

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Mutual Lease Termination Agreement by and between the City of El Paso ("Lessor") and El Paso Professional Baseball, L.P. ("Lessee") for the following described property:

The facilities commonly known as the Andy and Syd Cohen Center, El Paso County, Texas, municipally known and numbered as 9700 Gateway North Blvd., El Paso, Texas ("Cohen Center").

ADOPTED this the ____ day of June 2013.

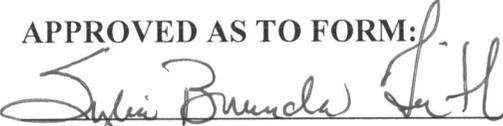
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Sylvia Borunda Firth
City Attorney

APPROVED AS TO CONTENT:

William Studer
Deputy City Manager
Development and Tourism

STATE OF TEXAS)
)
COUNTY OF EL PASO) **MUTUAL LEASE TERMINATION AGREEMENT**

This Mutual Lease Termination Agreement (“Agreement”) is made this _____ day of June 2013, by and between the **CITY OF EL PASO** (“Lessor”) and **EL PASO PROFESSIONAL BASEBALL, L.P.** (“Lessee”).

WHEREAS, Lessor and El Paso Diablos, Inc. entered into a Lease Agreement (“Lease”), effective December 26, 1989, which Lease was subsequently amended several times as specified on **Exhibit “A”** attached hereto and incorporated herein by reference covering the following described real property and improvements:

The facilities commonly known as the Andy and Syd Cohen Center, El Paso County, Texas, municipally known and numbered as 9700 Gateway North Blvd., El Paso, Texas (“Cohen Center”);

WHEREAS, the current tenant under the Lease is El Paso Professional Baseball, L.P.;

WHEREAS, the Lease expires April 24, 2016, but Lessee desires to terminate the Lease and all rights to possession of the Cohen Center and to release the Cohen Center to the Lessor; and

WHEREAS, Lessor has evaluated the situation and determined that it will be beneficial for Lessor to accept the Agreement and to release Lessee from its obligations under the Lease, except as otherwise specifically stated herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Lessee shall surrender the Lease and vacate Cohen Center upon thirty (30) days prior written notice; provided however said notice shall not require Lessee to vacate earlier than **October 1, 2013**.
2. Lessor shall accept the surrender of Cohen Center.
3. Lessor and Lessee shall discharge and release each other from all obligations under the Lease as of the date Cohen Center is surrendered to the Lessor.
4. All other terms and conditions not expressly amended herein shall remain in full force and effect until such time as Cohen Center is surrendered to Lessor.
5. In consideration for the agreement of the Lessee to surrender Cohen Center to the Lessor as provided herein the Lessor agrees as follows:

- a. Lessor will not require the Lessee to reimburse the Lessor for electrical service as required in the Lease for the remainder of Lessee's possession of Cohen Center.
- b. The unreimbursed sum of \$ _____ currently past due and owing to the Lessor for electric utilities incurred prior to the effective date of this Agreement will be discharged.
- c. The prepaid rent credit for the scoreboard installed by Lessee in the amount of \$110,000.00 shall be reimbursed to Lessee within thirty (30) days of the execution of this Agreement.
- d. The Lessee shall be reimbursed for the value of the improvements installed at Cohen Center which will not be fully amortized at the time the Lease is terminated and Cohen Center is surrendered to the Lessor. The Lessor and Lessee agree the value of the improvements is \$150,000.00 and this amount shall be paid to Lessee upon the surrender of Cohen Center.
- e. Within ten (10) days of the effective date of this Agreement, the Lessor shall pay Lessee the sum of \$40,000.00 as a promotional fee for the purpose of advertising the Triple "A" baseball team at Cohen Center for the remainder of the Lease term. The advertising and promotional activities shall include:
 - 1) Tables or kiosk in the stadium during all 50 game nights displaying promotional items and selling tickets.
 - 2) Access to all fans at the stadium during home games and other events.
 - 3) Ability to hand out brochures and other materials at booth.
 - 4) 16' x 32' size outfield sign, to include production.
 - 5) For every home game during the 2013 season, an on field promotion contest that will tie in the Triple "A" Baseball Team sponsors brand and entertain the fans at the same time.
 - 6) Promotion will be displayed on video board as winner is displayed receiving their prize.
 - 7) A :15 second video spot featuring Sponsor will be played.

- 8) The Diablos will run a thirty (3) second commercial advertising the Triple "A" Baseball Team during all 50 home games.
 - 9) Public address announcements made throughout each game, guarantee of 5 per night.
 - f. During the remainder of the Lease Term, Lessor shall have access to Cohen Center for purposes of evaluating future uses, etc.
6. Lessee agrees to indemnify and hold the Lessor harmless for any and all claims or causes of action arising out of the Lease including, but not limited to, arising out of Lessee's use, occupancy, subleasing, assigning or mortgaging of the Cohen Center; including but not limited to the payment of taxes which accrued during the Lease term. Lessee agrees to defend Lessor against any such claims and to defend the Lessor in any legal actions which may be brought against Lessor, including attorney's fees and court costs, or fees or claims arising out of the Lease. Lessee shall provide written confirmation to Lessor of payment for all taxes.
 7. All provisions of the Lease and its amendments which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of the Lease hereunder shall survive such cessation, expiration or termination of the Lease.
 8. The person signing this Mutual Lease Termination Agreement on behalf of Lessor and Lessee warrants that he or she has the authority to do so and to bind the party represented.

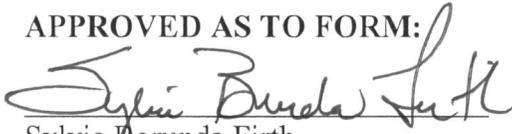
IN WITNESS WHEREOF, this Mutual Lease Termination Agreement has been executed by the parties hereto as of the date, month and year first hereinabove written.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

LESSOR OF EL PASO:

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:


Sylvia Borunda Firth
Deputy City Attorney

APPROVED AS TO CONTENT:

William Studer
Deputy City Manager
Development and Tourism

LESSOR'S ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of June 2013, by
Joyce A. Wilson as City Manager of the City of El Paso, Texas.

My Commission Expires:

Notary Public
Notary's Printed Name: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

EXHIBIT "A"
COHEN CENTER LEASE AGREEMENT

1. December 26, 1989 — Ordinance No. 009918—Authorizing the City of El Paso to enter into a Lease Agreement with El Paso Diablos, Inc. for the purpose of operating a baseball franchise and Lease Agreement.
2. March 5, 1991 — Ordinance No. 010482 — Amending the Lease Agreement between the City of El Paso and El Paso Diablos, Inc. in order to permit the City to waive its share of the parking fees for events scheduled on City reserved dates at Andy and Syd Cohen Center.
3. April 16, 1992 — Ordinance No. 010544 — Amending the Lease Agreement between the City of El Paso and the El Paso Diablos, Inc. to clarify that the El Paso Diablos, Inc. must pay the City a percentage of concession sales and a one dollar per vehicle parking fee during entertainment events immediately preceding or following professional baseball games; and to provide that upon termination of the Lease Agreement, the property involved, together with any improvements thereto, shall become the property of the City.
4. August 4, 1992 — Ordinance No. 011098 — Authorizing the Mayor to execute an amendment to the December 26, 1989 Andy and Syd Cohen Center Lease Agreement between the City of El Paso and the El Paso Diablos, Inc., to provide certain definitions and to clarify administrative procedures and guidelines. (**Lease Amendment** replaces original **Agreement as amended.**)
5. February 15, 1994 - Ordinance No. 011779 - Amending Ordinance Numbers 009918, 010482, 010544, and 011098 which established and amended the Andy and Syd Cohen Stadium Lease between the City of El Paso and the El Paso Diablos, Inc., to revise the rental schedule as set for in Section 9C(1) of said Lease.
6. July 5, 1995 — Ordinance No. 012468 - Amending Ordinance No. 011098 amending the Lease Agreement between the City of El Paso and the El Paso Diablos, Inc. to increase the term of the Lease, modify the size of the Leased Premises, and Allocate Fees.
7. August 6, 1996 — Resolution that the Mayor be, and hereby is, authorized to sign the Lessor's Approval of Assignment of Lease from El Paso Diablos, Inc. to El Paso Baseball Club, LLC, for the facilities known as the Andy and Syd Cohen Center.

8. September 13, 1996 — Letter from National Association of Professional Baseball Leagues, Inc. approving El Paso Control Interest Transfer of the El Paso Diablos of the Texas League of Professional Baseball Clubs.
9. February 3, 1998 — Ordinance No. 013481 — Amending Ordinance Numbers 00918, 010482, 010544, 011098 & 11779 which established and amended the Andy and Syd Cohen Stadium Lease between the City of El Paso and the El Paso Diablos, Inc., to revise the rental schedule as set forth in Section 9C(1) of said Lease.
10. June 8, 2004 — Ordinance No. 015805 — Amending Ordinance Numbers 009918, 010544, 011098, 011779, 012468 and 013481 which established and amended the Andy and Syd Cohen Stadium Lease between the City of El Paso and the El Paso Diablos, Inc., which was subsequently assigned to El Paso Baseball Club, LLC, to revise the obligation to pay rent as set forth in said lease.
11. February 8, 2005 — Ordinance No. 15997 - Amending Ordinance Numbers 009918, 010544, 011098, 011779, 012468, 013481, and 015805 which established and amended the Andy and Syd Cohen Stadium Lease between the City of El Paso and the El Paso Diablos, Inc., which was subsequently assigned to El Paso Baseball Club, LLC, a limited liability company which has been converted to a Texas Limited Partnership under the name El Paso Baseball Club, LP, to revise the obligation to pay rent as set forth in said Lease; to approve the assignment of Lessee's interest to El Paso Professional Baseball, LP; add two option periods; delete reporting requirements, and remove rental rates charged for outside events be approved by City Council.
12. April 25, 2006 — Ordinance No. 16351 — Allows for the elimination of the current second five-year option period, to extend the lease term for a 10 year period, to accept El Paso Professional Baseball, LP's acquisition and installation of the Scoreboard at the Facilities as partial consideration, to substitute the \$30,000 flat rental fee for new consideration, to delete the automatic rental adjustments, to add revenue sharing for El Paso Professional Baseball, LP's advertising revenue received at, by or through the Scoreboard in excess of \$150,000 per annum (up to \$30,000 per annum for the City) as additional consideration to the City, to add financial reporting requirements in order to verify the revenue sharing, and to allow El Paso Professional Baseball, LP to transfer title to the new scoreboard to the City at the end of the lease term.