FERNANDO STREET DISTANT THEREON NORTH 86° 49' EAST 86.00 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE EASTERLY LINE OF MONTGOMERY STREET (FORMERLY EAST STREET), AS SAID STREETS ARE SHOWN UPON THE MAP ABOVE REFERRED TO; RUNNING THENCE FROM SAID POINT OF BEGINNING, SOUTH 8° 16' EAST AND PARALLEL WITH THE SAID EASTERLY LINE OF MONTGOMERY STREET, FOR A DISTANCE OF 78.50 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 17, AS SAID LOT IS SHOWN UPON THE MAP ABOVE REFERRED TO; RUNNING THENCE SOUTH 86° 49' WEST ALONG SAID LAST NAMED LINE, FOR A DISTANCE OF 86.00 FEET TO THE NORTHWESTERLY CORNER THEREOF ON THE SAID EASTERLY LINE OF MONTGOMERY STREET; RUNNING THENCE SOUTH 2° 10' EAST ALONG THE SAID EASTERLY LINE OF MONTGOMERY STREET, FOR A DISTANCE OF 86.00 FEET TO THE NORTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM T. J. GILLESPIE HARDWOOD PLANING MILL COMPANY, A CORPORATION, TO LENA BENNETT, DATED DECEMBER 20, 1985, RECORDED DECEMBER 24, 1985 IN BOOK 755 OF OFFICIAL RECORDS, PAGE 222, SANTA CLARA COUNTY RECORDS, THENCE LEAVING THE SAID EASTERLY LINE OF MONTGOMERY STREET AND RUNNING NORTH 86° 49' EAST ALONG THE NORTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID BENNETT, FOR A DISTANCE OF 116.20 FEET TO THE NORTHEASTERLY CORNER THEREOF ON THE EASTERLY LINE OF LOT 14, AS SAID LOT IS SHOWN UPON THE MAP ABOVE REFERRED TO; RUNNING THENCE NORTH 8° 16' WEST ALONG SAID LAST NAMED LINE, FOR A DISTANCE OF 1.825 FEET, MORE OR LESS TO THE NORTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM T. J. GILLESPIE HARDWOOD PLANING MILL COMPANY, A CORPORATION, TO GEORGE SCHLOSSER, DATED MARCH 23, 1925, RECORDED MARCH 28, 1925 IN BOOK 145 OF OFFICIAL RECORDS, PAGE 278, SANTA CLARA COUNTY RECORDS; RUNNING THENCE NORTH 87° 40' EAST ALONG THE NORTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID SCHLOSSER, FOR A DISTANCE OF 118.80 FEET TO THE NORTHEASTERLY CORNER THEREOF ON THE WESTERLY LINE OF GILLESPIE AVENUE, AS SAID AVENUE IS SHOWN UPON THE MAP ABOVE REFERRED TO; RUNNING THENCE NORTH 8° 16' WEST ALONG THE SAID WESTERLY LINE OF GILLESPIE AVENUE, FOR A DISTANCE OF 159.17 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE SAID SOUTHERLY LINE OF SAN FERNANDO STREET; RUNNING THENCE SOUTH 86° 49' WEST ALONG THE SAID SOUTHERLY LINE OF SAN FERNANDO STREET, FOR A DISTANCE OF 147.80 FEET TO THE POINT OF BEGINNING.  
APN: PORTION OF 259-48-011

PARCEL 2:

PORTION OF LOTS 13 AND 14, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE GILLESPIE SUBDIVISION BEING PART OF LOT 29 OF THE LOS COCHES RANCHO", WHICH MAP



WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 18, 1911 IN VOLUME "N" OF MAPS, AT PAGE 48, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF MONTGOMERY STREET (FORMERLY EAST STREET) DISTANT THEREON 159.50 FEET SOUTHERLY FROM THE INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET; AND RUNNING THENCE EASTERLY AND PARALLEL WITH THE DIVIDING LINE BETWEEN SAID LOTS 13 AND 14, 116.80 FEET TO A POINT IN THE EASTERLY LINE OF LOT 14; THENCE SOUTHERLY AND ALONG THE EASTERLY LINE OF LOTS 14 AND 13, 50 FEET TO A POINT; THENCE WESTERLY AND PARALLEL WITH THE DIVIDING LINE BETWEEN LOTS 13 AND 14, 116.80 FEET TO A POINT ON THE EASTERLY LINE OF MONTGOMERY STREET; THENCE NORTHERLY AND ALONG THE SAID EASTERLY LINE OF MONTGOMERY STREET 50 FEET TO THE POINT OF BEGINNING.

APN: PORTION OF 259-78-011

PARCEL 8:

COMMENCING AT A POINT ON THE WESTERLY LINE OF AUTUMN STREET (FORMERLY GILLESPIE AVENUE) DISTANT THEREON S. 8° 18' E. 159.17 FEET FROM THE INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET; RUNNING THENCE ALONG SAID WESTERLY LINE OF GILLESPIE AVENUE S. 8° 16' E. 80 FEET; THENCE S. 86° 48' W. 116.80 FEET; THENCE N. 8° 16' W. 80.00 FEET, MORE OR LESS, TO A POINT DISTANT SOUTHERLY 15 FEET FROM THE NORTHERLY LINE OF LOT 15 HEREINAFTER MENTIONED; THENCE N. 87° 45' E. AND DISTANT SOUTHERLY 15 FEET FROM THE NORTHERLY LINE OF SAID LOT 15, 116.80 FEET MORE OR LESS, TO THE WESTERLY LINE OF GILLESPIE AVENUE AND THE POINT OF BEGINNING, AND BEING PORTIONS OF LOTS 12 AND 15 AS DESIGNATED AND DELINEATED UPON THAT CERTAIN MAP ENTITLED; "MAP OF THE GILLESPIE SUBDIVISION BEING PART OF LOT 22 OF THE LOS COCHES RANCHO", AND WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 18, 1911 IN BOOK "N" OF MAPS, AT PAGE 48.

APN: 259-48-013

APN: 259-48-011 and 259-48-013

Arb: 259-48-011 & 013

150 S. Montgomery Street

APN259-48-053

Legal Description – 150 S. Montgomery Street  
APN 259-48-053

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EASTERLY LINE OF MONTGOMERY STREET (60.00 FEET IN WIDTH), AT THE SOUTHWESTERLY CORNER OF THE GILLESPIE SUBDIVISION A MAP OF WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 18, 1911 IN BOOK N OF MAPS, AT PAGE 48, SAID POINT OF BEGINNING BEING DISTANT SOUTH  $3^{\circ} 16' 00''$  EAST 329.03 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET (60.00 FEET IN WIDTH); THENCE FROM SAID POINT OF BEGINNING NORTH  $87^{\circ} 24' 00''$  EAST ALONG THE SOUTHERLY LINE OF SAID GILLESPIE SUBDIVISION ABOVE REFERRED TO FOR A DISTANCE OF 221.44 FEET TO A POINT IN THE WESTERLY LINE OF A PROPOSED 72 FOOT STREET; THENCE SOUTHERLY ALONG SAID LAST MENTIONED LINE, ALONG AN ARC OF A CURVE TO THE RIGHT, FROM A TANGENT BEARING SOUTH  $9^{\circ} 35' 20''$  WEST, WITH A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF  $30^{\circ} 42' 51''$ , FOR AN ARC DISTANCE OF 268.03 FEET; THENCE WESTERLY ON A COMPOUND CURVE TO THE RIGHT, WITH A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF  $123^{\circ} 12' 55''$ , FOR AN ARC DISTANCE OF 107.53 FEET; THENCE SOUTH  $87^{\circ} 05' 00''$  WEST, 10.00 FEET TO A POINT IN THE SAID EASTERLY LINE OF MONTGOMERY STREET; THENCE NORTH  $3^{\circ} 16' 00''$  WEST ALONG SAID LAST MENTIONED LINE FOR A DISTANCE OF 212.84 FEET TO THE POINT OF BEGINNING.

645 Park Avenue

APN 261-35-014

Legal Description – 645 Park Avenue  
APN 261-35-014

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

A PORTION OF LOTS 27 AND 28, AS SAID LOTS ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP SHOWING THE SUBDIVISION OF THE RANCHO DE LOS COCHES ADJOINING THE CITY OF SAN JOSE", WHICH MAP WAS FILED FOR RECORD ON NOVEMBER 6, 1867 IN BOOK "A" OF MAPS AT PAGE 47, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE PARCEL OF LAND CONVEYED TO THE CITY OF SAN JOSE, A MUNICIPAL CORPORATION, BY GRANT DEED RECORDED SEPTEMBER 21, 1965 IN BOOK 7111 AT PAGE 130 OF OFFICIAL RECORDS; THENCE SOUTH  $86^{\circ} 59' 15''$  WEST ALONG THE NORTHERLY LINE OF PARK AVENUE A DISTANCE OF 331.00 FEET TO A CHISELED "X" IN THE SIDEWALK; THENCE LEAVING SAID LAST NAMED LINE AND RUNNING NORTH  $3^{\circ} 00' 45''$  WEST AT A RIGHT ANGLE THERETO A DISTANCE OF 10 FEET; THENCE SOUTH  $86^{\circ} 59' 15''$  WEST AT A RIGHT ANGLE TO AND PARALLEL WITH SAID NORTHERLY LINE OF PARK AVENUE A DISTANCE OF 50.00 FEET; THENCE NORTH  $3^{\circ} 00' 45''$  WEST AT A RIGHT ANGLE THERETO, A DISTANCE OF 162.19 FEET, MORE OR LESS, TO THE SOUTHWESTERLY CORNER OF PARCEL 2, AS SAID PARCEL 2 IS DESCRIBED IN THAT CERTAIN MEMORANDUM OF LEASE FROM GILL INDUSTRIES, A CALIFORNIA CORPORATION, TO THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, A CORPORATION, RECORDED AUGUST 14, 1973 IN BOOK 0516 AT PAGE 402 OF OFFICIAL RECORDS, SAID SOUTHWESTERLY CORNER BEING AT A POINT IN LINE PARALLEL WITH AND DISTANT SOUTHERLY 2.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE SOUTH FACE OF THE SOUTH WALL OF THE THEN EXISTING SUNLITE BAKERY BUILDING; THENCE ALONG THE SOUTHERLY LINE OF PARCEL 2 AS DESCRIBED IN SAID MEMORANDUM OF LEASE NORTH  $86^{\circ} 59' 15''$  EAST 94.59 FEET; THENCE, ALONG THE BOUNDARIES OF THE EXISTING TRANSFORMER CAGE, SOUTH  $3^{\circ} 01' 00''$  EAST 8.00 FEET, NORTH  $86^{\circ} 59' 15''$  EAST 18.00 FEET AND NORTH  $3^{\circ} 01' 00''$  WEST 8.00 FEET TO A POINT IN THE LAST MENTIONED PARALLEL LINE; THENCE, ALONG SAID PARALLEL LINE, NORTH  $86^{\circ} 59' 15''$  EAST 18.00 FEET; THENCE, ALONG THE BOUNDARIES OF THE EXISTING EVAPORATOR, SOUTH  $3^{\circ} 01' 00''$  EAST 13.90 FEET, NORTH  $86^{\circ} 59' 15''$  EAST 10.00 FEET, AND NORTH  $3^{\circ} 01' 00''$  WEST 13.90 FEET TO A POINT IN LAST MENTIONED PARALLEL LINE; THENCE, ALONG SAID PARALLEL LINE, NORTH  $86^{\circ} 59' 15''$  EAST 94.60 FEET; THENCE, ALONG THE BOUNDARIES OF AN EXISTING SUMP, SOUTH  $3^{\circ} 01' 00''$  EAST 1.00 FEET, NORTH  $86^{\circ} 59' 15''$  EAST 6.00 FEET, AND NORTH  $3^{\circ} 01' 00''$  WEST 1.00 FEET TO A POINT IN LAST MENTIONED PARALLEL LINE; THENCE ALONG SAID PARALLEL LINE, NORTH  $86^{\circ} 59' 15''$  EAST 132.09 FEET TO THE BACK OF THE EXISTING DRIVEWAY CURB; THENCE ALONG SAID BACK OF SAID EXISTING DRIVEWAY CURB; SOUTH  $3^{\circ} 01' 00''$  EAST 16.12 FEET, AND EASTERLY ALONG A CURVE TO THE LEFT, TANGENT TO LAST DESCRIBED COURSE HAVING A RADIUS OF 7.50 FEET, A CENTRAL ANGLE OF  $90^{\circ} 00'$ , AN ARC DISTANCE OF 11.78 FEET; THENCE NORTH  $86^{\circ} 59' 15''$  EAST 40.22 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 10.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM THE WESTERLY LINE OF MONTGOMERY STREET; THENCE SOUTH  $3^{\circ} 01' 00''$  EAST ALONG THE WESTERLY LINE OF SOUTH MONTGOMERY STREET AS ESTABLISHED BY THE ABOVE REFERRED TO GRANT DEED TO THE CITY OF SAN JOSE A DISTANCE OF 108.54 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE ALONG A TANGENT CURVE CONCAVE SOUTHEASTERLY WITH A RADIUS OF 40 FEET THROUGH AN ANGLE OF  $89^{\circ} 59' 40''$  FOR AN ARC LENGTH OF 52.83 FEET TO THE POINT OF BEGINNING.



EXHIBIT B

RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURNED TO:

KATTEN MUCHIN ROSENMAN LLP  
2029 Century Park East, Suite 2600  
Los Angeles, California 90067  
Attention: Benzion J. Westreich, Esq.

MEMORANDUM OF OPTION

By this Memorandum of Option (this "Memorandum") entered into as of \_\_\_\_\_, 2011, THE SAN JOSE DIRIDON DEVELOPMENT AUTHORITY, a California Joint Powers Authority created pursuant to the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5, of the California Government Code, Government Code Section 6500 *et sec* ("AUTHORITY") grants to Athletics Investment Group LLC, a California Limited Liability Company, ("Optionee"), an option to purchase the real property described in the attached Exhibit A, attached hereto ("Property"). The option is more particularly described in the Option Agreement for the Sale of Property ("Option Agreement") executed in connection with this Memorandum, dated as of even date herewith, by and between Optionor and Optionee.

1. Term. The term of the Option Agreement begins and ends as provided in Section 2 of the Option Agreement.
2. Purpose. This Memorandum is prepared solely for the purposes of notice and recordation of Optionee's right to purchase the Property in accordance with the terms of the Option Agreement.
3. Termination. The Option Agreement shall automatically terminate and shall have no further force or effect upon the first of the following events to occur:
  - a. The purchase of the Property by Optionee; or
  - b. As set forth in the Option Agreement.

If Optionee does not exercise the Option contained in the Option Agreement prior to the expiration of the Option Period as defined in the Option Agreement, Optionee shall, upon AUTHORITY's request, execute a quitclaim deed to the Property, in recordable form, releasing Optionee's interest in the Property and rights under this Memorandum.

4. Price and Terms. The Optionor and Optionee have executed and recorded this instrument to give notice of the Option Agreement and the respective rights and obligations of Optionee and Optionor. The price and other terms are in the unrecorded Option Agreement, which is incorporated by reference in its entirety in this Memorandum. In the event of any inconsistency between this Memorandum and the Option Agreement, the Option Agreement shall control.

5. Successors and Assigns. This Memorandum and the Option Agreement shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns.

6. Governing Law. This Memorandum and the Option Agreement are governed by California law.

[End of text; signature on following page]



IN WITNESS WHEREOF, the parties have executed and delivered this Memorandum as of the date set forth hereinabove.

OPTIONOR:

THE SAN JOSE DIRIDON DEVELOPMENT AUTHORITY, a California Joint Powers Authority created pursuant to the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5, of the California Government Code, Government Code Section 6500 *et seq*

APPROVED AS TO FORM:

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

OPTIONEE:

ATHLETICS INVESTMENT GROUP LLC,  
a California Limited Liability Company.

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

Its: President

STATE OF CALIFORNIA        )  
COUNTY OF \_\_\_\_\_        ) ss.

On \_\_\_\_\_ before me, \_\_\_\_\_ (here insert name and title of the officer), personally appeared \_\_\_\_\_ (insert name(s) of signer(s)) who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ } ss.

On \_\_\_\_\_ before me, \_\_\_\_\_ (here insert name and title of the officer), personally appeared \_\_\_\_\_ (insert name(s) of signer(s)) who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT C

RD:TDM:CER  
9/9/2010

RES. NO. 75567

RESOLUTION NO. 75567

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE: (A) REAFFIRMING THE NEGOTIATING PRINCIPLES PREVIOUSLY ESTABLISHED AND AMENDED BY THE CITY COUNCIL; AND (B) SUPPORTING THE EFFORTS OF THE OAKLAND ATHLETICS OWNERSHIP TO MOVE THE TEAM TO SAN JOSE AND THE ASSISTANCE OF THE SILICON VALLEY LEADERSHIP GROUP AND OTHER LOCAL GROUPS IN THEIR EFFORTS TO BRING MAJOR LEAGUE BASEBALL TO SAN JOSE

WHEREAS, on April 7, 2009 and August 3, 2010, the City Council and Agency Board affirmed its interest in supporting the efforts of the Oakland Athletics' ownership to move the team to the City of San Jose; and

WHEREAS, on May 12, 2009, the City Council and Agency Board established Negotiating Principles for the development of a stadium in the Downtown for a Major League Baseball team, which were subsequently amended by Council on August 3, 2010; and

WHEREAS, on September 10, 2010, through the efforts of the Silicon Valley Leadership Group, a letter from seventy five (75) of Silicon Valley's leading CEOs was sent to Major League Baseball urging Commissioner Selig to approve the Athletics' move to San Jose; and

WHEREAS, various local organizations, including the San Jose Silicon Valley Chamber of Commerce, the San Jose Convention and Visitors Bureau, the San Jose Sports Authority and Baseball San Jose, have all expressed their support for the Athletics' move to San Jose, and Lew Wolff, the Athletics' owner, is also on record as indicating he would prefer San Jose as the new home of the Athletics; and

RD:TDM:DER  
9/9/2010

RES. NO. 78807

WHEREAS, the Council desires to reaffirm the following previously-approved Negotiating Principles that will guide the City's efforts in bringing a Major League Baseball stadium to San Jose:

1. No new taxes are imposed to fund ballpark-related expenditures.
2. The City must determine that the ballpark development will generate a significant economic benefit to the City and have a positive impact on City General Fund revenues.
3. No public funds shall be spent to finance or reimburse any costs associated with construction of the ballpark or construction of any on-site infrastructure or improvements needed for the ballpark.
4. No public funds of any kind are spent to finance or reimburse any ballpark operational or maintenance costs related to activities conducted by or under the authority of the baseball team that uses the ballpark either at the ballpark or in the streets surrounding the ballpark.
5. No public funds shall be spent to finance or reimburse the cost of any traffic control, street cleanup, emergency or security services within the ballpark site or within the streets surrounding the ballpark that are related to activities at the ballpark conducted by or under the authority of the baseball team.
6. If the property is leased for a ballpark, the baseball team must be willing, at the end of the term of the lease, either to purchase the property at fair market value or to do one of the following things at the City's option and at no cost to the City or the Redevelopment Agency:

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- a. Transfer ownership of the improvements to the City or Redevelopment Agency; or
  - b. Demolish the improvements and clear the site to make way for other development.
7. The entity that builds or operates the ballpark must be willing, if the City deems it appropriate, to make the ballpark available to the City during baseball's offseason for up to 10 days per year for community-related events; at no rental charge to the City.
8. The name of the baseball team must include San Jose.

NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF SAN JOSE:

- (a) Reaffirms the negotiating principles previously established and amended by the City Council; and
- (b) Supports the efforts of the Oakland Athletics ownership to move the team to San José and the assistance of the Silicon Valley Leadership Group and other local groups in their efforts to bring Major League Baseball to San Jose.

RD:TDM: CER  
9/9/2010

RES. NO. 78987

ADOPTED this 21<sup>st</sup> day of September, 2010, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, HERRERA, KALRA,  
LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: CAMPOS.

DISQUALIFIED: NONE.

*Chuck Reed*

CHUCK REED  
Mayor

ATTEST:

*Lee Price*  
LEE PRICE, MMC  
City Clerk



# EXHIBIT 4

**MAJOR LEAGUE CONSTITUTION****MLC Art. I to Art. II, Sec. 2****MAJOR LEAGUE CONSTITUTION**

(originally adopted as the Major League Agreement on January 12, 1921)

**Article I****FORMATION AND DURATION OF CONSTITUTION**

This Major League Constitution constitutes an agreement among the Major League Baseball Clubs, each of which shall be entitled to the benefits of and shall be bound by all the terms and provisions hereof, and it shall remain in effect through December 31, 2012, except that the provisions of Article II, Section 3(g) shall expire at such time as the current Commissioner ceases to hold office.

**Article II****THE COMMISSIONER**

Sec. 1. The Office of the Commissioner of Baseball is an unincorporated association also doing business as Major League Baseball and has as its members the Major League Baseball Clubs.

Sec. 2. The functions of the Commissioner shall include:

(a) To serve as Chief Executive Officer of Major League Baseball. The Commissioner shall also have executive responsibility for labor relations and shall serve as Chairman, or shall designate a Chairman, of such committees as the Commissioner shall name or the Major League Clubs shall from time to time determine by resolution.

(b) To investigate, either upon complaint or upon the Commissioner's own initiative, any act, transaction or practice charged, alleged or suspected to be not in the best interests of the national game of Baseball, with authority to summon persons and to order the production of documents, and, in case of refusal to appear or produce, to impose such penalties as are hereinafter provided.

(c) To determine, after investigation, what preventive, remedial or punitive action is appropriate in the premises, and to take such action either against Major League Clubs or individuals, as the case may be.

**MAJOR LEAGUE CONSTITUTION****MLC Art. II, Sec. 2 to Art. II, Sec. 4**

(d) From time to time, to formulate and to announce the rules of procedure to be observed by the Commissioner and all other parties in connection with the discharge of the Commissioner's duties. Such rules shall always recognize the right of any party in interest to appear before the Commissioner and to be heard.

(e) To appoint a President of each League to perform such functions as the Commissioner may direct.

(f) To make decisions, or to designate an officer of the Commissioner's Office to make decisions, regarding on-field discipline, playing rule interpretations, game protests and any other matter within the responsibility of the League Presidents prior to 2000.

Sec. 3. In the case of conduct by Major League Clubs, owners, officers, employees or players that is deemed by the Commissioner not to be in the best interests of Baseball, punitive action by the Commissioner for each offense may include any one or more of the following:

(a) a reprimand; (b) deprivation of a Major League Club of representation in Major League Meetings; (c) suspension or removal of any owner, officer or employee of a Major League Club; (d) temporary or permanent ineligibility of a player; (e) a fine, not to exceed \$2,000,000 in the case of a Major League Club, not to exceed \$500,000 in the case of an owner, officer or employee, and in an amount consistent with the then-current Basic Agreement with the Major League Baseball Players Association, in the case of a player; (f) loss of the benefit of any or all of the Major League Rules, including but not limited to the denial or transfer of player selection rights provided by Major League Rules 4 and 5; and (g) such other actions as the Commissioner may deem appropriate.

Sec. 4. Notwithstanding the provisions of Section 2, above, the Commissioner shall take no action in the best interests of Baseball that requires the Clubs to take, or to refrain from taking, action (by vote, agreement or otherwise) on any of the matters requiring a vote of the Clubs at a Major League Meeting that are set forth in Article II, Section 9 or in Article V, Section 2(a) or (b); provided, however, that nothing in this Section 4 shall limit the Commissioner's authority to act on any matter that involves the integrity of, or public confidence in, the national game of Baseball. Integrity shall include without limitation, as determined by the Commissioner, the ability of, and the public perception that, players and Clubs perform and compete at all times to the best of their abilities. Public confidence shall include without limitation the public perception, as determined by the Commissioner, that there is an appropriate level of long-term competitive balance among Clubs.

**MAJOR LEAGUE CONSTITUTION****MLC Art. II, Sec. 5 to Art. II, Sec. 9**

Sec. 5. Notwithstanding the provisions of Sections 2 and 4, above, the powers of the Commissioner to act in the best interests of Baseball shall be inapplicable to any matter relating to the process of collective bargaining between the Clubs and the Major League Baseball Players Association.

Sec. 6. In the case of conduct by organizations not parties to this Constitution, or by individuals not connected with any of the parties hereto, that is deemed by the Commissioner not to be in the best interests of Baseball, the Commissioner may pursue appropriate legal remedies, advocate remedial legislation and take such other steps as the Commissioner may deem necessary and proper in the interests of the morale of the players and the honor of the game.

Sec. 7. The Office of the Commissioner shall be financed in such manner as the Major League Clubs shall by rule and/or agreement determine. Audited financial statements for the preceding fiscal year and a proposed budget for the ensuing year shall be submitted annually by the Commissioner for the approval of the members of the Executive Council. The Commissioner shall obtain the approval of the Executive Council before incurring any expenses in excess of the annual budget so approved by the Executive Council, except that the Commissioner need not secure such approval in the case of expenses that the Commissioner would be required by law or pre-existing contract to pay in any event.

Sec. 8.

(a) The Commissioner shall hold office for a minimum term of three years or for such longer term as shall be established by the Major League Clubs at the time of the Commissioner's election. The Commissioner shall be eligible to succeed himself or herself.

(b) Any re-election shall be considered at a Major League Meeting held not less than six months nor more than 15 months prior to the expiration of any term. The Commissioner's compensation shall be fixed at the time of election.

(c) No diminution of the compensation or powers of the present or any succeeding Commissioner shall be made during the Commissioner's term of office.

Sec. 9. The election of a Commissioner hereunder shall be at a Major League Meeting; the vote shall be by Clubs and by written ballot, and to elect shall require the affirmative vote of not less than three-fourths of all Major League Clubs. The re-election of a Commissioner to succeed himself or herself shall be by Clubs and by written ballot, and to re-elect shall require the affirmative vote of not less than a majority of all Major League Clubs. During any period of incapacity of the

**MAJOR LEAGUE CONSTITUTION**  
**MLC Art. II, Sec. 9 to Art. III, Sec. 2**

Commissioner, as determined by a majority of the Executive Council or by the Commissioner, all the powers and duties of the Commissioner shall be conferred upon and exercised by the Executive Council. During any vacancy in the Office of the Commissioner, all the powers and duties of the Commissioner shall be conferred upon and thenceforth exercised by the Executive Council, until a Commissioner of Baseball has been elected as herein set forth. Notwithstanding the two preceding sentences, in the event of such incapacity or vacancy and upon the affirmative vote of not less than three-fourths of all Major League Clubs, a Commissioner Pro Tem may be elected to serve for any period less than three years, with all of the powers and duties that are conferred upon the Commissioner pursuant to this Constitution.

**Article III**

**THE EXECUTIVE COUNCIL**

Sec. 1. The Major League Executive Council shall be composed of the Commissioner and eight Club members, four from each League. The Club members shall be appointed by the Commissioner and ratified by the vote of a majority of the Major League Clubs. Club members shall serve a four-year term, with the term of one member from each League expiring annually. The Commissioner may designate a substitute or alternate to serve at any meeting of the Council in the absence of any member of the Council. The Commissioner and five other members shall constitute a quorum at all meetings. Each member of the Council shall have one vote. In the case of a division within the Council, the decision of a majority shall be controlling and final. The Commissioner shall have authority, solely and finally, to determine and decide all jurisdictional questions.

Sec. 2. The Executive Council shall have jurisdiction in the following matters:

- (a) To cooperate, advise and confer with the Commissioner and other offices, agencies and individuals in an effort to promote and protect the interests of the Clubs and to perpetuate Baseball as the national game of America, and to surround Baseball with such safeguards as may warrant absolute public confidence in its integrity, operations and methods.
- (b) To survey, investigate and submit recommendations for change in, elimination of, addition to or amendments to any rules, regulations, agreements, proposals or other matters in which the Major League Clubs have an interest and particularly in respect to:

**MAJOR LEAGUE CONSTITUTION****MLC Art. III, Sec. 2 to Art. III, Sec. 4**

(1) Rules and regulations determining relationships between players and Clubs and between Clubs, and any and all matters concerning players' contracts or regulations; and

(2) Rules and regulations to govern the playing of World Series games, All-Star Games and any other contests or games in which Major League Clubs participate and/or games that may be played for charitable purposes.

(c) In the interim between Major League Meetings, to exercise full power and authority over all other matters pertaining to the Major League Clubs, not within the jurisdiction granted to the Commissioner under this Constitution, including the adoption, amendment or suspension of Major League Rules, for said interim; provided that all actions of the Executive Council pursuant to this paragraph (c) shall be noticed for action at the next regular or special Major League Meeting for approval or other disposition.

(d) To submit to the Major League Clubs recommendations as to persons to be considered for election as Commissioner whenever a vacancy may exist in that office.

(e) To review and to either approve or disapprove, in whole or in part, the proposed budget submitted annually by the Commissioner for the financing of the Commissioner's Office and requests by the Commissioner for authority to incur expenses in excess thereof.

Nothing contained in this Section 2 shall be deemed to diminish or curtail the jurisdiction granted to the Commissioner under Article II hereof or to empower the Executive Council to amend or suspend in any respect any provisions of this Constitution.

Sec. 3. The Commissioner shall be permanent Chairman of the Executive Council. The members of the Executive Council shall receive no compensation or reimbursement of expenses for their services as members thereof.

Sec. 4. The Executive Council shall hold regularly scheduled meetings at least bi-monthly each calendar year. The Executive Council shall hold such other meetings as may, from time to time, be called at the request of the Commissioner or a majority of the Major League Clubs. The Executive Council shall establish its own rules of procedure for all such meetings and shall keep minutes of its meetings.

**MAJOR LEAGUE CONSTITUTION****MLC Art. IV to Art. V, Sec. 1****Article IV****RULES, RESOLUTIONS AND REGULATIONS**

Any rules, resolutions or regulations adopted as provided in this Constitution shall be binding upon the Major League Clubs and shall not thereafter be amended or repealed except as provided in Article III, Section 2(c), Article V, Section 2 or Article XI, Section 3 hereof. The authority of the Commissioner shall include the authority to determine finally a disagreement over a rule, resolution, regulation or this Constitution.

**Article V****MAJOR LEAGUE MEETINGS****Sec. 1.**

(a) Four regular Major League Meetings shall be held each year on such dates and at such places as the Commissioner shall designate. One such regular meeting shall be held each off-season in December or January. The Commissioner may either cancel a regular meeting so called or may fail to call a regular meeting if in the Commissioner's judgment there is not sufficient business to justify holding the meeting. The Commissioner may also hold any meeting by teleconference or videoconference or conduct any vote by mail, facsimile, electronic mail or other means. At all Major League Meetings, the Commissioner shall preside, except that the Commissioner shall not preside at any Major League Meeting for the election of a Commissioner or for consideration of the term of office or duties of a Commissioner. In the absence of the Commissioner, the presiding officer shall be elected by written ballot of a majority vote of the Major League Clubs represented at the meeting. Whatever Clubs shall be represented at a Major League Meeting shall constitute a quorum. Each Club at a Major League Meeting shall be represented by a person having full authority to act for the Club and to bind the Club on all matters. Voting shall be by roll call of the Clubs, in rotating alphabetical order; provided, however, that upon the majority vote of all Clubs, the vote shall be by written ballot.

(b) The Commissioner or the Executive Council or any Major League Club may, from time to time, propose to the Major League Clubs the adoption, amendment or rescission of any rule, resolution or other matter for action at a Major League Meeting. Except by unanimous consent, no action shall be taken at any Major League Meeting upon any matter of which at least 20 days, or at any special meeting upon any matter of which at least 10 days, of prior written



**MAJOR LEAGUE CONSTITUTION****MLC Art. V, Sec. 1 to Art. V, Sec. 2**

notice shall not have been given all Major League Clubs and the Executive Council. The notice calling any Major League Meeting may specify that the meeting shall act in Executive Session either entirely or as to any particular matter specified therein. Upon the affirmative vote of a majority of the Major League Clubs represented at a Major League Meeting or at the Commissioner's direction, such meeting shall go into Executive Session. At an Executive Session each Club shall be represented by not more than two representatives.

**Sec. 2.**

(a) The vote of a majority of the Major League Clubs shall be required for the approval of any of the following:

(1) Any action relating to the process of collective bargaining with the Major League Baseball Players Association or with any representative of the Major League umpires;

(2) Any action relating to scheduling for the championship season;

(3) Any action relating to the All-Star Game, Division Series, League Championship Series or World Series;

(4) Any action to amend Major League Rule 25 relating to the Uniform Playing Rules and Official Scoring Rules; provided, however, that any action to amend the designated hitter rule shall require the vote of three-fourths of all Clubs;

(5) Any action relating to radio, television or other audio or video media (including the Internet or any other online technology), including but not limited to any agreement or amendment thereto with any other party, pursuant to which there is the grant, license or other transfer of radio, television or other audio or video media rights for Major League Baseball games; or

(6) Any action to extend the term of this Constitution.

(b) The vote of three-fourths of the Major League Clubs shall be required for the approval of any of the following:

(1) Expansion by the addition of a new Club or Clubs or contraction by the subtraction of a Club or Clubs;

**MAJOR LEAGUE CONSTITUTION****MLC Art. V, Sec. 2 to Art. V, Sec. 3**

(2) The sale or transfer of a control interest in any Club; provided, however, that a majority vote of all Major League Clubs shall be sufficient to approve any such sale or transfer occurring upon the death of an owner to a spouse or one or more lineal descendants. For purposes hereof, the term "control" shall mean the possession by the transferee, directly or indirectly, of the power or authority to influence substantially the management policies of the Club. A sale or transfer of a non-control interest in any Club shall require only the approval of the Commissioner;

(3) The relocation of any Major League Club;

(4) Any change from the present form of three-division play in either League (e.g., two-division or four-division play);

(5) The realignment of one or more Clubs into a different division(s) or into the other League; provided, however, that no Club may be moved to a different division or to the other League without its consent;

(6) Any provision affecting the sharing by the Major League Clubs of revenues from any source;

(7) Any provision amending this Constitution, except as specifically provided elsewhere in this Constitution; or

(8) The involuntary termination of the rights, privileges and properties of a Major League Club pursuant to the procedures of Article VIII hereof.

(c) Except as specifically provided in Article II, Section 9 and Article V, Section 2(b) of this Constitution, all actions to be voted upon by the Major League Clubs shall be decided by a majority vote of all Major League Clubs.

(d) Interpretation and applicability of this Section 2 shall be made by the Commissioner and that decision shall be final and non-appealable.

Sec. 3. Special Major League Meetings may be called by the Commissioner and shall be so called whenever the Commissioner is requested in writing by any eight Major League Clubs. If the Commissioner shall, within five days after receipt of such request, fail to call a Major League Meeting, any Major League Club so requesting may call the Major League Meeting.

**MAJOR LEAGUE CONSTITUTION**  
**MLC Art. VI, Sec. 1 to Art. VI, Sec. 2**

**Article VI**

**ARBITRATION**

Sec. 1. All disputes and controversies related in any way to professional baseball between Clubs or between a Club(s) and any Major League Baseball entity(ies) (including in each case, without limitation, their owners, officers, directors, employees and players), other than those whose resolution is expressly provided for by another means in this Constitution, the Major League Rules, the Basic Agreement with the Major League Baseball Players Association, or the collective bargaining agreement with any representative of the Major League umpires, shall be submitted to the Commissioner, as arbitrator, who, after hearing, shall have the sole and exclusive right to decide such disputes and controversies and whose decision shall be final and unappealable. The procedure set forth in this Section is separate from and shall not alter or affect the procedure set forth in Article V governing the role of the Commissioner at Major League Meetings, or the Commissioner's powers to act in the best interests of Baseball under Article II.

Sec. 2. The Major League Clubs recognize that it is in the best interests of Baseball that all actions taken by the Commissioner under the authority of this Constitution, including, without limitation, Article II and this Article VI, be accepted and complied with by the Clubs, and that the Clubs not otherwise engage in any form of litigation between or among themselves or with any Major League Baseball entity, but resolve their differences pursuant to the provisions of this Constitution. In furtherance thereof, the Clubs (on their own behalf and including, without limitation, on behalf of their owners, officers, directors and employees) severally agree to be finally and unappealably bound by actions of the Commissioner and all other actions, decisions or interpretations taken or reached pursuant to the provisions of this Constitution and severally waive such right of recourse to the courts as would otherwise have existed in their favor. In the event of any legal action other than as prescribed by Section 1 of this Article VI by any Club (including, without limitation, their owners, officers, directors and employees) in connection with any dispute or controversy related in any way to professional baseball, or in the event of noncompliance with any action of the Commissioner, with any action or decision taken or reached pursuant to the provisions of this Constitution, or with the terms or intent of this Article VI, in addition to any other remedy that may be available to the Commissioner, the Commissioner may direct that the costs, including attorneys' fees, to the Office of the Commissioner or any other Baseball entity, whether as plaintiff or defendant, of any court proceeding or other form of litigation resulting therefrom be reimbursed to the Office of the Commissioner or such other Baseball entity by such non-complying Club (on its own behalf and including, without limitation, on behalf of its owners, officers, directors and

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**MLC Art. VI, Sec. 2 to Art. VIII, Sec. 1**

employees). Nothing herein shall be construed to limit any rights of indemnity that the Major League Clubs or any Major League Baseball entity may have against any Club.

Sec. 3. The form of player's contract to be used by the Major League Clubs, and all contracts between Major League Clubs and their officers and employees, shall contain a clause by which the parties agree to submit themselves to the jurisdiction of the Commissioner, and to accept the Commissioner's decisions rendered in accordance with this Constitution.

**Article VII**

**SUPERSEDING EFFECT**

This Constitution, and all actions taken pursuant to this Constitution, shall supersede any conflicting provisions of any other agreement, as amended, whether now existing or hereinafter entered into, to which any Major League Club is a party and any conflicting actions taken pursuant thereto.

**Article VIII**

**CLUBS AND TERRITORIES**

Sec. 1. **Clubs.** There shall be 30 Major League Clubs, which agree hereby to act at all times in the best interests of Baseball. The Clubs shall be organized into two Leagues, the American League and the National League, with three divisions in each League, as follows:

American League

East

Baltimore Orioles  
Boston Red Sox  
New York Yankees  
Tampa Bay Rays  
Toronto Blue Jays

National League

East

Atlanta Braves  
Florida Marlins  
New York Mets  
Philadelphia Phillies  
Washington Nationals

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**MLC Art. VIII, Sec. 1 to Art. VIII, Sec. 4**

Central

Chicago White Sox  
Cleveland Indians  
Detroit Tigers  
Kansas City Royals  
Minnesota Twins

West

Los Angeles Angels of Anaheim  
Oakland Athletics  
Seattle Mariners  
Texas Rangers

Central

Chicago Cubs  
Cincinnati Reds  
Houston Astros  
Milwaukee Brewers  
Pittsburgh Pirates  
St. Louis Cardinals

West

Arizona Diamondbacks  
Colorado Rockies  
Los Angeles Dodgers  
San Diego Padres  
San Francisco Giants

Sec. 2. **Expansion, Contraction, Realignment, Divisions.** Any increase or decrease in the number of or any realignment of the Major League Clubs or any change from the present form of three-division play shall be governed by the voting provisions in Article V, Section 2 (b).

Sec. 3. **Voluntary Termination.** A Major League Club may withdraw from this Constitution only with the approval of three-fourths of all Major League Clubs, subject to such terms and conditions as the Commissioner may require, by submitting a written request to withdraw to the Commissioner, making full payment of all Baseball indebtedness and offering to assign to the Commissioner or the Commissioner's designee all of the withdrawing Club's rights, privileges and other property rights hereunder and under any other Baseball-related agreement.

Sec. 4. **Involuntary Termination.** The rights, privileges and other property rights of a Major League Club hereunder and under any other Baseball-related agreement may be terminated (i) in the event of contraction, pursuant to Article V, Section 2 (b) (1), or (ii) involuntarily, with the approval of three-fourths of all Major League Clubs, if the Club in question shall do or suffer any of the following:

- (a) Disband its team;
- (b) Disband its business organization or cease its business;
- (c) Except pursuant to official policies promulgated by the Commissioner, allow gambling of any kind upon its grounds or any building owned or controlled by it;

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**MLC Art. VIII, Sec. 4 to Art. VIII, Sec. 6**

- (d) Offer, agree, conspire or attempt to lose any game participated in by the Club; or fail to suspend immediately any player, employee or officer who shall be proved guilty of offering, agreeing, conspiring or attempting to lose any such game or of being interested in any pool or wager on any game in which a Club participates;
- (e) Fail to present its team at the time and place it is scheduled to play any championship game, unless such failure is caused by unavoidable accident in travel or conditions beyond the control of the Club or its officers;
- (f) Fail or refuse to comply with any requirement of the Commissioner;
- (g) Willfully violate any provision of this Constitution or any provision of the Professional Baseball Agreement, or any rules duly adopted pursuant to either of those agreements;
- (h) Transfer or assign such number of its player contracts as will prevent it from functioning as a Major League Club;
- (i) Fail to pay any indebtedness owing to Baseball within thirty days after receiving written notice from the Commissioner of default of such payment;
- (j) Fail or refuse to fulfill its contractual obligations;
- (k) Fail to maintain a ballpark suitable for the playing of home Major League Baseball games; or
- (l) Make an assignment for the benefit of its creditors or file a voluntary petition in bankruptcy, or if a receiver or trustee in bankruptcy is appointed for the properties and assets of the Club, or if reorganization proceedings in bankruptcy are instituted by or against the Club.

**Sec. 5. Termination Procedure.** The Commissioner shall determine the procedure to be followed with respect to a termination of a Club's rights hereunder, whether voluntary or involuntary. Such procedures shall include, in the case of a proposed involuntary termination, a written charge identifying the basis for the proposed involuntary termination, and an opportunity for the Club in question to be heard with respect to the charge.

**Sec. 6. Effect of Termination.** Upon termination of a Major League Club in accordance with Section 3 or 4 hereof, the Commissioner may, but is not required to,

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**MLC Art. VIII, Sec. 6 to Art. VIII, Sec. 8**

cancel and/or make such other disposition of the terminated Club's rights, privileges and other property rights hereunder or under any other Baseball-related agreement as the Commissioner deems appropriate. Without limiting the foregoing, the Commissioner is hereby authorized and empowered (but not required) to acquire through a designee and operate or dispose of the baseball park (or leasehold interest therein if such park is leased by such Club) and/or all other baseball properties, including without limitation the Club and the television, radio and other media contracts of such Club, the Player Development Contracts of such Club, the trademark and copyright rights of such Club and any other property, contracts, rights under this Constitution or other rights the Commissioner shall designate. Any terminated Club shall be obligated to assist in carrying out the provisions of any intended sale or other disposition and will execute and deliver any and all documents determined by the Commissioner to be necessary or convenient therefor, including without limitation instruments of conveyance, transfer, lease, bill of sale, assignment or quit claim. In the event of a failure, refusal or inability of any terminated Club to execute any and all such documents, each Club agrees i) that the Commissioner shall have the full and complete authority, to execute any and all such documents on behalf of the terminated Club in order to carry out the intended sale or other disposition, and ii) that any court of competent jurisdiction may enter any orders, judgments or decrees necessary to enforce and carry out the provisions hereof and that such Club will not oppose the entry of any such orders, judgments or decrees. Upon consummation of such purchase or sale, the Commissioner may first apply the proceeds to the payment of Baseball-related debts of the terminated Club, and finally any balance remaining thereafter shall be paid over to the terminated Club. The cancellation, operation, acquisition or disposition of a terminated Club's rights, privileges and properties shall be conducted in such manner, if any, as may be decided by the Commissioner in the Commissioner's sole discretion.

**Sec. 7. Effect of Termination on Active Player Contracts and Reservation Rights.** Upon a termination of a Major League Club in accordance with Section 3 or 4 hereof, title to the contracts of all active players then under contract to the terminated Club and all rights of player reservation of such Club shall, at the option of the Commissioner, thereupon vest in the Commissioner or a designee of the Commissioner, to be disposed of in such manner as the Commissioner may determine. The Commissioner may exercise this option with respect to all or less than all of the active player contracts and reservation rights of the terminated Club.

**Sec. 8. Operating Territories.** The Major League Clubs shall have assigned operating territories within which they have the right and obligation to play baseball games as the home Club.



**MAJOR LEAGUE CONSTITUTION****MLC Art. VIII, Sec. 8**

(a) National League. The National League Clubs shall have the following operating territories:

Arizona Diamondbacks: Maricopa County in Arizona;

Atlanta Braves: City of Atlanta; and Fulton, Cobb, Gwinette and Dekalb Counties in Georgia;

Chicago Cubs: Cook, Lake, DuPage, Will, Kendall, McHenry and Grundy Counties in Illinois; and Lake and Porter Counties in Indiana; provided, however, that this territory shall be shared with the Chicago White Sox franchise in the American League;

Cincinnati Reds: Butler, Warren, Clermont and Hamilton counties in Ohio; Boone, Kenton and Campbell Counties in Kentucky; and Dearborn and Franklin Counties in Indiana;

Colorado Rockies: City of Denver; and Adams, Arapahoe, Boulder, Broomfield, Douglas, Jefferson and Denver Counties in Colorado;

Florida Marlins: Dade and Broward Counties in Florida; provided, however, that with respect to all Major League Clubs, Palm Beach County in Florida shall also be included;

Houston Astros: City of Houston; and Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery and Waller Counties in Texas;

Los Angeles Dodgers: Orange, Ventura and Los Angeles Counties in California; provided, however, that this territory shall be shared with the Los Angeles Angels of Anaheim franchise in the American League;

Milwaukee Brewers: Milwaukee, Ozaukee and Waukesha Counties in Wisconsin;

New York Mets: City of New York; Nassau, Suffolk, Rockland and Westchester Counties in New York; Bergen, Hudson, Essex and Union Counties in New Jersey; and that

**MAJOR LEAGUE CONSTITUTION****MLC Art. VIII, Sec. 8**

portion of Fairfield County in Connecticut located south of Interstate 84 and west of Route 58; provided, however, that this territory shall be shared with the New York Yankees franchise in the American League;

Philadelphia Phillies: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties in Pennsylvania; and Gloucester, Camden and Burlington Counties in New Jersey;

Pittsburgh Pirates: City of Pittsburgh and Allegheny County in Pennsylvania;

St. Louis Cardinals: City of St. Louis; and St. Louis, Jefferson, St. Charles and Franklin Counties in Missouri; and St. Clair, Madison, Monroe and Jersey Counties in Illinois;

San Diego Padres: San Diego County in California;

San Francisco Giants: City of San Francisco; and San Francisco, San Mateo, Santa Cruz, Monterey and Marin Counties in California; provided, however, that with respect to all Major League Clubs, Santa Clara County in California shall also be included;

Washington Nationals: District of Columbia; and Arlington, Fairfax and Prince William Counties, and all independent cities bordering such counties, in Virginia.

(b) American League. The American League Clubs shall have the following operating territories:

Baltimore Orioles: City of Baltimore; and Baltimore, Anne Arundel, Howard, Carroll and Harford Counties in Maryland;

Boston Red Sox: Suffolk, Middlesex, Essex, Bristol, Worcester, and Norfolk Counties in Massachusetts; provided, however, that Bristol and Worcester Counties and the territory south and west of Highway 128 in Norfolk County shall be shared with the Pawtucket franchise in the International League;

**MAJOR LEAGUE CONSTITUTION****MLC Art. VIII, Sec. 8**

Chicago White Sox:	Cook, Lake, DuPage, Will, Kendall, McHenry and Grundy Counties in Illinois; and Lake and Porter Counties in Indiana; provided, however, that this territory shall be shared with the Chicago Cubs franchise in the National League;
Cleveland Indians:	Cuyahoga, Lorrain, Medina, Geauga, Lake and Summit Counties in Ohio; provided, however, that Summit County shall be shared with the Akron franchise in the Eastern League;
Detroit Tigers:	Wayne, Monroe, Washtenaw, Oakland, Macomb and St. Clair Counties in Michigan;
Kansas City Royals:	Johnson, Wyandotte, Miami and Leavenworth Counties in Kansas; and Clay, Jackson, Cass and Platte Counties in Missouri;
Los Angeles Angels of Anaheim:	Los Angeles, Orange and Ventura Counties in California; provided, however, that this territory shall be shared with the Los Angeles Dodgers franchise in the National League;
Minnesota Twins:	Ramsey and Hennepin Counties in Minnesota;
New York Yankees:	City of New York; Nassau, Suffolk, Rockland and Westchester Counties in New York; Bergen, Hudson, Essex and Union Counties in New Jersey; and that portion of Fairfield County in Connecticut located south of Interstate 84 and west of Route 58; provided, however, that this territory shall be shared with the New York Mets franchise in the National League;
Oakland Athletics:	Alameda and Contra Costa Counties in California;
Seattle Mariners:	King County in Washington;
Tampa Bay Rays:	Hillsborough and Pinellas Counties in Florida;
Texas Rangers:	Cities of Dallas, Ft. Worth and Arlington; and Dallas and Tarrant Counties in Texas;

**MAJOR LEAGUE CONSTITUTION**  
**MLC Art. VIII Sec. 8 to Art. IX, Sec. 5**

Toronto Blue Jays: Cities of Scarborough, York, East York, North York, Etobicoke and Toronto, commonly referred to as Metropolitan Toronto.

Sec. 9. **Home Television Territories.** The definitions of the home television territories of the Major League Clubs shall be maintained in the Commissioner's Office. Amendments to such territories shall be made only with the approval of the Executive Council.

**Article IX**

**CONDUCT OF CHAMPIONSHIP SEASON AND POST-SEASON**

Sec. 1. **Schedule.** The games for each championship season shall be arranged in a written schedule prepared by the Commissioner, acting in accordance with any standing resolutions passed at a Major League Meeting and with the Basic Agreement with the Major League Baseball Players Association. No Major League Club shall schedule or play any exhibition game during the championship season without the prior approval of the Commissioner.

Sec. 2. **Playing Rules.** All championship games shall be played under the Official Baseball Rules.

Sec. 3. **Parks Not to be Changed During Season.** No Club shall change the size or dimensions of its playing field during the championship season.

Sec. 4. **Championship Season and Post-Season.** The Commissioner shall have responsibility for all matters relating to the administration of the championship season and the post-season, which shall be conducted in accordance with the Major League Rules and the Major League Regulations.

Sec. 5. **All-Star Game.** The Clubs shall provide the necessary services of players, and, if selected as a host Club, the park, facilities and equipment needed for the playing of an All-Star Game during each baseball season. All-Star Games shall be played under the supervision, control and direction of the Commissioner. The date and the park in which an All-Star Game is to be played shall be determined by the Executive Council. Each host Club agrees that when it is designated to conduct an All-Star Game, it will provide the park, facilities and equipment for such a game for a total rental of one dollar and will act as agent for the Major League Clubs in the conduct of said game.

**MAJOR LEAGUE CONSTITUTION****MLC Art. X, Sec. 1 to Art. X, Sec. 3****Article X****MAJOR LEAGUE CENTRAL FUND**

Sec. 1. **Maintenance of Major League Central Fund.** There shall be maintained for the Major League Clubs in the Office of the Commissioner a separate account to be known as the "Major League Central Fund" and to be administered by the Executive Council. All sums received for the account of the parties hereto under this Constitution shall be deposited in the Major League Central Fund. The Commissioner is hereby appointed the fiscal agent of the Major League Central Fund.

Sec. 2. **All-Star Game Revenues and Expenses.** The All-Star Game host Club shall be required to submit such revenue and expense budgets for the All-Star Game and reasonably related events as may from time to time be required by the Commissioner. The host Club shall be entitled to reimbursement of its reasonable and necessary expenses out of such revenues. With the approval of the Commissioner, reimbursement of expenses included in the budget may be made on application of the host Club periodically in advance of each All-Star Game. Final settlement pursuant to the approved budget shall be made following submission of a post-game accounting by the host Club. All-Star Game receipts from the sale of tickets (net of applicable local taxes) shall be transmitted by the host Club to the Major League Central Fund without deduction for expenses, but the host Club may retain revenues received from related activities until the final accounting and settlement.

The net proceeds of each such game and related activities after the payment of expenses shall be deposited in the Major League Central Fund and shall be credited to the Major League Clubs equally.

Sec. 3. **Major League Club Broadcasts.** Major League Club practices with regard to the telecasting and radio broadcasting of games are governed as follows:

- (a) The Clubs hereby agree that each Club shall have, with respect to each game in which it participates, the right to authorize the telecast of such game only by means of over-the-air, cable and satellite technology, and only within its home television territory.
- (b) Each Club shall have, with respect to each game in which it participates, the right to authorize the radio broadcast of such game (1) if such Club is a home Club, over any radio broadcast station in the United States, for Clubs in the United States, or in Canada, for Clubs in Canada, except a station whose transmitter is not

**MAJOR LEAGUE CONSTITUTION****MLC Art. X, Sec. 3 to Art. X, Sec. 4**

located within 50 miles of such Club's ballpark and is located within 50 miles of the visiting Club's ballpark, or (2) if such Club is a visiting Club, over any radio broadcast station in the United States, for Clubs in the United States, or in Canada, for Clubs in Canada, whose transmitter is located within 50 miles of such visiting Club's ballpark, except as may be agreed by the home Club and the visiting Club.

(c) Each Club shall provide in its ballpark to the visiting Club suitable space to be used for the purposes described in subparagraphs (a) and (b), above, together with the ability to install and maintain in such ballpark such wires, cables and other equipment and items as may be necessary for such purposes, at the expense of the visiting Club or the visiting Club's rightsholder. Each home Club will additionally admit such employees and agents of the visiting Club and the visiting Club's rightsholder to the home Club's ballpark free of charge as may be necessary for the purposes described in subparagraphs (a) and (b), above.

(d) Each Club hereby agrees, with respect to each game in which it participates, that the other participating Club shall have the right, and hereby authorizes the Commissioner to grant to national rightsholders the right, to make use of the Club's trademarks in connection with all productions made pursuant to subparagraphs (a) and (b), above, and Section 4, below, and all advertising related thereto. All such use of trademarks shall inure to the benefit of the trademark owner and shall be made pursuant to all established standards of quality.

**Sec. 4. National Broadcasts, Copyright Royalties.** Subject to such approving vote of the Major League Clubs as may be required by Article V, Section 2 of this Constitution, the Major League Clubs grant to the Commissioner, acting as their agent, with the prior advice and prior consent of the Major League Executive Council, the exclusive right to sell on their behalf, throughout the United States and other territories as chosen by the Commissioner, exclusive or non-exclusive television and radio or other video or audio media rights (including the Internet and any other online technology) (live or taped) to the World Series, League Championship Series, Division Series, All-Star Games, regular season championship games, spring training games, exhibition games and other Major League Baseball events. All contracts for the sale of such television, radio and other video and audio media and online rights shall be administered by the Commissioner on behalf of the Clubs, and the contracts shall so provide.

The Clubs further authorize and empower the Commissioner, acting as their agent, to make exclusive demand and present formal claim on their behalf, by appropriate notice, filings and otherwise, and to negotiate and enter into settlement agreements with respect to the collection of royalty fees for broadcasts of Major League Baseball games carried as distant signal programming by cable television systems, satellite providers

**MAJOR LEAGUE CONSTITUTION****MLC Art. X, Sec. 4 to Art. X, Sec. 5**

and other media providers, pursuant to applicable provisions of the United States, Canada and foreign copyright laws.

The proceeds received from the sales of television and radio or other video or audio media rights to the World Series, League Championship Series, Division Series, All-Star Games, regular season championship games, spring training games and exhibition games and from copyright royalty fees shall be made payable to the Commissioner as agent for the Clubs, and when received by the Commissioner, shall be deposited in the Major League Central Fund and shall be credited to each of them equally.

**Sec. 5. Payments from Central Fund, Books of Account.** Each of the Major League Clubs hereto hereby authorizes and directs the Commissioner to make the following payments on its behalf out of the Major League Central Fund. These payments are to be charged to the Clubs equally.

(a) There shall be payments of such contributions to the Major League Baseball Players Benefit Plan as the Clubs are or may become obligated to contribute to the Benefit Plan by agreement with the Major League Baseball Players Association or by action of the Clubs.

(b) In October of each year, there shall be paid to the Commissioner an amount which shall be sufficient for the following purposes:

(1) to enable the Commissioner, after expenditure of the receipts of the Commissioner's Office from all other sources, to cover (i) the clerical, administrative and operational expenses of the Commissioner's Office and the Executive Council incurred during the fiscal year ending in that month pursuant to the budget for such year as approved by the Executive Council, and (ii) expenditures for contributions and other non-operational purposes made pursuant to the appropriations for such purposes recommended by the Executive Council, and

(2) to provide, as of the close of each fiscal year, a reserve fund for the Commissioner's Office of at least \$10,000,000, or such amount approved by the Executive Council (such reserve fund to be the excess of all assets over all liabilities).

(c) There shall be paid from time to time such amounts as shall be approved by the Executive Council for the administrative expenses of the Central Fund and for other purposes common to all Clubs, including the compensation and expenses of advisors, attorneys, actuaries and other persons retained or employed by the



**MAJOR LEAGUE CONSTITUTION****MLC Art. X, Sec. 5 to Art. X, Sec. 6**

Commissioner in connection with player relations matters and the Major League Baseball Players Benefit Plan or other matters.

(d) The balance of each Club's share of the Major League Central Fund remaining after said payments (less the reserve) shall be paid to the Clubs on or before October 31 of the year in which received, or as soon thereafter as possible, unless otherwise determined by the Commissioner.

The Commissioner may from time to time invest any balance of the Major League Central Fund on hand in certificates of deposit, obligations of the United States Government, A<sub>1</sub>P<sub>1</sub> rated commercial paper or such other interest bearing accounts or instruments as have been approved in advance by the Major League Finance & Compensation Committee.

Upon termination of the Major League Central Fund, any remaining funds shall be distributed and paid to the Clubs.

The Commissioner shall provide and keep true and accurate books of account and records of all receipts and disbursements and other transactions involving or pertaining to the Major League Central Fund.

On or before February 15 of each year, the Commissioner shall submit to the Executive Council an accurate statement of account showing all receipts and disbursements and other transactions involving or pertaining to the Major League Central Fund during the preceding fiscal year ending October 31 and, in addition thereto, setting forth a full and complete schedule of all cash obligations of the United States Government and other property then comprising the Major League Central Fund.

Each Major League Club shall be furnished a copy of such annual statement and shall be entitled at all times during business hours to inspect the books of account and records of the Major League Central Fund.

**Sec. 6. Termination of Central Fund.** The Major League Central Fund shall be in existence continuously unless and until three-fourths of the Major League Clubs shall have given to the Commissioner written notice on or before June 30 of any year of their intention to terminate the Major League Central Fund, and upon the giving of any such notice the Major League Central Fund shall terminate on the 31<sup>st</sup> day of December of the year following the year in which such notice is given.

**MAJOR LEAGUE CONSTITUTION****MLC Art. XI, Sec. 1 to Art. XI, Sec. 2****Article XI****MISCELLANEOUS**

Sec. 1. **Fiscal Responsibility.** Each Major League Club shall comply with the Debt Service Rule and any other rules dealing with fiscal responsibility as may be contained in the then-current Basic Agreement with the Major League Baseball Players Association, as may be amended in accordance with Article V, Section 2(a)(1).

Sec. 2. **Indemnification of Officials.** The Major League Clubs hereby jointly indemnify each person who is now or hereafter serves as the Commissioner of Baseball, or as an employee, officer or director of the Office of the Commissioner of Baseball, Major League Baseball Properties, Inc., Major League Baseball Enterprises, Inc., Major League Baseball Advanced Media, L.P., the Major League Scouting Bureau, the Arizona Fall League, Inc. or any other similar or affiliated entity currently existing or hereafter created to carry out functions of interest to Major League Baseball or to professional baseball, and each person who is an officer, director, employee or representative of a Major League Club who has been or is hereafter elected, appointed or selected by the Commissioner of Baseball or the Commissioner's designee or the Major League Executive Council to perform, individually or as a member of a committee, a function related to the Office of the Commissioner of Baseball or any other matter of interest to Major League Baseball or to professional baseball, whether or not then acting as such Commissioner of Baseball, employee, officer or director or as such a person so elected, appointed or selected, against expenses (including attorney's fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative to which he or she shall have been made a party by reason of his or her being or having served in such capacity if he or she acted in good faith and in a manner he or she reasonably believed to be in and not opposed to the best interests of baseball, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of baseball, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

The Commissioner shall hereafter be indemnified in any case, provided that he or she has met the applicable standard of conduct set forth in the preceding portion

**MAJOR LEAGUE CONSTITUTION****MLC Art. XI, Sec. 2 to Art. XI, Sec. 3**

of this resolution. In the case of any other person covered by this resolution, indemnification shall be only as authorized in a specific case upon a determination either by the Commissioner or a majority vote of the Major League Clubs that the indemnification of the person is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the preceding portion of this resolution.

Sec. 3. **Major League Regulations.** The Commissioner shall adopt a set of Major League Regulations relating to games, ballparks, uniforms and other matters and may otherwise promulgate bulletins and directives binding on the Major League Clubs (including without limitation their owners, officers, directors and employees) in matters relating to the Commissioner's functions and the administration of the game of baseball that are not inconsistent with this Constitution. Amendments to such Regulations, bulletins and directives may be made in the discretion of the Commissioner.



# EXHIBIT B

**EXECUTORY COPY****OPTION AGREEMENT FOR THE SALE OF PROPERTY  
FROM THE SAN JOSE DIRIDON DEVELOPMENT AUTHORITY TO ATHLETICS  
INVESTMENT GROUP LLC**

This option agreement for the purchase of property ("Agreement" or "Option Agreement") is made as of this 8th of Nov, 2011 by and between the SAN JOSE DIRIDON DEVELOPMENT AUTHORITY, a California Joint Powers Authority created pursuant to the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5, of the California Government Code, Government Code Section 6500 et seq ("AUTHORITY"), and ATHLETICS INVESTMENT GROUP LLC ("OPTIONEE").

**RECITALS**

WHEREAS, the AUTHORITY is the owner of certain property and improvements located at 105 South Montgomery, 150 South Montgomery, 510 West San Fernando, 102 South Montgomery, 115 South Autumn, and 645 Park Avenue, in San José, California more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property is located in the Diridon Redevelopment Project Area ("Diridon Area") and was originally purchased by the Redevelopment Agency of the City of San Jose ("AGENCY") with the intent that the Property, along with other adjacent properties, be developed into a Major League Baseball park or alternatively a mixed use development with housing; and

WHEREAS, both the AGENCY and the City of San Jose, ("CITY") have envisioned many potential future development and redevelopment projects in the Diridon Area including corporate offices, housing, high speed rail, BART, and a potential sports stadium/Major League Baseball park; and

WHEREAS, AGENCY and CITY formed AUTHORITY and transferred the Property to AUTHORITY for the purposes of facilitating future development in the Diridon Area; and

WHEREAS, OPTIONEE is exploring the construction of a Major League Baseball park in the Diridon Area; and

WHEREAS, the AUTHORITY and OPTIONEE desire to enter into this Agreement to grant OPTIONEE an option to purchase the Property, subject to the conditions herein.

NOW, THEREFORE, the parties agree as follows:



SECTION 1. GRANT OF OPTION.

For consideration in the amount of Fifty Thousand Dollars, (\$50,000), payable by OPTIONEE to AUTHORITY upon execution of this Agreement, and on the terms and conditions set forth herein, AUTHORITY grants to OPTIONEE an irrevocable, exclusive option to purchase the Property. ("Option").

Contemporaneously with the execution of this Agreement, AUTHORITY and OPTIONEE have executed a Memorandum of Option Agreement, in the form attached hereto as Exhibit "B" (the "Memorandum"), in recordable form.

If OPTIONEE does not exercise the Option contained in this Agreement prior to the expiration of the Option Period as defined below, OPTIONEE shall, upon Authority's request, execute a quitclaim deed to the Property, in recordable form, releasing OPTIONEE'S interest in the Property and rights under the Memorandum.

SECTION 2. TERM OF OPTION.

A. The Option to purchase the Property shall become effective on full execution of this Agreement and the Memorandum and shall expire two years thereafter if not exercised by OPTIONEE prior to such one year anniversary in accordance with Section 3A. ("Option Period"). With the consent of AUTHORITY, OPTIONEE may extend the Option Period for one additional year with the payment of Twenty-five Thousand Dollars, (\$25,000), payable by OPTIONEE to AUTHORITY ten (10) days prior to the expiration of the Option Period, in which event the term "Option Period" shall mean the previous Option Period as so extended.

B. Unless otherwise agreed, this Agreement shall automatically terminate upon the earlier of (i) expiration of the Option Period, as extended pursuant to Section 2.A, or (ii) execution of the Purchase Agreement (as defined below).

SECTION 3. EXERCISE OF OPTION.

A. Notice. As long as OPTIONEE is not in default under this Agreement and all conditions to the exercise of the option are satisfied or are waived in writing by AUTHORITY, OPTIONEE may exercise the option in accordance with this section and in no other manner. The Option shall be exercised by delivering written notice from OPTIONEE to AUTHORITY before the expiration of the Option Period ("Option Notice"). The Option Notice shall affirmatively state that the OPTIONEE exercises the Option without condition or qualification; provided, however, that the purchase and sale of the Property shall be subject to the closing conditions set forth herein and to be set forth in the Purchase Agreement. .

B. Purchase Price of Property. The Property shall be sold to OPTIONEE for the amount of **SIX MILLION NINE HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED TWENTY-SEVEN DOLLARS (\$6,975,227)** provided the use of the Property



is restricted, to the reasonable satisfaction of AUTHORITY, for use as a Major League Baseball park and uses incidental to the Major League Baseball park, including to host other ticketed events, and use by CITY as provided in the Negotiating Principles noted below, and upon satisfaction of all conditions set forth in Section 4 and the Purchase Agreement.

#### SECTION 4. OPTION CONDITIONS.

##### A. Voter Approval

As a condition to the OPTIONEE's exercise of the Option, AUTHORITY may require a majority vote of the voters of San Jose approving the City, Agency and Authority participation in the building of the ballpark.

##### B. Purchase and Sale Agreement

AUTHORITY and OPTIONEE shall negotiate, in good faith, a purchase and sale agreement for the Property consistent with the terms of this Agreement, it being understood that the AUTHORITY will provide a first draft of the purchase and sale agreement (the "Purchase Agreement") within 90 days after the execution of this Agreement. AUTHORITY and OPTIONEE will thereafter diligently and continuously negotiate in good faith the form of Purchase Agreement to completion such that the definitive Purchase Agreement is ready to be, and shall be, executed by AUTHORITY and OPTIONEE within 15 days after the exercise of the Option by OPTIONEE in accordance with Section 3.A. The Purchase Agreement shall also include the following provisions:

1. The Property shall be restricted for use as a Major League Baseball park and uses incidental to the Major League Baseball park, including hosting other ticketed events, and use by CITY as provided in the Negotiating Principles noted below. .
2. A Transportation and Parking Management Plan ("TPMP") and Construction Management Plan ("CMP") will be required to be developed and agreed to prior to the commencement of construction for the CMP and prior to commencement of operations at the park for the TPMP (or at such other time as may be agreed to).
3. The purchase Agreement shall be consistent with the Negotiating Principles established by City Council Resolution No. 75567 as in effect on the date hereof attached hereto as Exhibit C, and shall contain such other commercially reasonable terms and conditions customary in Santa Clara County real estate sale and purchase agreements.
4. The Purchase Agreement may also include additional properties if acquired by AUTHORITY for a Major League Baseball park and uses incidental to the Major

League Baseball park including hosting other ticketed events, and use by CITY as provided in the Negotiating Principles, provided AUTHORITY and OPTIONEE agree.

SECTION 5. RIGHT OF ENTRY ON PROPERTY.

During the Option Period, OPTIONEE and its designated employees, agents and independent contractors shall have the right to enter on the Property, upon reasonable notice to AUTHORITY, to the extent necessary for the purpose to inspect, investigate, or conduct tests, including tests invasive to the Property. OPTIONEE agrees to repair any damages it or its agents or independent contractors shall cause to the Property, and further agrees to indemnify and hold AUTHORITY harmless from any and all costs, expenses, losses, and liabilities incurred or sustained by AUTHORITY as a result of the acts of OPTIONEE'S agents, or independent contractors pursuant to the rights granted under this Section. Notwithstanding anything to the contrary set forth herein, OPTIONEE shall have no liability to repair damage existing prior to OPTIONEE'S entry and OPTIONEE shall have no liability for any pre-existing conditions, facts or circumstances on, in, under or affecting the Property.

SECTION 6. ASSIGNMENT.

This Option shall not be assigned by OPTIONEE, without Authority's prior written approval, which approval shall be within the sole and absolute discretion of AUTHORITY, provided, however, that no consent shall be required for an assignment to (1) any entity directly or indirectly controlled by Lew Wolff, John Fisher or any member of their immediate families or (2) any entity to whom the Oakland Athletics are transferred or any subsidiary of, parent entity of, or entity under common control with such transferee entity.

SECTION 7. "AS IS" CONDITION.

OPTIONEE is acquiring the Property "AS IS" without any warranty of AUTHORITY, express or implied, as to the nature or condition of or title to the Property or its fitness for OPTIONEE's intended use of same, except as shall be set forth in the purchase and sale agreement described in Section 4.B. hereof. Prior to the exercise of the Option, OPTIONEE shall be familiar with the Property and will be relying solely upon its own, independent inspection, investigation and analysis of the Option Property as it deems necessary or appropriate in so acquiring the Property from AUTHORITY (including, without limitation, any and all matters concerning the condition, use, sale, development or suitability for development of the Property). In the event OPTIONEE shall acquire the Property, OPTIONEE hereby expressly waives any rights which it might have to seek contribution from AUTHORITY under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. § 9601, or any other toxic waste or hazardous waste clean-up statute, law or regulation now or hereafter in existence. OPTIONEE is not relying in any way upon any representations, statements, agreements, warranties, studies, plans, reports,

descriptions, guidelines or other information or material furnished by AUTHORITY or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters, except as shall be set forth in the purchase and sale agreement described in Section 4.B. hereof.

**SECTION 8. ENVIRONMENTAL CONDITIONS**

AUTHORITY makes no representations or warranties regarding any hazardous materials which may be present in, on or under the Property. Upon request of OPTIONEE, AUTHORITY will make available any and all reports or other information it has in its possession or control regarding any hazardous material which may have been identified on the Property. For purposes of this Agreement, "hazardous material" shall mean any material or substance which is regulated by any federal, state or local law or ordinance due to its hazardous, toxic, dangerous, flammable, corrosive or radioactive characteristic, or that may be harmful to persons who are exposed to them.

**SECTION 9. NOTICES.**

All notices, demands, requests, and exercises under this Option by either party shall be hand delivered or sent by United States mail, registered or certified, postage prepaid, addressed to the other party as follows:

**OPTIONEES:** Athletics Investment Group LLC  
7000 Coliseum Way  
Oakland, CA 94621  
Attn: Neil Kraetsch - General Counsel

**AUTHORITY:** San Jose Diridon Development Authority  
City of San Jose  
Office of the City Manager  
200 East Santa Clara Street  
17<sup>th</sup> Floor  
San Jose, CA 95113

Notices, demands, requests and exercises served in the above manner shall be considered sufficiently given or served for all purposes under this Option Agreement at the time the notice, demand, or request is hand delivered or three business days after being postmarked to the addresses shown above.

**SECTION 10. ENTIRE AGREEMENT.**

This Option Agreement, including all exhibits attached hereto, contains the entire agreement between the parties respecting the matters set forth, and supersedes all



prior agreements between the parties respecting such matters and all prior negotiations between the parties are merged herein. No verbal agreements or conversations with any officer, agent or employee of the AUTHORITY prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Option Agreement. Any such verbal agreement shall be considered unofficial information and in no way binding upon either party hereto

SECTION 11. DISTINCTION FROM REGULATORY AUTHORITY OF THE CITY.

OPTIONEE understands and agrees that this Agreement does not and shall not be construed to indicate or imply that the CITY, AGENCY or AUTHORITY, is acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the Property as contemplated by this Agreement.

SECTION 12. BINDING EFFECT.

This Option Agreement shall be binding on and inure to the benefit of the parties to this Option Agreement and their successors and assigns.

SECTION 13. MISCELLANEOUS PROVISIONS.

A. This Option Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of California as the same from time to time exists. In the event that suit shall be brought by either party to this Option Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

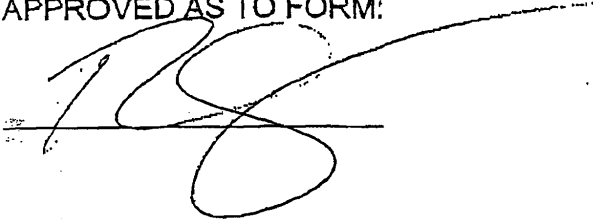
B. Contemporaneously with the execution hereof, the AUTHORITY and OPTIONEE shall execute, acknowledge and record against the Property with the applicable governmental body the Memorandum.

SECTION 14. COUNTERPARTS

This Option Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Option Agreement.

WITNESS THE EXECUTION HEREOF as of the day and year first hereinabove written.

APPROVED AS TO FORM:


A large, stylized handwritten signature in black ink, likely belonging to Toni J. Taber, written over a horizontal line.

"AUTHORITY"

A handwritten signature in black ink, likely belonging to Toni J. Taber, written over a horizontal line.

Toni J. Taber, CMC  
Assistant City Clerk

"AUTHORITY"

By:   
Debra Figone  
Executive Director

"OPTIONEE"

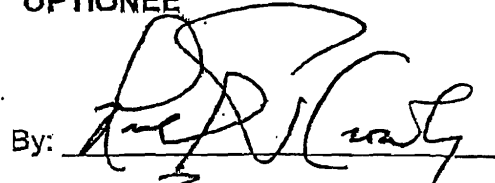
By:   
PRESIDENT

EXHIBIT A

Legal Description

105 S. Montgomery Street

APN 261-35-003, -006 & -010

Legal Description – 105 S. Montgomery Street  
APN 261-35-003 & -006

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 21:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAN FERNANDO STREET (FORMERLY KNOWN AS AND CALLED NORTH STREET) WITH THE WESTERLY LINE OF MONTGOMERY STREET, (FORMERLY KNOWN AS AND CALLED EAST STREET); RUNNING THENCE SOUTHERLY ALONG THE WESTERLY LINE OF MONTGOMERY STREET 111.50 FEET; THENCE WESTERLY AND PARALLEL WITH SAN FERNANDO STREET 77.50 FEET; THENCE NORTHERLY AND PARALLEL WITH MONTGOMERY STREET 111.501 FEET TO THE SOUTHERLY LINE OF SAN FERNANDO STREET; AND THENCE EASTERLY ALONG SAID LAST NAMED LINE 77.50 FEET TO THE POINT OF BEGINNING, AND BEING LOT 28 OF THE LOS COCHES RANCHO.

APN: PORTION 261-35-003

PARCEL 22:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAN FERNANDO STREET; DISTANT THEREON 77 FEET AND 6 INCHES WESTERLY FROM THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF SAN FERNANDO STREET WITH THE WESTERLY LINE OF MONTGOMERY STREET, FORMERLY KNOWN AS AND CALLED EAST STREET; RUNNING THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAN FERNANDO STREET 5 FEET 4 INCHES, THENCE SOUTHERLY AND PARALLEL WITH MONTGOMERY STREET 111 FEET AND 6 INCHES, THENCE EASTERLY AND PARALLEL WITH SAN FERNANDO STREET 5 FEET AND 4 INCHES; THENCE NORTHERLY AND PARALLEL WITH MONTGOMERY STREET, 111 FEET AND 6 INCHES TO THE POINT OF BEGINNING, AND BEING A PART OF LOT 28 OF THE LOS COCHES RANCHO.

APN: PORTION OF 261-35-003

PARCEL 23:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAN FERNANDO STREET DISTANT THEREON 82 FEET 10 INCHES WESTERLY FROM THE INTERSECTION OF SAID LINE OF SAN FERNANDO STREET WITH THE WESTERLY LINE OF MONTGOMERY STREET, FORMERLY EAST STREET, AS SAID LINE EXISTED ON MAY 28, 1891; THENCE WESTERLY ALONG SAID LINE OF SAN FERNANDO STREET 52 FEET; THENCE AT RIGHT ANGLES SOUTHERLY ON A LINE PARALLEL WITH SAID WESTERLY LINE OF MONTGOMERY STREET 111 FEET 6 INCHES; THENCE AT RIGHT ANGLES EASTERLY ON A LINE PARALLEL WITH SAID LINE OF SAN FERNANDO STREET 52 FEET; THENCE AT RIGHT ANGLES NORTHERLY ON A LINE PARALLEL WITH SAID WESTERLY LINE OF MONTGOMERY STREET 111 FEET 6 INCHES TO THE POINT OF BEGINNING, AND BEING A PORTION OF LOT 28 OF THE SUBDIVISION OF LOS COCHES RANCHO.

APN: PORTION OF 261-35-003



**PARCEL 24:**

**LOT 1 AS DELINEATED AND SO DESIGNATED UPON MAP ENTITLED, "MAP OF THE OTTERSON LOTS, IN THE LOS COCHES RANCHO", IN WHICH SAID MAP WAS RECORDED OF JUNE 23, 1896 IN THE OFFICE OF THE COUNTY OF RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, IN VOLUME "B" OF MAPS, AT PAGE 35.**

**APN: 261-35-006**

Legal Description; APN 261-35-010

**PARCEL 19:**

BEGINNING AT A POINT ON THE WESTERLY LINE OF MONTGOMERY STREET, FORMERLY KNOWN AS EAST STREET, DISTANT THEREON SOUTHERLY 111.50 FEET FROM THE POINT OF INTERSECTION OF SAID LINE OF MONTGOMERY STREET WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET, FORMERLY KNOWN AS NORTH STREET, AND SAID POINT OF BEGINNING BEING THE SOUTHEASTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM CHARLES J. RYLANDER ET UX TO W.A. RISSLAND ET UX, DATED SEPTEMBER 19, 1914 AND RECORDED SEPTEMBER 19, 1914 INBOOK 419 OF DEEDS, PAGE 587, THENCE SOUTHERLY AND ALONG SAID LINE OF MONTGOMERY STREET, 42.0 FEET TO THE NORTHEASTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM GEORGE EDWARD RAMER TO BERTHA CAROLINE BRADLEY DATED AUGUST 18, 1903 AND RECORDED JULY 26, 1904 IN BOOK 281 OF DEEDS, PAGE 121; THENCE WESTERLY AND PARALLEL WITH SAID LINE OF SAN FERNANDO STREET, AND ALONG THE NORTHERLY LINE OF LAND DESCRIBED IN THE DEED TO SAID BERTHA CAROLINE BRADLEY, 135.0 FEET TO THE NORTHWESTERLY CORNER THEREOF, AND IN THE EASTERLY LINE OF THE PARCEL OF LAND DISTRIBUTED IN THE ESTATE OF DELIA BRYANT, ALSO KNOWN AS DELIA A. BRYANT, DECEASED, TO HARRIETTE FRANCES BOWMAN AND PRINCE WARREN GODFREY, BY DECREE OF DISTRIBUTION DATED MARCH 31, 1916, A CERTIFIED COPY OF WHICH DECREE WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 03, 1916 IN BOOK 440 OF DEEDS, AT PAGE 265, AND THENCE NORTHERLY AND ALONG SAID LAST REFERRED TO EASTERLY LINE 42.0 FEET TO THE SOUTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM H.H. MADSEN ET UX TO F.B. GILGER, DATED AUGUST 24, 1922 AND RECORDED AUGUST 30, 1922 IN BOOK 561 OF DEEDS, PAGE 143; THENCE EASTERLY AND PARALLEL WITH THE SAID LINE OF SAN FERNANDO STREET, AND ALONG THE SOUTHERLY LINE OF LAND DESCRIBED IN THE DEED TO SAID F.B. GILGER AND THE PROLONGATION OF SAID LINE EASTERLY 135.0 FEET TO THE WESTERLY LINE OF MONTGOMERY STREET; AND THE POINT OF BEGINNING, AND BEING A PORTION OF LOT 28 OF THE LOS COCHES RANCHO.

**PARCEL 20:**

BEGINNING AT A POINT ON THE WESTERLY LINE OF MONTGOMERY STREET, FORMERLY EAST STREET, DISTANT THEREON 153.50 FEET SOUTHERLY FROM THE POINT OF INTERSECTION OF THE WESTERLY LINE OF MONTGOMERY STREET WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET, FORMERLY NORTH. STREET, SAID POINT OF BEGINNING BEING THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY AMANDA J. GODFREY, A WIDOW, TO MATTIE E. HOFFMAN, BY DEED DATED APRIL 19, 1898 AND RECORDED APRIL 19, 1898 IN BOOK 208 OF DEEDS, PAGE 176, RECORDS OF SANTA CLARA COUNTY CALIFORNIA; THENCE RUNNING SOUTHERLY AND ALONG THE WESTERLY LINE OF MONTGOMERY STREET, 80 FEET TO THE NORTHEASTERLY CORNER OF THE LANDS SHOWN AND DESIGNATED UPON MAP ENTITLED, "MAP OF THE OTTERSON LOTS IN THE LOS COCHES RANCHO", AND WHICH SAID MAP WAS RECORDED IN THE OFFICE OF THE COUNTY



RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JUNE 23, 1886 IN BOOK B OF MAPS, AT PAGE 35; THENCE RUNNING WESTERLY AND ALONG THE NORTHERLY LINE OF SAID OTTERSON LOTS, 135.00 FEET TO A POINT ON THE EASTERLY LINE OF THAT CERTAIN PARCEL OF LAND DISTRIBUTED IN THE ESTATE OF DELIA BRYANT, ALSO KNOWN AS DELIA A. BRYANT, DECEASED, TO HARRIETTE FRANCES BOWMAN AND PRINCE WARREN GODFREY, BY DECREE OF DISIRIBUTION ENTERED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FORTHE COUNTY OF SANTA CLARA ON MARCH 31, 1916, A CERTIFIED COPY OF WHICH WAS RECORDED ON APRIL 03, 1916 IN BOOK 440 OF DEEDS, PAGE 266, RECORDS OF SAID COUNTY OF SANTA CLARA RUNNING, THENCE NORTHERLY AND ALONG LAST SAID LINE, 80 FEET TO THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO MATTIE E. HOFFMAN, AS HEREINABOVE REFERRED TO; THENCE RUNNING EASTERLY AND ALONG THE SOUTHERLY LINE OF SAID LAND SO DESCRIBED IN THE DEED TO MATTIE E. HOFFMAN, 135 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF LOT 28 OF THE LOS COCHES RANCHO.

102 S. Montgomery Street

APN 259-48-012

Legal Description – 102 S. Montgomery Street  
APN 259-48-012

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 5:

BEGINNING AT THE POINT OF INTERSECTION OF THE EASTERLY LINE OF MONTGOMERY STREET, FORMERLY EAST STREET, WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET; THENCE RUNNING SOUTHERLY AND ALONG THE EASTERLY LINE OF MONTGOMERY STREET, 73.50 FEET; THENCE AT RIGHT ANGLES EASTERLY AND PARALLEL WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET, 86 FEET; THENCE AT RIGHT ANGLES NORTHERLY AND PARALLEL WITH THE EASTERLY LINE OF MONTGOMERY STREET 73.50 FEET TO A POINT ON THE SOUTHERLY LINE OF SAN FERNANDO STREET; THENCE RUNNING WESTERLY AND ALONG THE SOUTHERLY LINE OF SAN FERNANDO STREET, 86 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF THE LOS COCHES RANCHO.

510 W. San Fernando Street  
115 South Autumn Street

APN 259-48-011  
APN 259-48-013

Legal Description -- 510 W. San Fernando Street  
APN 259-48-011 & -013

Real property in the City of San Jose, County of Santa Clara, State of California,  
described as follows:

PARCEL 1:

ALL OF LOTS 16 AND 17, AND A PORTION OF LOTS 14 AND 15, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE GILLESPIE SUBDIVISION", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 18, 1911 IN BOOK N OF MAPS, AT PAGE 48 AND A PORTION OF THE LOS COCHES RANCHO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAN FERNANDO STREET DISTANT THEREON NORTH 86° 49' EAST 86.00 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE EASTERLY LINE OF MONTGOMERY STREET (FORMERLY EAST STREET), AS SAID STREETS ARE SHOWN UPON THE MAP ABOVE REFERRED TO; RUNNING THENCE FROM SAID POINT OF BEGINNING, SOUTH 8° 16' EAST AND PARALLEL WITH THE SAID EASTERLY LINE OF MONTGOMERY STREET, FOR A DISTANCE OF 78.50 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 17, AS SAID LOT IS SHOWN UPON THE MAP ABOVE REFERRED TO; RUNNING THENCE SOUTH 86° 49' WEST ALONG SAID LAST NAMED LINE, FOR A DISTANCE OF 86.00 FEET TO THE NORTHWESTERLY CORNER THEREOF ON THE SAID EASTERLY LINE OF MONTGOMERY STREET; RUNNING THENCE SOUTH 2° 10' EAST ALONG THE SAID EASTERLY LINE OF MONTGOMERY STREET, FOR A DISTANCE OF 86.00 FEET TO THE NORTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM T. J. GILLESPIE HARDWOOD PLANING MILL COMPANY, A CORPORATION, TO LENA BENNETT, DATED DECEMBER 20, 1985, RECORDED DECEMBER 24, 1985 IN BOOK 755 OF OFFICIAL RECORDS, PAGE 222, SANTA CLARA COUNTY RECORDS, THENCE LEAVING THE SAID EASTERLY LINE OF MONTGOMERY STREET AND RUNNING NORTH 86° 49' EAST ALONG THE NORTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID BENNETT, FOR A DISTANCE OF 116.20 FEET TO THE NORTHEASTERLY CORNER THEREOF ON THE EASTERLY LINE OF LOT 14, AS SAID LOT IS SHOWN UPON THE MAP ABOVE REFERRED TO; RUNNING THENCE NORTH 8° 16' WEST ALONG SAID LAST NAMED LINE, FOR A DISTANCE OF 1.825 FEET, MORE OR LESS TO THE NORTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM T. J. GILLESPIE HARDWOOD PLANING MILL COMPANY, A CORPORATION, TO GEORGE SCHLOSSER, DATED MARCH 23, 1925, RECORDED MARCH 28, 1925 IN BOOK 145 OF OFFICIAL RECORDS, PAGE 278, SANTA CLARA COUNTY RECORDS; RUNNING THENCE NORTH 87° 40' EAST ALONG THE NORTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID SCHLOSSER, FOR A DISTANCE OF 118.80 FEET TO THE NORTHEASTERLY CORNER THEREOF ON THE WESTERLY LINE OF GILLESPIE AVENUE, AS SAID AVENUE IS SHOWN UPON THE MAP ABOVE REFERRED TO; RUNNING THENCE NORTH 8° 16' WEST ALONG THE SAID WESTERLY LINE OF GILLESPIE AVENUE, FOR A DISTANCE OF 159.17 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE SAID SOUTHERLY LINE OF SAN FERNANDO STREET; RUNNING THENCE SOUTH 86° 49' WEST ALONG THE SAID SOUTHERLY LINE OF SAN FERNANDO STREET, FOR A DISTANCE OF 147.80 FEET TO THE POINT OF BEGINNING.  
APN: PORTION OF 259-48-011

PARCEL 2:

PORTION OF LOTS 13 AND 14, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE GILLESPIE SUBDIVISION BEING PART OF LOT 29 OF THE LOS COCHES RANCHO", WHICH MAP



WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 18, 1911 IN VOLUME "N" OF MAPS, AT PAGE 48, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF MONTGOMERY STREET (FORMERLY EAST STREET) DISTANT THEREON 159.50 FEET SOUTHERLY FROM THE INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET; AND RUNNING THENCE EASTERLY AND PARALLEL WITH THE DIVIDING LINE BETWEEN SAID LOTS 13 AND 14, 116.80 FEET TO A POINT IN THE EASTERLY LINE OF LOT 14; THENCE SOUTHERLY AND ALONG THE EASTERLY LINE OF LOTS 14 AND 13, 50 FEET TO A POINT; THENCE WESTERLY AND PARALLEL WITH THE DIVIDING LINE BETWEEN LOTS 13 AND 14, 116.80 FEET TO A POINT ON THE EASTERLY LINE OF MONTGOMERY STREET; THENCE NORTHERLY AND ALONG THE SAID EASTERLY LINE OF MONTGOMERY STREET 50 FEET TO THE POINT OF BEGINNING.

APN: PORTION OF 259-78-011

PARCEL 8:

COMMENCING AT A POINT ON THE WESTERLY LINE OF AUTUMN STREET (FORMERLY GILLESPIE AVENUE) DISTANT THEREON S. 8° 18' E. 159.17 FEET FROM THE INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET; RUNNING THENCE ALONG SAID WESTERLY LINE OF GILLESPIE AVENUE S. 8° 16' E. 80 FEET; THENCE S. 86° 48' W. 116.80 FEET; THENCE N. 8° 16' W. 80.00 FEET, MORE OR LESS, TO A POINT DISTANT SOUTHERLY 15 FEET FROM THE NORTHERLY LINE OF LOT 15 HEREINAFTER MENTIONED; THENCE N. 87° 45' E. AND DISTANT SOUTHERLY 15 FEET FROM THE NORTHERLY LINE OF SAID LOT 15, 116.80 FEET MORE OR LESS, TO THE WESTERLY LINE OF GILLESPIE AVENUE AND THE POINT OF BEGINNING, AND BEING PORTIONS OF LOTS 12 AND 15 AS DESIGNATED AND DELINEATED UPON THAT CERTAIN MAP ENTITLED; "MAP OF THE GILLESPIE SUBDIVISION BEING PART OF LOT 22 OF THE LOS COCHES RANCHO", AND WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 18, 1911 IN BOOK "N" OF MAPS, AT PAGE 48.

APN: 259-48-013

APN: 259-48-011 and 259-48-013

Arb: 259-48-011 & 013

150 S. Montgomery Street

APN259-48-053

Legal Description – 150 S. Montgomery Street  
APN 259-48-053

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EASTERLY LINE OF MONTGOMERY STREET (60.00 FEET IN WIDTH), AT THE SOUTHWESTERLY CORNER OF THE GILLESPIE SUBDIVISION A MAP OF WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 18, 1911 IN BOOK N OF MAPS, AT PAGE 48, SAID POINT OF BEGINNING BEING DISTANT SOUTH  $3^{\circ} 16' 00''$  EAST 329.03 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF SAN FERNANDO STREET (60.00 FEET IN WIDTH); THENCE FROM SAID POINT OF BEGINNING NORTH  $87^{\circ} 24' 00''$  EAST ALONG THE SOUTHERLY LINE OF SAID GILLESPIE SUBDIVISION ABOVE REFERRED TO FOR A DISTANCE OF 221.44 FEET TO A POINT IN THE WESTERLY LINE OF A PROPOSED 72 FOOT STREET; THENCE SOUTHERLY ALONG SAID LAST MENTIONED LINE, ALONG AN ARC OF A CURVE TO THE RIGHT, FROM A TANGENT BEARING SOUTH  $9^{\circ} 35' 20''$  WEST, WITH A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF  $30^{\circ} 42' 51''$ , FOR AN ARC DISTANCE OF 268.03 FEET; THENCE WESTERLY ON A COMPOUND CURVE TO THE RIGHT, WITH A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF  $123^{\circ} 12' 55''$ , FOR AN ARC DISTANCE OF 107.53 FEET; THENCE SOUTH  $87^{\circ} 05' 00''$  WEST, 10.00 FEET TO A POINT IN THE SAID EASTERLY LINE OF MONTGOMERY STREET; THENCE NORTH  $3^{\circ} 16' 00''$  WEST ALONG SAID LAST MENTIONED LINE FOR A DISTANCE OF 212.84 FEET TO THE POINT OF BEGINNING.

645 Park Avenue

APN 261-35-014

Legal Description – 645 Park Avenue  
APN 261-35-014

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

A PORTION OF LOTS 27 AND 28, AS SAID LOTS ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP SHOWING THE SUBDIVISION OF THE RANCHO DE LOS COCHES ADJOINING THE CITY OF SAN JOSE", WHICH MAP WAS FILED FOR RECORD ON NOVEMBER 6, 1867 IN BOOK "A" OF MAPS AT PAGE 47, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE PARCEL OF LAND CONVEYED TO THE CITY OF SAN JOSE, A MUNICIPAL CORPORATION, BY GRANT DEED RECORDED SEPTEMBER 21, 1965 IN BOOK 7111 AT PAGE 130 OF OFFICIAL RECORDS; THENCE SOUTH  $86^{\circ} 59' 15''$  WEST ALONG THE NORTHERLY LINE OF PARK AVENUE A DISTANCE OF 331.00 FEET TO A CHISELED "X" IN THE SIDEWALK; THENCE LEAVING SAID LAST NAMED LINE AND RUNNING NORTH  $3^{\circ} 00' 45''$  WEST AT A RIGHT ANGLE THERETO A DISTANCE OF 10 FEET; THENCE SOUTH  $86^{\circ} 59' 15''$  WEST AT A RIGHT ANGLE TO AND PARALLEL WITH SAID NORTHERLY LINE OF PARK AVENUE A DISTANCE OF 50.00 FEET; THENCE NORTH  $3^{\circ} 00' 45''$  WEST AT A RIGHT ANGLE THERETO, A DISTANCE OF 162.19 FEET, MORE OR LESS, TO THE SOUTHWESTERLY CORNER OF PARCEL 2, AS SAID PARCEL 2 IS DESCRIBED IN THAT CERTAIN MEMORANDUM OF LEASE FROM GILL INDUSTRIES, A CALIFORNIA CORPORATION, TO THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, A CORPORATION, RECORDED AUGUST 14, 1973 IN BOOK 0516 AT PAGE 402 OF OFFICIAL RECORDS, SAID SOUTHWESTERLY CORNER BEING AT A POINT IN LINE PARALLEL WITH AND DISTANT SOUTHERLY 2.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE SOUTH FACE OF THE SOUTH WALL OF THE THEN EXISTING SUNLITE BAKERY BUILDING; THENCE ALONG THE SOUTHERLY LINE OF PARCEL 2 AS DESCRIBED IN SAID MEMORANDUM OF LEASE NORTH  $86^{\circ} 59' 15''$  EAST 94.59 FEET; THENCE, ALONG THE BOUNDARIES OF THE EXISTING TRANSFORMER CAGE, SOUTH  $3^{\circ} 01' 00''$  EAST 8.00 FEET, NORTH  $86^{\circ} 59' 15''$  EAST 18.00 FEET AND NORTH  $3^{\circ} 01' 00''$  WEST 8.00 FEET TO A POINT IN THE LAST MENTIONED PARALLEL LINE; THENCE, ALONG SAID PARALLEL LINE, NORTH  $86^{\circ} 59' 15''$  EAST 18.00 FEET; THENCE, ALONG THE BOUNDARIES OF THE EXISTING EVAPORATOR, SOUTH  $3^{\circ} 01' 00''$  EAST 13.90 FEET, NORTH  $86^{\circ} 59' 15''$  EAST 10.00 FEET, AND NORTH  $3^{\circ} 01' 00''$  WEST 13.90 FEET TO A POINT IN LAST MENTIONED PARALLEL LINE; THENCE, ALONG SAID PARALLEL LINE, NORTH  $86^{\circ} 59' 15''$  EAST 94.60 FEET; THENCE, ALONG THE BOUNDARIES OF AN EXISTING SUMP, SOUTH  $3^{\circ} 01' 00''$  EAST 1.00 FEET, NORTH  $86^{\circ} 59' 15''$  EAST 6.00 FEET, AND NORTH  $3^{\circ} 01' 00''$  WEST 1.00 FEET TO A POINT IN LAST MENTIONED PARALLEL LINE; THENCE ALONG SAID PARALLEL LINE, NORTH  $86^{\circ} 59' 15''$  EAST 132.09 FEET TO THE BACK OF THE EXISTING DRIVEWAY CURB; THENCE ALONG SAID BACK OF SAID EXISTING DRIVEWAY CURB; SOUTH  $3^{\circ} 01' 00''$  EAST 16.12 FEET, AND EASTERLY ALONG A CURVE TO THE LEFT, TANGENT TO LAST DESCRIBED COURSE HAVING A RADIUS OF 7.50 FEET, A CENTRAL ANGLE OF  $90^{\circ} 00'$ , AN ARC DISTANCE OF 11.78 FEET; THENCE NORTH  $86^{\circ} 59' 15''$  EAST 40.22 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 10.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM THE WESTERLY LINE OF MONTGOMERY STREET; THENCE SOUTH  $3^{\circ} 01' 00''$  EAST ALONG THE WESTERLY LINE OF SOUTH MONTGOMERY STREET AS ESTABLISHED BY THE ABOVE REFERRED TO GRANT DEED TO THE CITY OF SAN JOSE A DISTANCE OF 108.54 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE ALONG A TANGENT CURVE CONCAVE SOUTHEASTERLY WITH A RADIUS OF 40 FEET THROUGH AN ANGLE OF  $89^{\circ} 59' 40''$  FOR AN ARC LENGTH OF 52.83 FEET TO THE POINT OF BEGINNING.



EXHIBIT B

RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURNED TO:

KATTEN MUCHIN ROSENMAN LLP  
2029 Century Park East, Suite 2600  
Los Angeles, California 90067  
Attention: Benzion J. Westreich, Esq.

MEMORANDUM OF OPTION

By this Memorandum of Option (this "Memorandum") entered into as of \_\_\_\_\_, 2011, THE SAN JOSE DIRIDON DEVELOPMENT AUTHORITY, a California Joint Powers Authority created pursuant to the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5, of the California Government Code, Government Code Section 6500 *et sec* ("AUTHORITY") grants to Athletics Investment Group LLC, a California Limited Liability Company, ("Optionee"), an option to purchase the real property described in the attached Exhibit A, attached hereto ("Property"). The option is more particularly described in the Option Agreement for the Sale of Property ("Option Agreement") executed in connection with this Memorandum, dated as of even date herewith, by and between Optionor and Optionee.

1. Term. The term of the Option Agreement begins and ends as provided in Section 2 of the Option Agreement.
2. Purpose. This Memorandum is prepared solely for the purposes of notice and recordation of Optionee's right to purchase the Property in accordance with the terms of the Option Agreement.
3. Termination. The Option Agreement shall automatically terminate and shall have no further force or effect upon the first of the following events to occur:
  - a. The purchase of the Property by Optionee; or
  - b. As set forth in the Option Agreement.

If Optionee does not exercise the Option contained in the Option Agreement prior to the expiration of the Option Period as defined in the Option Agreement, Optionee shall, upon AUTHORITY's request, execute a quitclaim deed to the Property, in recordable form, releasing Optionee's interest in the Property and rights under this Memorandum.

4. Price and Terms. The Optionor and Optionee have executed and recorded this instrument to give notice of the Option Agreement and the respective rights and obligations of Optionee and Optionor. The price and other terms are in the unrecorded Option Agreement, which is incorporated by reference in its entirety in this Memorandum. In the event of any inconsistency between this Memorandum and the Option Agreement, the Option Agreement shall control.
5. Successors and Assigns. This Memorandum and the Option Agreement shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns.
6. Governing Law. This Memorandum and the Option Agreement are governed by California law.

[End of text; signature on following page]



IN WITNESS WHEREOF, the parties have executed and delivered this Memorandum as of the date set forth hereinabove.

OPTIONOR:

THE SAN JOSE DIRIDON DEVELOPMENT AUTHORITY, a California Joint Powers Authority created pursuant to the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5, of the California Government Code, Government Code Section 6500 *et seq*

APPROVED AS TO FORM:

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

OPTIONEE:

ATHLETICS INVESTMENT GROUP LLC,  
a California Limited Liability Company.

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

Its: President

STATE OF CALIFORNIA        )  
COUNTY OF \_\_\_\_\_        ) ss.

On \_\_\_\_\_ before me, \_\_\_\_\_ (here insert name and title of the officer), personally appeared \_\_\_\_\_ (insert name(s) of signer(s)) who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ ) ss.

On \_\_\_\_\_ before me, \_\_\_\_\_ (here insert name and title of the officer), personally appeared \_\_\_\_\_ (insert name(s) of signer(s)) who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## EXHIBIT C

RD:TDM:CER  
9/9/2010

RES. NO. 75567

## RESOLUTION NO. 75567

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE: (A) REAFFIRMING THE NEGOTIATING PRINCIPLES PREVIOUSLY ESTABLISHED AND AMENDED BY THE CITY COUNCIL; AND (B) SUPPORTING THE EFFORTS OF THE OAKLAND ATHLETICS OWNERSHIP TO MOVE THE TEAM TO SAN JOSE AND THE ASSISTANCE OF THE SILICON VALLEY LEADERSHIP GROUP AND OTHER LOCAL GROUPS IN THEIR EFFORTS TO BRING MAJOR LEAGUE BASEBALL TO SAN JOSE

WHEREAS, on April 7, 2009 and August 3, 2010, the City Council and Agency Board affirmed its interest in supporting the efforts of the Oakland Athletics' ownership to move the team to the City of San Jose; and

WHEREAS, on May 12, 2009, the City Council and Agency Board established Negotiating Principles for the development of a stadium in the Downtown for a Major League Baseball team, which were subsequently amended by Council on August 3, 2010; and

WHEREAS, on September 10, 2010, through the efforts of the Silicon Valley Leadership Group, a letter from seventy five (75) of Silicon Valley's leading CEOs was sent to Major League Baseball urging Commissioner Selig to approve the Athletics' move to San Jose; and

WHEREAS, various local organizations, including the San Jose Silicon Valley Chamber of Commerce, the San Jose Convention and Visitors Bureau, the San Jose Sports Authority and Baseball San Jose, have all expressed their support for the Athletics' move to San Jose, and Lew Wolff, the Athletics' owner, is also on record as indicating he would prefer San Jose as the new home of the Athletics; and

RD:TDM:DER  
9/9/2010

RES. NO. 78807

WHEREAS, the Council desires to reaffirm the following previously-approved Negotiating Principles that will guide the City's efforts in bringing a Major League Baseball stadium to San Jose:

1. No new taxes are imposed to fund ballpark-related expenditures.
2. The City must determine that the ballpark development will generate a significant economic benefit to the City and have a positive impact on City General Fund revenues.
3. No public funds shall be spent to finance or reimburse any costs associated with construction of the ballpark or construction of any on-site infrastructure or improvements needed for the ballpark.
4. No public funds of any kind are spent to finance or reimburse any ballpark operational or maintenance costs related to activities conducted by or under the authority of the baseball team that uses the ballpark either at the ballpark or in the streets surrounding the ballpark.
5. No public funds shall be spent to finance or reimburse the cost of any traffic control, street cleanup, emergency or security services within the ballpark site or within the streets surrounding the ballpark that are related to activities at the ballpark conducted by or under the authority of the baseball team.
6. If the property is leased for a ballpark, the baseball team must be willing, at the end of the term of the lease, either to purchase the property at fair market value or to do one of the following things at the City's option and at no cost to the City or the Redevelopment Agency:

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Item No. 0.1

RD:TDM:CEB  
8/9/2010

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- a. Transfer ownership of the improvements to the City or Redevelopment Agency; or
  - b. Demolish the improvements and clear the site to make way for other development.
7. The entity that builds or operates the ballpark must be willing, if the City deems it appropriate, to make the ballpark available to the City during baseball's offseason for up to 10 days per year for community-related events; at no rental charge to the City.
8. The name of the baseball team must include San Jose.

NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF SAN JOSE:

- (a) Reaffirms the negotiating principles previously established and amended by the City Council; and
- (b) Supports the efforts of the Oakland Athletics ownership to move the team to San José and the assistance of the Silicon Valley Leadership Group and other local groups in their efforts to bring Major League Baseball to San Jose.



RD:TDM: CER  
9/9/2010

RES. NO. 78987

ADOPTED this 21<sup>st</sup> day of September, 2010, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, HERRERA, KALRA,  
LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: CAMPOS.

DISQUALIFIED: NONE.

*Chuck Reed*

CHUCK REED  
Mayor

ATTEST:

*Lee Price*  
LEE PRICE, MMC  
City Clerk

# EXHIBIT C

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CITY OF SAN JOSÉ; CITY OF SAN JOSÉ  
AS SUCCESSOR AGENCY TO THE  
REDEVELOPMENT AGENCY OF THE CITY  
OF SAN JOSÉ; and THE SAN JOSÉ  
DIRIDON DEVELOPMENT AUTHORITY

Plaintiffs,

v.

OFFICE OF THE COMMISSIONER OF  
BASEBALL, an unincorporated association  
doing business as Major League Baseball; and  
ALLAN HUBER “BUD” SELIG,

Defendants.

Case No. C-13-02787 RMW

**ORDER GRANTING-IN-PART AND  
DENYING-IN-PART DEFENDANTS’  
MOTION TO DISMISS PLAINTIFFS’  
COMPLAINT UNDER FEDERAL  
RULE OF CIVIL PROCEDURE  
12(b)(6)**

**[Re: Docket No. 25]**

*[W]e continue to believe that the Supreme Court should retain the  
exclusive privilege of overruling its own decisions, save perhaps when  
opinions already delivered have created a near certainty that only the  
occasion is needed for pronouncement of the doom.*

*Salerno v. American League of Professional Baseball Clubs*, 429 F.2d  
1003, 1005 (2d Cir. 1970).

This lawsuit yet again raises the question of the scope of baseball’s exemption from federal  
antitrust laws. The judicially created exemption was born in 1922 in *Federal Base Ball Club of  
Baltimore, Inc. v. National League of Professional Base Ball Clubs* (“Federal Baseball”), 259 U.S.  
200 (1922) (Holmes, J.), and reaffirmed in *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953)

(per curiam) and *Flood v. Kuhn*, 407 U.S. 258 (1972) (Blackmun, J.). Many distinguished jurists, including the Justices themselves, however, have openly criticized the Supreme Court's decisions distinguishing baseball from other professional sports for the purposes of exempting *only* baseball from antitrust laws. In 1957, in *Radovich v. National Football League*, Justice Clark writing for the majority acknowledged that the distinction for baseball may be "unrealistic, inconsistent, or illogical," and "were we considering the question of baseball for the first time upon a clean slate, we would have no doubts" that the business of baseball is within the scope of the Sherman Antitrust Act. 352 U.S. 445, 452 (1957) (emphasis added) (holding that the business of football is subject to the Sherman Act). In 1970, Judge Friendly writing for the Second Circuit "freely acknowledge[d] [the court's] belief that *Federal Baseball* was not one of Mr. Justice Holmes' happiest days, that the rationale of *Toolson* is extremely dubious and that, to use the Supreme Court's own adjectives, the distinction between baseball and other professional sports is 'unrealistic,' 'inconsistent' and 'illogical.'" *Salerno*, 429 F.2d at 1005 (quoting *Radovich*, 352 U.S. at 452). In 1972, in *Flood*, Justice Blackmun writing for the majority said that "*Federal Baseball* and *Toolson* have become an aberration confined to baseball." 407 U.S. at 282 (emphasis added).

Despite the recognized flaws in the antitrust exemption for baseball, the Court has consistently "conclude[d] that the orderly way to eliminate error or discrimination, if any there be, is by legislation and not by court decision." *Radovich*, 352 U.S. at 452 (reasoning that "Congressional processes are more accommodative, affording the whole industry hearings and an opportunity to assist in the formulation of new legislation" and "[t]he resulting product is therefore more likely to protect the industry and the public alike."). "The Court has emphasized that since 1922 baseball, with full and continuing congressional awareness, has been allowed to develop and to expand unhindered by federal legislative action." *Flood*, 407 U.S. at 283. The *Flood* Court held that "[i]f there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court." *Id.* at 284 (emphasis added) (affirming *Federal Baseball* and *Toolson*).

The facts of this case present the issue of whether club *relocation* is a part of the “business of baseball” subject to the Supreme Court’s holdings in *Federal Baseball*, *Toolson* and *Flood*. Plaintiffs, the City of San José, City of San José as successor agency to the Redevelopment Agency of the City of San José (“RDA”), and the San José Diridon Development Authority (collectively, “City” or “San José”), argue that the antitrust exemption set forth in *Federal Baseball*, *Toolson* and *Flood* applies only to baseball’s “reserve clause.”<sup>1</sup> This position, however, is contrary to the holdings of a vast majority of the courts that have addressed the issue. All federal circuit courts that have considered the issue (the Eleventh, Seventh, Ninth and Second Circuits) have *not* limited the antitrust exemption to the reserve clause, but have adopted the view that the exemption broadly covers the “business of baseball.”<sup>2</sup> Only one federal district court<sup>3</sup> and one state supreme court<sup>4</sup> have explicitly limited the antitrust exemption to baseball’s reserve system. Two other federal district courts have considered the breadth of the “business of baseball” exemption, holding that the radio broadcasting of baseball games<sup>5</sup> and employment relations with umpires<sup>6</sup> are not “integral” to the business of baseball and thus not within the exemption. They do not, however, define the “business of baseball” or hold that it is limited to the reserve clause.<sup>7</sup>

<sup>1</sup> The reserve clause, “publicly introduced into baseball contracts in 1877,” confined “the player to the club that ha[d] him under the contract.” *Flood*, 407 U.S. at 259 n.1. The Court of Appeals for the District of Columbia in the *Federal Baseball* case described the reserve clause as follows: “Generally speaking, every player was required to contract with his club that he would serve it for one year, and would enter into a new contract ‘for the succeeding season at a salary to be determined by the parties to such contract.’ The quoted part is spoken of as the ‘reserve clause,’ and it is found, in effect, in the contracts of the minor league players, as well as in those of the major league players.” *Nat’l League of Prof. Baseball Clubs v. Federal Baseball Clubs of Baltimore*, 269 F. 681, 687 (D.C. Cir. 1920).

<sup>2</sup> *Major League Baseball v. Crist*, 331 F.3d 1177 (11th Cir. 2003); *Prof’l Baseball Schools & Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1086 (11th Cir. 1982); *Charles O. Finley & Co., Inc. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978); *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101 (9th Cir. 1974); *Salerno*, 429 F.2d at 1005 (2d Cir. 1970); *Portland Baseball Club, Inc. v. Baltimore Baseball Club, Inc.*, 282 F.2d 680 (9th Cir. 1960); *see also Triple-A Baseball Club Assocs. v. Northeastern Baseball, Inc.*, 832 F.2d 214, 216 n.1 (1st Cir. 1987) (noting the baseball exemption in a breach of contract case).

<sup>3</sup> *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993).

<sup>4</sup> *Butterworth v. Nat’l League of Prof’l Baseball Clubs*, 644 So.2d 1021 (Fla. 1994).

<sup>5</sup> *Henderson Broadcasting Corp. v. Houston Sports Ass’n, Inc.*, 541 F. Supp. 263, 265-72 (S.D. Tex. 1982).

<sup>6</sup> *Postema v. Nat’l League of Prof’l Baseball Clubs*, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992), *overruled on other grounds* by 998 F.2d 60 (2d Cir. 1993).

<sup>7</sup> *See Henderson*, 541 F. Supp. at 269 (“Radio broadcasting is not a part of the sport in the way in which players, umpires, the league structure and the reserve system are.”); *Postema*, 799 F. Supp. at 1489 (“It is thus clear that although the baseball exemption does immunize baseball from antitrust

San José filed suit against the Office of the Commissioner of Baseball and Allan Huber “Bud” Selig (collectively, “MLB”) alleging claims for violation of the Sherman Antitrust Act, California’s Cartwright Act, and state tort and unfair competition laws based on MLB’s failure to approve the Oakland Athletics Baseball Club’s (“the A’s”) proposed relocation from Oakland to San José. MLB moves to dismiss the City’s complaint on the basis that the business of baseball, including club relocation, has long been exempt from antitrust regulation. For the reasons explained below, this court concludes that: (1) the Supreme Court trilogy (*Federal Baseball*, *Toolson* and *Flood*) is not limited to MLB’s reserve system; (2) the longstanding antitrust exemption still encompasses all MLB decisions integral to the business of baseball; (3) the City’s state law claims based upon state antitrust and unfair competition law are preempted; and (4) the City’s state law tort claims are sufficiently pled to survive MLB’s motion to dismiss. Accordingly, the court GRANTS-IN-PART and DENIES-IN-PART MLB’s motion to dismiss the complaint.

### I. BACKGROUND

The Office of the Commissioner of Baseball, doing business as MLB, is an unincorporated association of thirty Major League Baseball Clubs, “organized into two leagues, the American League and the National League, with three divisions in each League.” Major League Const. (“ML Const.”) art. II, § 1, art. VIII, § 1, Compl. Ex. 4, Dkt. No. 1; *see also* current ML Const. at Dkt. No. 35-2. All thirty Clubs are “entitled to the benefits of” and “bound by” by the Major League Constitution (“ML Constitution”) and the rules adopted and promulgated by the Commissioner pursuant thereto. *Id.* art. I, art. IV, art. XI, § 3. With respect to Club relocation, the ML Constitution provides that “[t]he vote of three-fourths of the Major League Clubs” is required for the approval of “[t]he relocation of any Major League Club.” *Id.* art. V, § 2(b)(3).

The A’s is a Major League Baseball Club in the American League, Western Division. *Id.* art. VIII § 1. Pursuant to the Major League Constitution, the A’s “operating territory” is “Alameda

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challenges to its league structure and its reserve system, the exemption does not provide baseball with blanket immunity for anti-competitive behavior in every context in which it operates. The Court must therefore determine whether baseball’s employment relations with its umpires are ‘central enough to baseball to be encompassed in the baseball exemption.’” (quoting *Henderson*, 541 F. Supp. at 265)).



1 and Contra Costa Counties in California.” *Id.* art. VIII, § 8. The team was founded in Philadelphia,  
 2 Pennsylvania in 1901 as the “Philadelphia Athletics,” one of the American League’s eight charter  
 3 franchises. Compl. ¶ 47. In 1955, the team relocated to Kansas City and became the “Kansas City  
 4 Athletics.” *Id.* Just over a decade later, in 1968, the A’s moved to Oakland. *Id.* ¶ 48. The A’s  
 5 enjoyed tremendous success in the next two decades, winning three consecutive World  
 6 Championships in the 1970s; three American League Pennants in 1999, 1989 and 1990; and the  
 7 1989 World Series. *Id.* Today, the A’s remain in Oakland. Their home stadium is the “Oakland  
 8 Coliseum,” or “Coliseum,” which the team shares with the Oakland Raiders of the National Football  
 9 League. *Id.* ¶ 50.

10 Since 1990, however, “attendance at A’s games has plummeted.” *Id.* ¶ 51. The City alleges  
 11 various reasons for the low attendance: (1) the Coliseum is currently the fourth-oldest ballpark in  
 12 MLB; (2) according to the 2010 census, the Giants’ territory includes 4.2 million people and the A’s  
 13 territory only 2.6 million; and (3) the team is “heavily dependent on revenue sharing” with the  
 14 Raiders because they share the Coliseum. *Id.* ¶¶ 49-52. The City also alleges that the A’s are “one  
 15 of the most economically disadvantaged teams” in MLB because MLB “does not split team  
 16 revenues as evenly as other sports.” *Id.* ¶ 49.

17 For several years, the Athletics have considered possible alternative locations for their home  
 18 stadium, including Fremont (which ultimately failed in February 2009) and San José. Since 2009,  
 19 A’s owner Lew Wolff has focused the team’s relocation efforts on San José. In early 2009, the City  
 20 of San José issued an Economic Impact Analysis detailing the economic benefits of the proposed  
 21 A’s stadium in San Jose, which would consist of 13.36 acres near the Diridon train station and  
 22 would seat 32,000 fans. Compl. ¶¶ 68, 70 and Ex. 1. In March 2011, the RDA purchased six  
 23 parcels of land with the intent that that the property would be developed into a MLB ballpark. *See*  
 24 Option Agreement, Compl. Ex. 3.

25 The ML Constitution, however, currently designates San José as within the San Francisco  
 26 Giants’ operating territory. ML Const. art. VIII, § 8. Unlike the Los Angeles Dodgers and Los  
 27 Angeles Angels and the New York Mets and New York Yankees, which share certain operating  
 28 territories, the A’s and the Giants territories do not overlap. *Id.* Because San José is outside of the

A's operating territory, relocation requires a three-quarter majority approval by MLB's Clubs. *Id.* art. V, § 2(b)(3), art. VIII, § 8.<sup>8</sup> As such, Commissioner Selig allegedly asked the mayor of San José, Chuck Reed, to delay a public vote on whether the A's could purchase land and build a new stadium in San José. Compl. ¶ 73. The City also alleges that the Giants have "interceded to prevent the A's from moving to San José" based on the Giants' assertion that "if the [A's] were allowed to move there, it would undermine the Giants' investment in its stadium in San Francisco and marketing to fans." *Id.* ¶¶ 118, 121. Commissioner Selig, commenting on the territorial dispute, allegedly stated:

Wolff and the Oakland ownership group and management have worked very hard to obtain a facility that will allow them to compete into the 21st century. . . . The time has come for a thorough analysis of why a stadium deal has not been reached. The A's cannot and will not continue indefinitely in their current situation.

*Id.* ¶ 119.

Despite the ongoing dispute, on November 8, 2011, the San José City Council and the Athletics Investment Group entered into a two-year Option Agreement giving the A's the option to purchase the six parcels of land set aside by the RDA for the purposes of building the ballpark for a purchase price of \$6,975,227. Option Agreement 2, Compl. Ex. 3. The Athletics Investment Group paid \$75,000 for the initial two year option, which included the option to renew for a third year for an additional \$25,000. At oral argument, the City represented that the Athletics Investment Group recently paid the additional \$25,000 to extend the option for a third year. The City alleges that MLB has intentionally delayed approving the A's relocation for over four years, effectively preventing the A's from exercising its option to purchase the land set aside by the City under the Option Agreement and resulting in damages to the City in the form of lost revenue "reasonably expected under the Option Agreement and Purchase Agreement, respectively." Compl. ¶¶ 162-64. The City alleges that the territorial rights restrictions in the ML Constitution and MLB's failure to act on the territorial dispute restrains competition in the bay area baseball market, perpetuates the Giants' monopoly over the Santa Clara market, and creates anticompetitive effects that lead to

<sup>8</sup> Allegedly because the MLB is "hostile" to Club movement, only one MLB Club has relocated in the past 40 some years. Compl. ¶ 111 (In 2005, the Montreal Expos relocated to Washington D.C. and became the Washington Nationals.).

consumer harm in violation of federal and state antitrust laws. The complaint also brings claims under California's unfair competition laws and for tortious interference with San José's contractual relationships with the A's and its prospective economic advantage. MLB moves to dismiss all counts in the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

## II. MATERIALS CONSIDERED

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1989). Two exceptions exist: (1) the court may consider materials properly submitted as part of the complaint; and (2) the court may take judicial notice of facts that are "not subject to reasonable dispute," Fed. R. Evid. 201(b), including "matters of public record." *See Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001). There is no dispute that the court may consider the materials attached to the complaint. There is a dispute about the propriety of judicial notice.

MLB asks the court to take judicial notice of: San José City Council Resolution No. 74908 (Exhibit A); excerpts from the 1982 hearings before the Senate Judiciary Committee on Professional Sports Antitrust Immunity (Exhibit B); the October 29, 1997 Report of the Senate Judiciary Committee on the Curt Flood Act, S. Rep. 105-118 (Exhibit C); the California State Controller's March 2013 report titled "[RDA]: Asset Transfer Review January 1, 2011 through January 31, 2012" (Exhibit D); and a memorandum of the San Jose City Manager and San José [RDA] Executive Director bearing the subject line "Option Agreement for Sale of Property to Athletics Investment Group, LLC," dated October 24, 2011 (Exhibit E). Dkt. No. 26.

The City argues that judicial notice of Exhibit A (San José City Council Resolution No. 74908) is improper because the Resolution is unsigned, calling the authenticity of the document into question. Despite the unsigned nature of San José City Council Resolution No. 74908, the court concludes that document is a matter of public record and that its contents are not subject to reasonable dispute,<sup>9</sup> and thus deems judicial notice of the contents of the document appropriate.

With respect to Exhibits B and C (the legislative records), the City argues that the documents are offered for the sole purpose of legal argument and are thus improper. Similarly, the City argues

<sup>9</sup> The signed version of the Resolution is also publicly available through the City government's online archives, and it is identical to the unsigned version attached to the request for judicial notice.

1 that Exhibits D and E (City government report and memorandum) are offered solely to contest the  
2 validity of the Option Agreement and to argue that performance would require the A's to purchase  
3 additional parcels of land, respectively, both improper purposes.

4 The court concludes that the legislative histories, the Controller's Report and the RDA's  
5 Memorandum are all matters of public record not subject to reasonable dispute. Accordingly, the  
6 court takes judicial notice of Exhibits B-E. With respect to all exhibits, however, the court takes  
7 judicial notice "for the purpose of determining what statements are contained therein, not to prove  
8 the truth of the contents or any party's assertion of what the contents mean." *United States v. S.*  
9 *Cal. Edison Co.*, 300 F. Supp. 2d 964, 975 (E.D. Cal. 2004).

### 10 III. ANALYSIS

11 Quoting *Major League Baseball v. Butterworth*, 181 F. Supp. 2d 1316, 1331 (N.D. Fla.  
12 2001), MLB argues that: "[t]he business of baseball is exempt from the antitrust laws, as it has been  
13 since 1922, and as it will remain until Congress decides otherwise. Period." According to MLB, all  
14 of the City's claims are premised on the same alleged antitrust violations and all fail for this reason.  
15 The City counters that *Federal Baseball*, *Toolson* and *Flood* are limited to anticompetitive  
16 restrictions on players' abilities to negotiate their employment contracts, and as such, restraints on  
17 team relocation are not exempt from antitrust laws under the trilogy of Supreme Court cases. The  
18 City further asserts that once the scope of the exemption is properly cabined to player issues, all of  
19 its state law claims succeed. The City argues, however, that its unfair competition and tort claims  
20 would succeed even without any underlying antitrust violation. The court addresses the City's  
21 claims in turn.

#### 22 A. Sherman Act Claims

23 The City charges MLB with violations of the Sherman Antitrust Act, 15 U.S.C. §§ 1 and 2.  
24 The question is whether MLB's alleged restraints on the A's relocation are exempt from the City's  
25 antitrust claims. The issue boils down to whether *Federal Baseball*, *Toolson* and *Flood* ("the  
26 Trilogy") are limited to baseball's reserve system. Although the reasoning and results of those cases  
27 seem illogical today, they have survived for many years and are precedent that the court must  
28 follow.

## 1. The Trilogy and Related Supreme Court Cases

In *Federal Baseball*, petitioner Federal Baseball Club of Baltimore sued the National League and the American League (“the Major Leagues”) under the Sherman Antitrust Act alleging that the Major Leagues conspired to monopolize the baseball business by means of league structure and the reserve system. 259 U.S. at 207. The Supreme Court for the District of Columbia entered judgment for petitioner, but the Court of Appeals for the District of Columbia reversed on the basis that the Major Leagues “were not within the Sherman Act.” *Id.* at 208. The Supreme Court granted certiorari and affirmed judgment for the Major Leagues. *Id.* at 208-09. The Court first held that baseball qualifies as a business, specifically: “the business is *giving exhibitions of base ball* [sic], which are purely state affairs.” *Id.* at 208. The Court then held, however, that the business of baseball is not engaged in interstate commerce. *Id.* at 208-09 (Although “competitions must be arranged between clubs from different cities and States” to carry out the exhibitions, “the fact that . . . the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business.”). The Court held that any interstate activities were merely incidental to the state exhibitions, and thus “would not be called trade or commerce in the commonly accepted use of those words.” *Id.* at 209. Accordingly, the Court concluded that “the restrictions by contract that prevented the plaintiff from getting players to break their bargains [(i.e., the reserve system)] and the other conduct charged against the defendants were not an interference with commerce among the states.” *Id.*

Thirty years later, the Supreme Court revisited *Federal Baseball* for the first time in *Toolson*.<sup>10</sup> In *Toolson*, in a per curiam, one paragraph opinion, the Court upheld *Federal Baseball*:

<sup>10</sup> There were three petitioners in *Toolson*, all professional baseball players. Two of the petitioners originally filed separate actions in the Southern District of Ohio, each alleging injury based on the reserve system and certain restrictions “with respect to the sale of broadcasting rights for radio and television,” which deprived each player of “the reasonable value of his services and his opportunities for professional promotion.” *Kowalski v. Chandler*, 202 F.2d 413, 414 (6th Cir. 1953); *see also Corbett v. Chandler*, 202 F.2d 428, 428 (6th Cir. 1953) (summary affirmance citing to *Kowalski*). Petitioner Toolson originally filed suit in the Southern District of California, alleging, *inter alia*, that he was injured by MLB’s enforcement of his reserve clause and certain territorial restrictions, including those related to the media broadcasting of baseball exhibitions. *See Toolson v. New York Yankees*, 101 F. Supp. 93, 94 (S.D. Cal. 1951); *see also* Petitioner’s Opening Supreme Court Brief, *Toolson*, 346 U.S. 356, 1953 WL 78316, at \*5-\*9 (Sept. 16, 1953). The respective district courts decided for defendants, and the Sixth and Ninth Circuits affirmed. The Supreme Court granted certiorari in all three actions and decided them together in one opinion.

In [*Federal Baseball*], this Court held that the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws. Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. The present cases ask us to overrule the prior decision and, with retrospective effect, hold the legislation applicable. We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation. Without re-examination of the underlying issues, the judgments below are affirmed on the authority of [*Federal Baseball*], so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws.

*Toolson*, 346 U.S. at 356-57.

After *Toolson*, the Court faced the issue of whether other types of sport or leisure were also exempt from the antitrust laws under the same reasoning. The Court held that they were not. *United States v. Shubert*, 348 U.S. 222 (1955) (theatrical attractions), *United States v. Int'l Boxing Club*, 348 U.S. 236 (1955) (boxing), and *Radovich*, 352 U.S. 445 (1957) (football). In all three cases, the Court cabined the antitrust exemption to the “business of baseball.” *Shubert*, 348 U.S. at 227-30; *Int'l Boxing Club*, 348 U.S. at 242-43; *Radovich*, 352 U.S. at 450-51. In *Radovich*, the Court considered *Federal Baseball*, *Toolson*, *Shubert* and *International Boxing* and, in line with those cases, continued to characterize baseball’s exemption as broadly applicable to “the business of organized professional baseball.” *Radovich*, 352 U.S. at 451. In *Radovich*, the Court admitted that any distinction between the interstate nature of football and baseball may be “unrealistic, inconsistent, or illogical,” but nevertheless upheld the distinction on the basis of *stare decisis*, concluding that the proper remedy was “by legislation and not by court decision.” *Id.* at 452.

In 1972, the Court again had the opportunity to overrule *Federal Baseball* and *Toolson* in *Flood*. In *Flood*, petitioner, professional baseball player Curtis Flood, was traded to another major league club without his previous knowledge or consent. 407 U.S. at 264-65. The Commissioner of Baseball denied Flood’s request to be made a free agent. *Id.* at 265. Flood brought suit against the Commissioner of Baseball, the presidents of the two major leagues, and the major league clubs challenging professional baseball’s reserve clause under, *inter alia*, the Sherman Antitrust Act, under New York’s and California’s antitrust laws, and common law. *Flood*, 316 F. Supp. 271, 272 (S.D.N.Y. 1970). The District Court for the Southern District of New York dismissed the federal



antitrust claims under *Federal Baseball* and dismissed the state law claims on the basis that there must be “uniformity in any regulation of baseball and its reserve system” and, as such, any conflicting state regulation would violate the Commerce Clause. *Id.* at 279-80. The Second Circuit affirmed. 443 F.2d 264, 267-68 (2d Cir. 1971). On certiorari, the Supreme Court affirmed the dismissal of all claims. 407 U.S. at 285.

In so affirming, the Supreme court did overturn *Federal Baseball* in one respect, holding that “[p]rofessional baseball is a business and it *is engaged in interstate commerce.*” 407 U.S. at 282 (emphasis added). Despite officially recognizing that, unlike in 1922, the business of baseball was then “in interstate commerce,” the Court held that, based on Congress’s inaction for “half a century” following *Federal Baseball*, Congress intended for baseball to remain outside the scope of antitrust regulation:

Congress as yet has had no intention to subject baseball’s reserve system to the reach of the antitrust statutes. This, obviously, has been deemed to be something other than mere congressional silence and passivity.

*Id.* at 282-83. Although the Court describes baseball’s exemption as an “aberration,”<sup>11</sup> the Court reaffirmed that the exemption is “an established one . . . that has been recognized not only in *Federal Baseball* and *Toolson*, but in *Shubert*, *International Boxing*, and *Radovich*, as well, a total of five consecutive cases in this Court.” *Id.* at 282.

Because *Flood* explicitly overrules *Federal Baseball*’s holding that the business of the exhibition of baseball is purely a state activity, the City argues that *stare decisis* only requires this court to adhere to an antitrust exemption limited to the reserve clause, which was at issue in *Flood*.<sup>12</sup> This court examines the decisions that have analyzed the issue post-*Flood*.

<sup>11</sup> “With its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly. *Federal Baseball* and *Toolson* have become an aberration confined to baseball.” *Id.* at 282.

<sup>12</sup> While *Federal Baseball* and *Toolson* did address baseball’s reserve system, *Federal Baseball* also addressed league structure. 259 U.S. at 207. Similarly, *Toolson* also addressed certain territorial restrictions and issues of league structure. See 101 F. Supp. at 94 (district court decision); Petitioner’s Opening Supreme Court Brief, 1953 WL 78316, at \*5-\*9 (outlining the various allegations). Accordingly, those opinions are not properly characterized as limited on their facts to the reserve clause.

## 2. Circuit Court Decisions Post-Flood

At the circuit court level, the Ninth, Seventh and Eleventh Circuits have addressed the issue post-*Flood*, although the Ninth Circuit did so without substantial analysis. Two years after *Flood*, in 1974, the Ninth Circuit considered whether MLB's relocation into formerly minor league territory violated Professional Baseball Rule 1(a) or the antitrust laws. *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101, 1102-03 (9th Cir. 1974) (per curiam). In one sentence, the court upheld the district court's dismissal of the antitrust claims: "Finally, the plaintiff's claim for relief under the antitrust laws was properly dismissed." *Id.* at 1103 (citing *Flood*, 407 U.S. 258).

In 1978, the Seventh Circuit considered whether restraints on the A's ability to sell A's contractual rights in three players to other teams violated federal antitrust laws. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 530 (7th Cir. 1978). The court provided substantial analysis and held that, notwithstanding "two" references in *Flood* to the reserve clause, it was clear from *Federal Baseball, Toolson, Flood* and *Radovich* that the Court "intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws." *Id.* at 541.

In 1982, the Eleventh Circuit considered federal antitrust claims based on, *inter alia*, "the player assignment system and the franchise location system" and "the Carolina League's rule requiring member teams to only play games with other teams that also belong to the National Association." *Profl Baseball Schools & Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1085 (11th Cir. 1982). The Eleventh Circuit did not squarely address whether the Supreme Court trilogy was limited to the reserve clause, but implicitly denied any such argument by upholding the challenged conduct—which included the "franchise location system" and certain territorial restrictions on the games—as exempt from antitrust regulation under *Federal Baseball, Toolson* and *Flood*. *Id.* at 1086. The court reasoned that "[e]ach of the activities appellant alleged as violative of the antitrust laws plainly concerns matters that are *an integral part of the business of baseball*" and thus affirmed the dismissal. *Id.* (emphasis added).<sup>13</sup>

<sup>13</sup> The Eleventh Circuit reaffirmed this view in *Major League Baseball v. Crist*, 331 F.3d 1177, 1179 (11th Cir. 2003), affirming *Major League Baseball v. Butterworth*, 181 F. Supp. 2d 1316 (N.D. Fla. 2001), discussed *infra*.

The City relies on *Twin City Sportservice, Inc. v. Charles O Finley & Co., Inc.*, 676 F.2d 1291 (9th Cir. 1982), for the proposition that baseball's antitrust exemption is limited. In *Twin City*, the issue was whether a concessioner's long-term, exclusive contract to provide concessions for the A's (entered into in 1950 when the A's were in Philadelphia) constituted an unreasonable restraint on trade. *Id.* at 1296. The Ninth Circuit considered the antitrust issue without mentioning baseball's exemption from antitrust laws because the exemption was never at issue in the case. *Twin City* does not provide support for the City's position.

### 3. District Court Decisions Post-Flood

#### a. Issues Merely Related to, but Not Integral to, Baseball

Two district courts have concluded that certain aspects of baseball, which are merely related to, but not *essential* to, the business of baseball, including the radio broadcasting of baseball games and umpire employment issues, are not subject to the antitrust exemption. *See Henderson Broadcasting Corp. v. Houston Sports Ass'n, Inc.*, 541 F. Supp. 263, 265-72 (S.D. Tex. 1982) (radio broadcasting); *Postema v. Nat'l League of Prof'l Baseball Clubs*, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992) (umpire employment issues), *overruled on other grounds by* 998 F.2d 60 (2d Cir. 1993). In *Postema*, the district court held:

It is thus clear that although the baseball exemption does immunize baseball from antitrust challenges to its *league structure and its reserve system*, the exemption does not provide baseball with blanket immunity for anti-competitive behavior in every context in which it operates. The Court must therefore determine whether baseball's employment relations with its umpires are "central enough to baseball to be encompassed in the baseball exemption."

*Postema*, 799 F. Supp. at 1489 (citing *Henderson*, 541 F. Supp. at 265) (emphasis added); *but see Salerno*, 429 F. 2d at 1004-05 (affirming dismissal of antitrust claims premised on the wrongful discharge of MLB umpires based on both (1) the binding effect of *Federal Baseball* and *Toolson* and (2) the plaintiffs' failure to allege "restrictive trade practices directed at umpires"). The *Postema* court distinguished *Salerno* on the basis that *Salerno* was decided before *Flood* "anchored the baseball exemption to the sport's 'unique characteristics and needs.'" *Postema*, 799 F. Supp. at 1489 (quoting *Flood*, 407 U.S. at 282). Thus, the court concluded that, "[u]nlike the *league structure* or the reserve system, baseball's relations with non-players are not a *unique characteristic*

1 or need of the game. Anti-competitive conduct toward umpires is not an *essential part of baseball*  
2 and in no way enhances its vitality or viability.” *Id.* (emphasis added). Even under this more  
3 narrow view of the exemption, however, there can be no dispute that team relocation is a “league  
4 structure” issue and an “essential part of baseball” that would fall within the exemption post-*Flood*.  
5 See *Profl Baseball Schools & Clubs*, 693 F.2d at 1085 (describing “franchise location” as “plainly  
6 [a] matter[] that [is] an integral part of the business of baseball” (emphasis added)).

7 **b. Cases Relating to the Giant’s Attempted Relocation to Tampa Bay**

8 A series of cases in the 1990s related to the San Francisco Giant’s attempted relocation to  
9 Tampa Bay, Florida resulted in differing opinions regarding the scope of baseball’s antitrust  
10 exemption. In 1993, in *Piazza v. Major League Baseball*, potential investors (from Pennsylvania)  
11 brought claims for constitutional violations, federal antitrust violations under the Sherman Act, and  
12 state law claims, on the basis that MLB impeded their efforts to purchase the San Francisco Giants  
13 and relocate the team to Tampa Bay, Florida. 831 F. Supp. 420, 421 (E.D. Pa. 1993). Judge Padova  
14 concluded, in a very lengthy opinion, that once the Court in *Flood* held that the business of baseball  
15 was in interstate commerce, the Court “stripped from *Federal Baseball* and *Toolson* any  
16 precedential value those cases may have had beyond the particular facts there involved, i.e., the  
17 reserve clause.” *Id.* at 436.

18 In 1994, the Florida Supreme Court considered the same issue in *Butterworth v. National*  
19 *League*, 644 So. 2d 1021 (Fla. 1994). The Florida Attorney General (“AG”) initiated antitrust civil  
20 investigative demands (“CIDs”) related to the same investors’ unsuccessful effort to relocate the  
21 San Francisco Giants to Tampa Bay, Florida. 644 So. 2d at 1022. Despite finding “no question that  
22 *Piazza* is against the great weight of federal cases regarding the scope of the exemption,” the Florida  
23 Supreme Court followed *Piazza* and upheld the AG’s initiation of the CIDs. *Id.* at 1025 and n.8.

24 Then, in 2001, in *Major League Baseball v. Butterworth*, MLB sued the Florida AG in the  
25 Northern District of Florida seeking declaratory and injunctive relief for the AG’s issuance of  
26 another set of CIDs with respect to MLB’s alleged interference with the Giant’s relocation. Judge  
27 Hinkle expressly considered whether *Flood* limited *Federal Baseball* to the reserve clause, and  
28

1 rejected *Piazza* and the Florida Supreme Court’s approach. *Butterworth*, 181 F. Supp. 2d 1316,  
2 1326-31 (N.D. Fla. 2001). The court held:

3 In sum, although in *Flood* the Court was asked to overrule *Federal*  
4 *Baseball* and *Toolson*, the Court explicitly declined to do so, holding  
5 instead that the business of baseball was exempt from the antitrust laws,  
6 just as *Federal Baseball* and *Toolson* had said. The Court reached this  
7 result not based on any original antitrust analysis but instead because of its  
8 explicit determination that any change should come from Congress.

9 *Id.* at 1330. The district court characterized *Flood* as “not so much a decision about antitrust law as  
10 about the appropriate role of the judiciary within our constitutional system.” *Id.* The district court  
11 also held that collateral estoppel did not attach to the Florida Supreme Court’s decision permitting  
12 the CIDs because there was a lack of identity of parties between the two cases, namely the fact that  
13 the state action had no binding effect on MLB or the Commissioner, and the different issues in each  
14 case. *Id.* at 1336-37. On appeal, the Eleventh Circuit affirmed, holding that the business of baseball  
15 is exempt from antitrust regulation, and also concluding that “the federal exemption preempts state  
16 antitrust law.” *Crist*, 331 F.3d at 1179.

17 It is against this backdrop that the court considers whether MLB’s alleged conduct in this  
18 case is immune from antitrust regulation.

#### 19 4. Application

20 This court agrees with the other jurists that have found baseball’s antitrust exemption to be  
21 “unrealistic, inconsistent, or illogical.” *Radovich*, 352 U.S. at 452. The exemption is an  
22 “aberration” that makes little sense given the heavily interstate nature of the “business of baseball”  
23 today. *See Flood*, 407 U.S. at 282. Despite this recognition, the court is still bound by the Supreme  
24 Court’s holdings, and cannot conclude today that those holdings are limited to the reserve clause.  
25 *Flood* explicitly declined to overrule *Federal Baseball* and *Toolson*, holding: “we adhere once again  
26 to *Federal Baseball* and *Toolson* and to their application to *professional baseball*.” *Id.* at 284  
27 (emphasis added). *Federal Baseball* and *Toolson* are broadly decided, i.e., the cases are *not* limited  
28 to the reserve clause either by the underlying facts (which include other claims related to, *inter alia*,  
territorial restrictions on media broadcasting) or the language used in the holdings. The court  
disagrees with the Eastern District of Pennsylvania’s opinion in *Piazza* that *Federal Baseball*,

*Toolson* and *Flood* can be limited to the reserve clause because the reserve clause is never referenced in any of those cases as part of the Court’s holdings. While the Court does reference MLB’s reserve system in *Flood*, the reserve system is the only alleged anticompetitive restraint on trade in that case. *See Flood*, 407 U.S. at 260-61, 265-66. Thus, in *Flood*, the court naturally held that, under *Federal Baseball* and *Toolson*, the reserve system, a part of the broader “business of baseball,” continued to enjoy exemption from the antitrust laws. *See id.* at 282-83. The Court’s recognition and holding in *Flood* that the business of baseball is now in interstate commerce cannot override the Court’s ultimate holding that Congressional inaction (at that time for half a century, but now for now over 90 years) shows Congress’s intent that the judicial exception for “the business of baseball” remain unchanged. *See id.* The Supreme Court is explicit that “if any change is to be made, it [must] come by legislative action that, by its nature, is only prospective in operation.” *Id.* at 283.

Since *Flood*, Congress did take legislative action, passing the Curt Flood Act of 1998 (“Act”), codified at 15 U.S.C. § 26b. The Act provides:

Subject to subsections (b) through (d) of this section, the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

15 U.S.C. § 26b(a). Subsection (b), however, provides that “[n]o court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a).” *Id.* § 26b(b). Subsection (b) further provides that the Act “does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to . . . (3) . . . franchise expansion, location or relocation.” *Id.* § 26b(b)(3) (emphasis added). Accordingly, despite the opportunity to do so, Congress chose not to alter the scope of the exemption with respect to any issues other than those “directly relating to or affecting employment of major league baseball players.” *Id.* § 26b(a)-(b); *see also* Sen. Rep. No. 105-118, at 6 (1997) (“With regard to contexts,



actions or issues outside the scope of subsection 27(a) . . . , the law as it exists today is not changed by this bill.”). The Curt Flood Act provides further support for the Court’s holding in *Flood* that Congress does not intend to change the longstanding antitrust exemption for “the business of baseball” with respect to franchise relocation issues. 15 U.S.C. § 26b(a)-(b); *accord Morsani v. Major League Baseball*, 79 F. Supp. 2d 1331, 1336 n.12 (M.D. Fla. 1999) (“Congress explicitly preserved the exemption for all matters ‘relating to or affecting franchise expansion, location or relocation’ . . . . Congress’ preservation of the broadest aspects of the antitrust exemption in this recent legislation casts in sharp relief the misdirection in *Butterworth*, 644 So.2d 1021 (Fla. 1994).”).

For these reasons, the court concludes that the federal antitrust exemption for the “business of baseball” remains unchanged, and is not limited to the reserve clause. Although not endorsing the more narrow tests from *Henderson* and *Postema*, even applying those tests, in contrast to the radio broadcasting or umpire employment issues in those cases, the alleged interference with a baseball club’s relocation efforts presents an issue of league structure that is “integral” to the business of baseball, and thus falls squarely within the exemption. *See Prof’l Baseball Schools & Clubs*, 693 F.2d at 1086.

The court holds that MLB’s alleged interference with the A’s relocation to San José is exempt from antitrust regulation. Accordingly, the court dismisses the City’s Sherman Act claims.

### **B. Antitrust Standing and Injury**

MLB further argues that dismissal of the antitrust claims is proper because the City does not have standing under sections 4 or 16 of the Clayton Act. *See* 15 U.S.C. § 15(a) (“section 4” of the Act) (conferring standing for the recovery of treble damages to “any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws . . . .”); *id.* § 26 (“section 16” of the Act) (permitting claims for injunctive relief “against threatened loss or damage by a violation of the antitrust laws”). “[T]he standing requirements under [section] 16 of the Clayton Act are broader than those under [section] 4 of the Act.” *City of Rohnert Park v. Harris*, 601 F.2d 1040, 1044 (9th Cir. 1979). The City asserts that it possesses standing to bring claims under section 4, 15 U.S.C. § 15(a), based on “direct injury to their property, i.e., the Diridon

Redevelopment Project Area,” and under, section 16, 15 U.S.C. § 26 based on “an existing threat to their ability to compete for relocation of the [A’s] to San José.” Opp’n 20, 21, Dkt. No. 28.

To state a claim for antitrust injury under section 4, the City must allege “(1) unlawful conduct, (2) causing an injury to the plaintiff, (3) that flows from that which makes the conduct unlawful, and (4) that is of the type the antitrust laws were intended to prevent.” *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190 F.3d 1051, 1055 (9th Cir. 1999); *see also Associated Gen. Contractors v. Cal. State Council of Carpenters*, 459 U.S. 519, 535-45 (1983). Injury that has not yet occurred, indirect, or merely speculative is generally insufficient to give rise to standing under section 4 of the Clayton Act. *See Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 111 (1986); *Datagate, Inc. v. Hewlett-Packard Co.*, 941 F.2d 864, 869-70 (9th Cir. 1991); *Eagle v. Star-Kist Foods, Inc.*, 812 F.2d 538, 542 (9th Cir. 1987). Here, the alleged economic injury resulting from the A’s not relocating to San José has not yet occurred, and depends on an assumption that future events will take place, including that: (1) the A’s choose to make the move and exercise the Option Agreement; (2) the City can legally perform the Option Agreement; and (3) the A’s can obtain financing, regulatory approvals, and ultimately build the stadium. Accordingly, the City lacks standing to assert an antitrust claim for treble damages under section 4 of the Clayton Act.

“However, section 16 of the Clayton Act, 15 U.S.C. § 26, ‘invokes traditional principles of equity and authorizes injunctive relief upon the demonstration of *threatened* injury.’” *Datagate*, 941 F.2d at 869 (quoting *Zenith Radio Corp. v. Hazeltine Research*, 395 U.S. 100, 130 (1969) (emphasis added)). “To have standing under [section 16], a plaintiff must show (1) a threatened loss or injury cognizable in equity (2) proximately resulting from the alleged antitrust violation.” *Rohnert Park*, 601 F.2d at 1044. In *Rohnert Park*, plaintiff, the City of Rohnert Park, in an effort to develop a regional shopping center, designated certain city land as a commercial zone suitable for development. *Id.* at 1042-43. The City of Rohnert Park owned two parcels within that commercial zone. *Id.* at 1043. Defendants decided to construct a regional shopping center in the neighboring town of Santa Rosa as part of an urban renewal project, and the City of Rohnert Park alleged, *inter alia*, antitrust violations under sections 1 and 2 of the Sherman Act based on defendants’ “attempt to monopolize retail merchandise space in the Santa Rosa trade area.” *Id.* at 1042-43. The Ninth

Circuit held that Rohnert Park failed to allege an injury cognizable in equity because the City's proprietary interest in the commercial zone was merely speculative (i.e., it was not clear that the two parcels of land owned by the City would have actually been a part of a shopping center because part of the property was designated for non-commercial purposes, including a library and a waste water facility). *Id.* at 1044-45. Even if Rohnert Park did have a property interest, the court held that Rohnert Park failed to show proximate causation because it did not "ma[k]e a sufficient showing that, absent the alleged antitrust violations by appellees, its commercial area would have been selected as a site for shopping center development." *Id.* at 1045.<sup>14</sup> The court reasoned that Rohnert Park could not rely on the "remote possibility, unsubstantiated by allegations of fact, that their situation might have been better had respondents acted otherwise." *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 507 (1975)).

Unlike in *Rohnert Park*, where the city's property interest was speculative, here, the complaint alleges that the City of San José owns the parcels of land set aside for the A's Stadium pursuant to the Option Agreement (the "Diridon land"). *See* Comp. ¶ 75. Also unlike in *Rohnert Park*, where there was no indication that the Rohnert Park would have been selected for the urban renewal project but for some antitrust violation, here, the A's have already selected the Diridon land as the prospective site for a new stadium.<sup>15</sup> The allegations in the complaint, taken as true, along with the fact that the A's have elected to extend the option for a third year, indicate that the A's very seriously wish to relocate to San José, and would do so but for MLB's alleged antitrust violation.

Although the court finds that the City may have standing to sue for injunctive relief, there is still a question as to whether the City's claimed injury to the Diridon property would sufficiently state an injury in the relevant market. *See Cargill*, 479 U.S. at 111-13 (holding that that a plaintiff seeking injunctive relief under section 16 of the Clayton Act must also allege a threat of antitrust

<sup>14</sup> The court also held that political subdivision, including cities, cannot sue "as *Parens patriae* on behalf of its property owners, taxpayers, and inhabitants who might be injured by the loss of investment profits and tax revenues," but "may, however, 'sue to vindicate such of their own proprietary interests as might be congruent with the interests of their inhabitants.'" *Id.* at 1044 (quoting *In re Multidistrict Vehicle Air Pollution M. D. L. No. 31*, 481 F.2d 122, 131 (9th Cir. 1973)).

<sup>15</sup> MLB argues that the A's could relocate to another city within the club's operating territory. But, the complaint alleges that the A's have already attempted to do so, and failed, at least in Fremont. It is unrealistic, at this point, that the A's would voluntarily *choose* another city over San José given the efforts that the A's have already expended to negotiate the Option Agreement with San José.

injury “of the type the antitrust laws were designed to prevent and that flows from that which makes defendants’ acts unlawful”); *McCoy v. Major League Baseball*, 911 F. Supp. 454, 458 (W.D. Wash. 1995) (holding that baseball fans do not have section 4 standing because “the fans’ damages do not arise out of the allegedly illegal conduct that the antitrust laws are intended to remedy”). The court need not decide this issue, however, because the court dismisses the antitrust claims on the basis of the federal antitrust exemption for the business of baseball.

### C. Cartwright Act Claims

The City also charges MLB with violations of California’s Cartwright Act, Cal. Bus. & Prof. Code § 16700 et seq. In *Flood*, the Supreme Court upheld the lower courts’ dismissals of all related state and common law claims on the grounds that “national uniformity is required in any regulation of baseball and its reserved [sic] system” and that “the Commerce Clause precludes the application here of state antitrust law.” 407 U.S. at 284-85 (internal quotations and alterations omitted); *see Flood*, 316 F. Supp. at 280 (“As we see it, application of various and diverse state laws here would seriously interfere with league play and the operation of organized baseball.”); *Flood*, 443 F.2d at 268 (“[A]s the burden on interstate commerce outweighs the states’ interest in regulating baseball’s reserve system, the Commerce Clause precludes the application here of state antitrust law.”); *see also Crist*, 331 F.3d at 1179 (“[W]e hold that the federal exemption preempts state antitrust law.”); *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 611 (7th Cir. 1997) (explaining that *Flood* is an “isolated exception” in “a field in which Congress has *not* sought to replace state with federal law.”).

The City argues that the cited cases, except for *Crist*, are limited to labor matters and inapplicable to team relocation issues. But, this court rejected that distinction, holding that the federal antitrust exemption extends beyond player issues, to team relocation actions. Thus, these cases are on point. In *Partee v. San Diego Chargers Football Co.*, the California Supreme Court explicitly adopted the reasoning in *Flood* and held that California’s Cartwright Act does not apply to the interstate activities of professional football:

No case has been found applying state antitrust laws to the interstate activities of professional sports. Professional football is a nationwide business structure essentially the same as baseball. Professional football’s teams are dependent upon

the league playing schedule for competitive play, *just as in baseball*. . . . We are satisfied that national uniformity required in regulation of baseball and its reserve system is likewise required in the player-team-league relationships challenged by Partee and that *the burden on interstate commerce outweighs the state interests in applying state antitrust laws to those relationships*.

34 Cal. 3d 378, 384-85 (1983) (emphasis added). This court follows the Supreme Court in *Flood*, the Eleventh Circuit in *Crist*, and the California Supreme Court in *Partee*, and dismisses the City's Cartwright Act claims under the Commerce Clause. Allowing the state claims to proceed would "prevent needed national uniformity in the regulation of baseball." *Butterworth*, 181 F. Supp. 2d at 1333.

#### **D. State Unfair Competition Claims**

The City also asserts claims under California's Unfair Competition Laws ("UCL"), Cal. Bus. & Prof. Code § 17200 et seq.<sup>16</sup> California law requires a plaintiff to prove an "unlawful, unfair or fraudulent business act or practice." *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999). The City alleges UCL violations based on both "unlawful" and "unfair" conduct. The unlawful or unfair conduct alleged is the same conduct that underlies the City's antitrust claims: MLB's alleged interference with the A's relocation to San José by delaying any relocation approval decision. The court held these allegations to be insufficient to state a claim under the Sherman Act, and thus the unlawful competition claims necessarily fail.

California law defines "unfair competition" as "conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition." *Cel-Tech*, 20 Cal. 4th at 187. Where the alleged conduct does not violate the antitrust laws, a claim based on *unfair* conduct cannot survive. *DocMagic, Inc. v. Ellie Mae, Inc.*, 745 F. Supp. 2d 1119, 1147 (N.D. Cal. 2010) ("[Plaintiff] has not alleged facts showing that

<sup>16</sup> Although state law creates the City's causes of action, the court appears to have federal question jurisdiction over the UCL claims because entitlement to relief is necessarily predicated on the resolution of a substantial federal antitrust question. *See Franchise Tax Bd. of State of Cal. v. Const. Laborers Vacation Trust for So. Cal.*, 463 U.S. 1, 14 (1983) (superseded by statute on other grounds) ("Even though state law creates appellant's causes of action, its case might still 'arise under' the laws of the United States if a well-pleaded complaint established that its right to relief under state law *requires resolution of a substantial question of federal law in dispute between the parties*." (emphasis added)); *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 841-43 (9th Cir. 2004).

[Defendant]’s conduct violated the Sherman Act . . . . As a result, any claims [plaintiff] might be asserting under the UCL’s unfair prong *necessarily fail as well.*” (emphasis added)); *Chavez v. Whirlpool Corp.*, 93 Cal. App. 4th 363, 375 (2001) (“If the same conduct is alleged to be both an antitrust violation and an ‘unfair’ business act or practice for the same reason—because it unreasonably restrains competition and harms consumers—the determination that the conduct is not an unreasonable restraint of trade necessarily implies that the conduct is not ‘unfair’ toward consumers.”); *LiveUniverse, Inc. v. MySpace, Inc.*, 304 Fed. Appx. 554, 557 (9th Cir. 2008) (same). Even considering the unfair competition claim, the court does not find that the alleged conduct—an unwarranted and intentional delay in approving the A’s relocation request—can arguably violate the “policy or spirit” of the antitrust laws where MLB remains exempt from antitrust regulation. “To permit a separate inquiry into essentially the same question under the unfair competition law would only invite conflict and uncertainty and could lead to the enjoining of procompetitive conduct.” *Chavez*, 93 Cal. App. 4th at 375. Accordingly, the court dismisses the City’s UCL claims.

#### **D. Tortious Interference Claims**

Finally, the City asserts claims for tortious interference with prospective economic advantage and tortious interference with contract.<sup>17</sup> “[T]he tort of interference with contract is merely a species of the broader tort of interference with prospective economic advantage.” *Buckaloo v. Johnson*, 14 Cal. 3d 815, 823 (1975), *overruled on other grounds by Della Penna v. Toyota Motor Sales, U.S.A.*, 11 Cal. 4th 376, 393 n.5 (1995). As such, the broader tort of interference with prospective economic advantage does not require the existence of a valid contract. *Id.* at 826-27.

Because interference claims are not exclusively premised on the alleged violation of antitrust law, but are also based on MLB’s alleged delay in rendering a relocation decision in frustration of the Option Agreement, the court considers these claims independently of the antitrust claims.

<sup>17</sup> The court exercises supplemental jurisdiction over these state law claims pursuant to 28 U.S.C. § 1367(a).



## 1. Whether MLB Must be a “Stranger” or “Outsider” to the Contract

The California Supreme Court has held that these interference torts can be brought only against non-contracting parties. *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 514 (1994) (“[C]onsistent with [the state’s] underlying policy of protecting the expectations of contracting parties against frustration by outsiders who have no legitimate social or economic interest in the contractual relationship, the tort cause of action for interference with contract *does not lie against a party to the contract.*” (second emphasis added)). The parties dispute whether, in that case, the California Supreme Court also required the allegedly interfering parties to be “outsiders” to or “strangers” to the contract, i.e., parties without any economic interest in the contract. In *Woods v. Fox Broadcasting Sub., Inc.*, 129 Cal. App. 4th 344, 352-53 (2005), the California Court of Appeals held that the rule from *Applied Equipment* does not require anything other than that the accused interfering party be a non-contracting party, rejecting the Ninth Circuit’s statements to the contrary in *Marin Tug & Barge, Inc. v. Westport Petroleum, Inc.*, 271 F.3d 825, 832-34 (9th Cir. 2001) (requiring the accused interfering party to be a “stranger” to the contract). In *G&C Auto Body Inc. v. GEICO Gen. Ins. Co.*, 552 F. Supp. 2d 1015, 1019-21 (N.D. Cal. 2008), the Northern District of California recently followed *Woods* and rejected *Marin Tug* on this point. In light of *Woods*, the California Supreme Court would likely reject the “stranger” test from *Marin Tug*. Accordingly, the court declines to dismiss the claims on this basis. MLB is not a party to the contract and thus satisfies the *Applied Equipment* requirement.

## 2. Tortious Interference with Prospective Economic Advantage

To prove a claim of tortious interference with prospective economic advantage in California, a plaintiff must set forth the following elements: “(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant’s knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant.” *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153 (2003) (quotation omitted). With respect to the third element, “a plaintiff seeking to recover for alleged interference with prospective economic relations has the

burden of pleading and proving that the defendant's interference was wrongful by some measure beyond the fact of interference itself." *Della Penna*, 11 Cal. 4th at 392-93 (1995) (internal quotation omitted); *Korea Supply Co.*, 29 Cal. 4th at 1154 (clarifying that this requirement is part of the third element of the test and holding that, under the third element, specific intent is not required). Unlike a claim for tortious interference with contract, where "intentionally interfering with an existing contract is 'a wrong in and of itself,' . . . intentionally interfering with a plaintiff's prospective economic advantage is not." *Korea Supply Co.*, 29 Cal. 4th at 1158 (quoting *Quelimane Co. v. Stewart Title Guar. Co.*, 19 Cal. 4th 26, 56 (1998)). For this reason, a claim for tortious interference with prospective economic advantage requires an allegation of an independently wrongful act. *See id.* In *Korea Supply Company*, the California Supreme Court defined an independently wrongful act as one that "is *unlawful*, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." 29 Cal. 4th at 1159 (emphasis added).

Here, because the court has already concluded that there was no unlawful act under the antitrust laws (or unfair competition laws), the only independently wrongful act could be tortious interference with contract, if there is, which is discussed below.

### 3. Tortious Interference with Contract

As discussed above, "[b]ecause interference with an existing contract receives greater solicitude than does interference with prospective economic advantage . . . , it is not necessary that the defendant's conduct be wrongful apart from the interference with the contract itself." *Quelimane*, 19 Cal. 4th at 55 (internal citation omitted). Thus, the absence of an antitrust violation or otherwise unlawful anticompetitive action does not necessarily foreclose this claim.

To state a cause of action for intentional interference with contractual relations, however, the City must allege: "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126 (1990).

1 MLB argues that the complaint fails to allege the fourth and fifth elements of “breach or  
2 disruption” and “resulting damage.” The City counters that the MLB Relocation Committee’s delay  
3 in deciding whether to approve the A’s relocation for over four years directly caused a disruption of  
4 the A’s ability to execute the Option Agreement and disrupted any future negotiation of a purchase  
5 agreement, presumably causing damage to the City. *See* Opp’n 18; Compl. ¶ 162.

6 The fourth element of “breach or disruption” does not require an allegation of “an actual or  
7 inevitable breach of contract” but may be satisfied with allegations that “plaintiff’s performance  
8 [has been made] made more costly or more burdensome.” *Id.* at 1129. At the time the Option  
9 Agreement was negotiated, both parties were aware that MLB might or might not approve the A’s  
10 relocation. *See* Compl. ¶ 73 (“San José Mayor Chuck Reed called for a public vote on whether the  
11 [A’s] could purchase land and build a new stadium for the [A’s] in San José. However at  
12 Commissioner Selig’s request, Mayor Reed delayed the vote pending the MLB Relocation  
13 Committee’s determination of the A’s—Giants territorial dispute.”). Despite this knowledge, it is  
14 reasonable to infer that the A’s and the City entered into the Option Agreement with the  
15 understanding that MLB would return a relocation decision within the two year term of the contract.

16 The court finds that the complaint sufficiently alleges a “disruption” of the contract because,  
17 here, the A’s are unable to exercise the option due to MLB’s delay in conducting the vote pursuant  
18 to the MLB Constitution to approve or deny relocation. By asking the City to delay on a public vote  
19 on the stadium, the City was justified in assuming that MLB would make a decision within a  
20 reasonable time which it has not. Regardless of whether MLB ultimately approves or denies the  
21 relocation request—and the court has concluded that it is within MLB’s authority to decide either  
22 way—the A’s were recently forced by MLB’s delay to extend the Option Agreement for another  
23 year, or lose the option. As a result of MLB’s delay, the A’s incurred an additional \$25,000 expense  
24 to renew the option, and the City is left waiting another year to sell the land set aside for the stadium  
25 in question. Fact questions remain regarding the City’s damages resulting from the alleged  
26 interference. The court cannot say at this stage that the City has incurred no damages owing to  
27 MLB’s frustration of the contract. Although MLB’s frustration of the Option Agreement is not an  
28 antitrust violation, MLB is nonetheless aware of the Option Contract and has engaged in acts (or

rather, has failed to engage a vote pursuant to the MLB Constitution) indicating an intent to frustrate the contract. The court concludes that the allegations in the complaint are sufficient to state a claim for tortious interference with contract.<sup>18</sup> The alleged tortious interference with contract is an independently unlawful act sufficient to support the City's tortious interference with prospective economic advantage claim, although the claims may be duplicative.

#### IV. ORDER

For the foregoing reasons, MLB's motion to dismiss the Sherman Act claim and the state claims for violation of the Cartwright Act and for unfair competition are granted without leave to amend. Although leave to amend is generally given after the initial granting of a motion to dismiss for failure to state a claim, leave may be denied if amendment would be futile. *See, e.g., Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). Here, the City has not suggested how its dismissed claims could be successfully amended nor does the court see how they could be. MLB's motion to dismiss the state claims for tortious interference with contract and economic advantage is denied.

Dated: October 11, 2013

  
RONALD M. WHYTE  
United States District Judge

<sup>18</sup> MLB also asserts in a footnote that the option agreement between San Jose and the A's is void, and therefore the City has not pled the existence of a valid contract, relying on the judicially noticed "[RDA]: Asset Transfer Review" report from the California State Controller finding certain asset transfers from the RDA to the City after January 1, 2011 to be invalid. *See* Dkt. No. 26-4. The court concludes that the "[RDA]: Asset Transfer Review" report is insufficient to definitively show that the Option Agreement is invalid. At the dismissal stage, the court draws all reasonable inferences in favor of the plaintiff based on the allegations in the complaint and presumes that the contract is valid.