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NON-RELOCATION AGREEMENTS IN MAJOR LEAGUE BASEBALL: COMPARISON, ANALYSIS, AND BEST PRACTICE CLAUSES

MARTIN J. GREENBERG* & BRYAN M. WARD**

I. INTRODUCTION

Franchise relocation in Major League Baseball (MLB) has been, at times, a common occurrence. In the twenty-year period between 1953 and 1972, ten MLB teams changed their home cities.

- 1953 — the Boston Braves relocated to Milwaukee;
- 1954 — the St. Louis Browns relocated to Baltimore, becoming the Baltimore Orioles;
- 1955 — the Philadelphia Athletics relocated to Kansas City;
- 1958 — the Brooklyn Dodgers relocated to Los Angeles;
- 1958 — the New York Giants relocated to San Francisco;

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1. Braves Timeline, http://atlanta.braves.mlb.com/atl/history/timeline2.jsp (last visited Nov. 4, 2010). The relocation year listed above is the year that the team played its first home game in the new city. The Braves' move to Milwaukee in 1953 was the first MLB relocation in fifty years; in 1903 the Baltimore Orioles relocated to New York City, becoming first the New York Highlanders and later the New York Yankees. Yankees Timeline, http://newyork.yankees.mlb.com/nyy/history/timeline1.jsp (last visited Nov. 4, 2010).


5. Giants Timeline, http://sanfrancisco.giants.mlb.com/sf/history/timeline7.jsp (last visited Nov. 4, 2010). These were the first major league teams on the West Coast; the teams moved...
1961 — the Washington Senators relocated to Minneapolis—St. Paul, becoming the Minnesota Twins;\(^6\)
1966 — the Milwaukee Braves relocated to Atlanta;\(^7\)
1968 — the Kansas City Athletics relocated to Oakland;\(^8\)
1970 — the Seattle Pilots relocated to Milwaukee, becoming the Milwaukee Brewers;\(^9\)
1972 — the Washington Senators relocated to Arlington, Texas, becoming the Texas Rangers.\(^10\)

To contrast, in the thirty-eight years since 1972, only one MLB franchise has relocated.\(^11\) A portion of the credit for this increased franchise stability can be assigned to the emergence of “non-relocation agreements” between MLB franchises and the cities they call home.\(^12\) This article will track the evolution of these agreements, outline the typical covenants within, and identify possible “best practice” clauses within current agreements that provide the greatest protection for a city that wishes to keep its resident MLB franchise from moving to another site.

II. THE APPEARANCE AND PROLIFERATION OF NON-RELOCATION COVENANTS

Non-relocation covenants first appeared in the late 1980s and early 1990s. In 1988, the Chicago White Sox (White Sox) entered into a lease agreement with the Illinois Sports Facility Authority (Authority).\(^3\) In Article 26 of the Lease Agreement, “Transfer of Franchise,” the White Sox acknowledged that simultaneously to facilitate travel for other NL teams.

\(^6\) Twins Timeline, http://minnesota.twins.mlb.com/min/history/timeline1.jsp (last visited Nov. 4, 2010).
\(^7\) Braves Timeline, supra note 1.
\(^8\) Athletics Timeline, supra note 3.
\(^9\) Brewers Timeline, http://milwaukee.brewers.mlb.com/mil/history/timeline1.jsp (last visited Nov. 4, 2010). The Pilots were a one-year-old expansion team at the time of their move, and this made the move controversial. Most leagues since then have made a ruling that expansion teams cannot move until they are at least five years old.
\(^12\) “Home city” is a term of convenience that includes county, state, or any other entity such as a stadium authority that built, owns, or operates an MLB stadium.
\(^13\) Management Agreement between Illinois Sports Facilities Authority and Chicago White Sox § 26.01 (1988) [hereinafter White Sox’s Agreement].
the Authority would be "irreparably harmed by the transfer of the [White Sox] American League franchise to a location other than the Stadium during the Term of this Agreement . . . ." Accordingly, the lease prohibits relocation of the White Sox as long as the Authority is not in default.

Section 26.01. Agreement by Team.

. . . .

Authority does not have an adequate remedy at law for breach of this entire article XXVI.

(b) Team shall not enter into any contract or agreement of any kind to transfer the Team’s franchise to a location other than the Stadium . . . .

. . . . Team shall play all of its home games, home League Championship games and home World Series games at the Stadium.

In the event the White Sox would violate the covenant, the Authority would be entitled to seek and obtain an injunction to prevent the team from relocating.

In 1992, the Baltimore Orioles (Orioles) and the Maryland Stadium Authority (MSA) entered into a lease agreement that contains a non-relocation – no-move clause. Article 20 of this lease states that the Orioles will not relocate during the term of the lease, as consideration for construction of the ballpark. The Orioles are also forbidden from relocating the team or playing post-season games in any other location. The sale, assignment, or transfer of the team is not permitted unless all of the obligations of the lease are assumed, including the relocation prohibition. The MSA may use any remedy

14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.* at 72–73.
19. *Id.*
20. *Id.*
21. *Id.*
available at law or in equity, including specific performance, to enforce this agreement.\textsuperscript{22} Article 20, "No Relocation," states as follows:

In consideration of MSA’s construction of the Ballpark, during the Term of this Agreement, the ORIOLES shall not permit the relocation of the Baltimore Orioles Major League Baseball team from Baltimore, Maryland, or permit any of the Championship Season or Post-Season Games to be played at any location other than the Ballpark, unless the ORIOLES are expressly permitted to do so by Section 8.14 (fire or other casualty) or Article XVIII (Eminent Domain) of this Agreement. This obligation of the ORIOLES shall not be deemed or construed to be a waiver by the ORIOLES of any generally applicable equitable rights, remedies or defenses in the event that MSA attempts to secure the ORIOLES’ specific performance of, or otherwise attempts to enforce, the ORIOLES’ obligations under this Agreement. The ORIOLES shall not permit any sale, assignment or other transfer of the Baltimore Orioles unless the assignee is required to assume all of the obligations of the ORIOLES under the Agreement.\textsuperscript{23}

Both the Orioles and White Sox lease agreements are still in effect.

Since 1992, twenty additional MLB teams have entered into either (1) a stadium lease agreement containing non-relocation covenants\textsuperscript{24} or (2) a separate non-relocation agreement with the "stadium leasing authority,"\textsuperscript{25} be it a city, county, state, or separately created stadium district.\textsuperscript{26} Currently, twenty-two MLB franchises are contractually bound by non-relocation covenants.\textsuperscript{27}

Not coincidentally, the proliferation of non-relocation agreements corresponds to the boom of new stadium construction for MLB teams—

\textsuperscript{22} Id.
\textsuperscript{23} Id.
\textsuperscript{24} See chart infra Section VIII for a list of all teams bound by non-relocation covenants, in either a stadium lease or a freestanding non-relocation agreement. The MLB franchises with non-relocation covenants in their stadium leases are the Braves, Giants, Padres, Phillies, Pirates, Reds, Rockies, A’s, Indians, Mariners, Orioles, Royals, Tigers, Twins, and White Sox.
\textsuperscript{25} The MLB franchises that are currently bound by freestanding non-relocation agreements are the Astros, Brewers, Cardinals, Marlins, Mets, Nationals, and Yankees.
\textsuperscript{26} For convenience, a stadium leasing authority of any type will be referred to hereinafter as the “home city.”
\textsuperscript{27} See chart infra Section VIII for a list of all teams bound by non-relocation covenants.
publicly financed stadium construction and renovation drives the non-relocation agreement by creating the need and the leverage to require franchise commitment to a city. From 1986 to 2003, 77% of MLB teams received new or substantially renovated facilities.\(^{28}\) Since 2003, the Philadelphia Phillies, San Diego Padres, St. Louis Cardinals, New York Mets, and New York Yankees have opened new stadiums; the Minnesota Twins opened a new stadium in 2010, and ground was broken on a new stadium for the Florida Marlins in July 2009.\(^{29}\) Brand new, mostly publicly-financed stadiums have become the norm for MLB teams.\(^{30}\)

\[\text{TEAM NAME} & \text{STADIUM NAME} & \text{OPENING YEAR} & \text{FACILITY COST (MILLIONS)} & \% \text{PUBLIC FINANCING} \\
Florida Marlins & New Marlins Ballpark & 2012 & 645 & 76 \\
Minnesota Twins & Target Field & 2010 & 544 & 72 \\
New York Mets & Citi Field & 2009 & 860 & 19 \\
New York Yankees & Yankee Stadium & 2009 & 1,500 & 32 \\
Washington Nationals & Nationals Park & 2008 & 611 & 100 \\
St. Louis Cardinals & Busch Stadium & 2006 & 365 & 12 \\
Philadelphia Phillies & Citizens Bank Park & 2004 & 346 & 50 \\
San Diego Padres & PETCO Park & 2004 & 285 & 57 \\
Cincinnati Reds & Great American Ball Park & 2003 & 291 & 96 \\
Milwaukee Brewers & Miller Park & 2001 & 414 & 75 \\
Pittsburgh Pirates & PNC Park & 2001 & 237 & 70 \\
Detroit Tigers & Comerica Park & 2000 & 361 & 32 \\
Houston Astros & Minute Maid Park & 2000 & 265 & 68 \\
San Francisco Giants & AT&T Park & 2000 & 325 & 0 \\
Seattle Mariners & Safeco Field & 1999 & 517 & 66 \\
Arizona Diamondbacks & Chase Field & 1998 & 354 & 67 \\
Atlanta Braves & Turner Field & 1996 & 235 & 100 \\
Colorado Rockies & Coors Field & 1995 & 215 & 75 \\
\]

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29. *Ballpark Groundbreaking*, http://florida.marlins.mlb.com/fla/ballpark/groundbreaking.jsp (last visited Nov. 4, 2010). For additional information, there is a webpage devoted to the ballpark history of each MLB franchise on that team’s MLB.com website.

30. 
With the appearance of these multi-hundred-million-dollar stadiums, largely financed with public money, home cities began taking measures to protect their investments. The home cities did so only because they could. Undoubtedly, the home cities of professional sports franchises have always desired to ensure that their teams not relocate. But, it is the team's desire for the construction of a new, publicly financed stadium, however, that provides the home city with the leverage needed to require the franchise to give assurances of continued residence. Without this leverage, the home city has no realistic hope of convincing a franchise to agree to non-relocation covenants.

Therefore, non-relocation agreements have become part of the politics of stadium approval. With the large amount of public contribution to the stadium construction equation, politicians must be assured that the team will remain at home for the duration of the lease or the term of the bonds. Politicians, in turn, must assure the public—who will pay the largest portion of the stadium cost through the imposition of a tax—that their investment will be protected and the team will remain at home. Therefore, non-relocation agreements have become the quid pro quo for public contribution.

Milwaukee, Wisconsin is a city that has experienced baseball relocations. In 1953, the Boston Braves moved to Milwaukee. In 1966, the Milwaukee

<table>
<thead>
<tr>
<th>Team</th>
<th>Stadium</th>
<th>Year</th>
<th>Public Cost</th>
<th>Total Estimated Cost (Millions)</th>
<th>Average Public Participation</th>
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</thead>
<tbody>
<tr>
<td>Cleveland Indians</td>
<td>Progressive Field</td>
<td>1994</td>
<td>175</td>
<td>48</td>
<td></td>
</tr>
<tr>
<td>Texas Rangers</td>
<td>Rangers Ballpark at Arlington</td>
<td>1994</td>
<td>191</td>
<td>71</td>
<td></td>
</tr>
<tr>
<td>Baltimore Orioles</td>
<td>Oriole Park at Camden Yards</td>
<td>1992</td>
<td>107</td>
<td>96</td>
<td></td>
</tr>
<tr>
<td>Chicago White Sox</td>
<td>U.S. Cellular Field</td>
<td>1991</td>
<td>167</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Tampa Bay Rays</td>
<td>Tropicana Field</td>
<td>1990</td>
<td>138</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>


31. Anecdotally, the mere mention of a professional sports franchise leaving or having left its home city continues to evoke strong emotion from the jilted home city and its fans, from the Dodgers leaving Brooklyn and Giants leaving Queens to, more recently, the Colts' departure from Baltimore, the Browns' move from Cleveland, and the Raiders' former and possibly future moves around California.

32. Braves Timeline, supra note 1.
Braves moved to Atlanta. Finally, in 1970, a group of investors, led by now commissioner Bud Selig, bought the Seattle Pilots out of bankruptcy, brought them to Milwaukee, and named them the Milwaukee Brewers. After thirty-six years, the Selig family sold the Brewers to a group headed by Los Angeles investor Mark Attanasio. Of course, the issue of relocation was raised. Then Brewers president Wendy Selig-Prieb said, “There is an ironclad lease that fixes this franchise to this community and that has a 30-year lease that we entered into.”

With respect to Milwaukee relocation, MLB Commissioner Bud Selig also said, “The sale of the Brewers means baseball fans in Milwaukee don’t have to worry about losing another team.” “Now they don’t have to go through what people went through in ’64 and ’65, when the Braves were leaving Milwaukee.” “There is no question about it. So whatever the controversy was about the ballpark or anything else, the Brewers are there. They’re secure, and they’re a marvelous asset.”

Governor Jim Doyle, who was the Attorney General during the controversial period when the Brewers lobbied to build Miller Park, has said that he had been advised that the lease was ironclad. “I think people in Wisconsin really, truly believed they were getting a [thirty-]year commitment, and that’s what I consider the team’s commitment to be.”

III. POLICY JUSTIFICATIONS FOR NON-RELOCATION AGREEMENTS

There are multiple policy reasons why a city would seek to contractually ensure that its MLB team does not relocate, yet all derive from a simple maxim—a professional sports franchise is a valuable and limited right. It is a limited right because the franchise allotment, currently thirty teams, is mandated and controlled by the governance of MLB. Each major city in North America competes for one, or at most two, of only thirty opportunities

33. Id.
34. Brewers Timeline, supra note 9.
35. Id.
37. Id.
38. Id.
39. Id.
40. Id.
41. Id.
42. M.L.B. CONST. art V. § 2(b)(1) (1921) (stating that a three-fourths approval vote of all clubs is required for any MLB expansion or contraction).
to be the home of an MLB franchise. Accordingly, should a city’s current team decide to relocate, it is highly unlikely that a replacement franchise will be available. And although MLB has, in the past, expanded the number of franchises, most recently, the league investigated, and nearly implemented, league contraction—initiating a plan for a reduction in the number of MLB teams to twenty-eight. Certainly, then, an MLB expansion franchise to replace a departed team cannot be relied upon or taken for granted. Because of the limited supply of MLB franchises, a home city must take all available

43. The New York City, Chicago, Los Angeles, and San Francisco-Oakland metropolitan areas each currently host two MLB franchises. This of course further restricts the pool of available teams for other cities that desire an MLB franchise.

44. There was a time when a city could reasonably believe that an MLB expansion franchise was a possibility. Of the thirty current MLB franchises, fourteen came into existence from 1961–1998 as a result of MLB expansion. See History of the Game, http://mlb.mlb.com/mlb/history/mlb_history_teams.jsp (last visited Nov. 4, 2010).

MAJOR LEAGUE BASEBALL EXPANSION 1961-1998

<table>
<thead>
<tr>
<th>TEAM</th>
<th>YEAR</th>
<th>FEE PAID (MILLIONS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Los Angeles Angels</td>
<td>1961</td>
<td>$2.1</td>
</tr>
<tr>
<td>Washington Senators</td>
<td>1961</td>
<td>$2.1</td>
</tr>
<tr>
<td>Houston Colt .45's</td>
<td>1962</td>
<td>$1.85</td>
</tr>
<tr>
<td>New York Mets</td>
<td>1962</td>
<td>$1.8</td>
</tr>
<tr>
<td>Kansas City Royals</td>
<td>1969</td>
<td>$5.5</td>
</tr>
<tr>
<td>San Diego Padres</td>
<td>1969</td>
<td>$5.5</td>
</tr>
<tr>
<td>Montreal Expos</td>
<td>1969</td>
<td>$5.5</td>
</tr>
<tr>
<td>Seattle Pilots</td>
<td>1969</td>
<td>$5.5</td>
</tr>
<tr>
<td>Seattle Mariners</td>
<td>1977</td>
<td>$6.25</td>
</tr>
<tr>
<td>Toronto Blue Jays</td>
<td>1977</td>
<td>$7.0</td>
</tr>
<tr>
<td>Colorado Rockies</td>
<td>1993</td>
<td>$95</td>
</tr>
<tr>
<td>Florida Marlins</td>
<td>1993</td>
<td>$95</td>
</tr>
<tr>
<td>Arizona Diamondbacks</td>
<td>1998</td>
<td>$130</td>
</tr>
<tr>
<td>Tampa Bay Devil Rays</td>
<td>1998</td>
<td>$130</td>
</tr>
</tbody>
</table>

measures to ensure that their home team remains where it is.

The value of an MLB franchise to its home city may be observed in a variety of areas; some of this value is quantifiable, much is not. Generally, the categories of value that a home city seeks to protect are: (1) capital investment and expenditures by the home city to provide facilities for the team, (2) economic benefits to the home city and surrounding area, and (3) intangible and non-economic benefits to community citizens, including what has been termed “psychic income.” Each measure of value, whether expended by the home city to provide for its team or received by the home city from its association with its MLB team, provides an incentive for that city to seek assurances that its team will remain, and perhaps most importantly, the home city’s expenditures provide justification for requiring the team to contractually commit to its home city. Such incentives and justifications include the following:

- Sports facilities and public infrastructures supporting sports facilities that are paid for primarily with public tax dollars and the public investment, which needs to be protected.
- Tax-exempt bonds at government rates are used to finance sports facilities, and private sector recipients retain the economic benefits of government credit.
- The statutory power of condemnation is often used to assemble real estate parcels in order to create the stadium facility.
- The team receives the benefit of having to pay no real estate taxes in that most stadium facilities are owned by some form of public entity or District.
- The team in many instances maintains management control and retains most of the revenues produced from the stadium, and the quid pro quo therefore is a covenant to play all home games at the stadium during the duration of the lease.
- A community suffers a direct economic loss if its team relocates.
- A community suffers the loss of intangible and non-economic benefits (psychic income) if the team relocates.

With these factors in mind, the home city, before it agrees to expend public assets on building a state-of-the-art facility, uses the leverage created by the team’s desire for a new stadium to bargain with the team for assurances, in the form of a non-relocation agreement, that the team will remain with the home city until the public investment can be “recovered” in the form of economic benefit to the surrounding area or at least until the stadium lease
expires. Regarding the concept of psychic income, a baseball franchise is a community asset that is sometimes difficult to monetarily assess and may provide to a community greater non-economic benefits than economic. The value of the franchise is in its name, associated with its city, and its obligation to retain its franchise in the community and play baseball games at the facility.

Psychic income can best be defined as having the benefit and prestige of a team in a community and a quality of life that its citizenry enjoys by virtue of a team playing in its community. Having an MLB team makes the community major league.

The significance of psychic income has not been lost on the judiciary—in a decision enforcing an earlier non-relocation agreement between New York City and the Yankees, the presiding judge explained the significance of the Yankees to New York:

The Yankee pinstripes belong to New York like Central Park, like the Statue of Liberty, like the Metropolitan Museum of Art, like the Metropolitan Opera, like the Stock Exchange, like the lights of Broadway, etc. Collectively they are "The Big Apple." Any loss represents a diminution of the quality of life here, a blow to the city's standing at the top, however narcissistic that perception may be.46

It is of course debatable, and has been often debated, whether the economic and non-economic benefits of an MLB franchise justify the tremendous capital expenditures that are necessary to provide a modern stadium for the team—whether having an MLB franchise is ultimately "worth it."47 This article will not enter into that debate. If due consideration is given

## RECENT REPORTED PURCHASES OF MAJOR LEAGUE BASEBALL TEAMS

<table>
<thead>
<tr>
<th>TEAM</th>
<th>YEAR REPORTED</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta Braves</td>
<td>2007</td>
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</tr>
<tr>
<td>Chicago Cubs</td>
<td>2009</td>
<td>$845 million (includes Wrigley Field and a 25% interest in CSN Chicago)</td>
</tr>
<tr>
<td>Milwaukee Brewers</td>
<td>2005</td>
<td>$223 million</td>
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<tr>
<td>Oakland Athletics</td>
<td>2005</td>
<td>$180 million</td>
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<tr>
<td>San Diego Padres</td>
<td>2009</td>
<td>$500 million</td>
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<tr>
<td>Washington Nationals</td>
<td>2006</td>
<td>$450 million</td>
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<table>
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<tr>
<th>RANK</th>
<th>TEAM</th>
<th>CURRENT VALUE&lt;sup&gt;1&lt;/sup&gt; ($MIL)</th>
<th>1-YR VALUE CHANGE&lt;sup&gt;2&lt;/sup&gt; (%)</th>
<th>DEBT/VALUE (%)</th>
<th>REVENUES ($MIL)</th>
<th>OPERATING INCOME&lt;sup&gt;3&lt;/sup&gt; ($MIL)</th>
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<td>1</td>
<td>New York Yankees</td>
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<td>441</td>
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<td>2</td>
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<td>870</td>
<td>4</td>
<td>28</td>
<td>266</td>
<td>40.0</td>
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<td>184</td>
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to some of the more remote, and therefore less ascertainable, economic benefits and to the intangible benefits and psychic income derived from their investment, the question at the heart of this debate becomes unanswerable. What is indisputable, however, is that large cities, and large numbers of their citizens, believe that it is well worth the real and intangible expenditures in order to reap the real and intangible benefits of being the home of a MLB franchise.

Whatever the actual value of such benefits, whether economic or psychic, the home city seeks to ensure that the relationship between the team and its home city endures. Armed with the leverage created by its ability to spend hundreds of millions of dollars on a new or renovated facility, and negotiating with team owners who know that better facilities will increase franchise value, the home city asks for assurances that their money will be well spent and protected—that the team will play baseball in the new facility for a long, long time. It is these assurances that comprise each non-relocation agreement.

Though certain covenants vary dramatically from agreement to agreement, there is also much in common among the twenty non-relocation agreements between MLB teams and their home cities. Each home city pursues essentially the same goal—retention of the MLB franchise—and so covenants prohibiting relocation, along with equitable remedies designed to force a team to honor these covenants, are present in some form in all agreements. Some non-relocation agreements, however, go beyond a narrow focus on the singular goal of team retention and contain provisions designed to further protect a home city from the economic harm that would result if the team

<table>
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<tr>
<th>Rank</th>
<th>Team</th>
<th>Valuation</th>
<th>Change</th>
<th>Revenue</th>
<th>Expenses</th>
<th>Earnings</th>
<th>Earnings Margin</th>
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relocated. Non-relocation agreements have evolved over time, becoming increasingly prominent, specific, and flexible. And although the ultimate goal of a home city is to keep its team within its borders, the best agreements will acknowledge the possibility of a team-city split and include provisions to protect the home city’s economic interests if its team does relocate.

IV. TRADITIONAL NON-RELOCATION CLAUSES—BARE COVENANT

What follows are some of the most basic non-relocation covenants. Many of these basic covenants were present in the earliest non-relocation agreements, and some of the prohibitions and duties are included in every non-relocation agreement—whether a standalone non-relocation contract or as a series of non-relocation covenants incorporated into the team’s stadium lease. These covenants establish the basic obligations by which a team must abide.

A. Prohibition of Team Relocation

The covenant prohibiting team relocation represents the essence of the non-relocation agreement. All other covenants are designed to ensure compliance with this provision, and all remedies are designed either to compel compliance with this provision or to mitigate the damage that team relocation would cause. The Cleveland Indians’ and Oakland Athletics’ stadium leases have typical clauses relative to the prohibition of team relocation:

ARTICLE XVI—Transfer of Franchise

Notwithstanding any other provision of this Agreement, the Lessee agrees as follows: (a) The Lessee shall not enter into any contract or agreement of any kind to transfer the Lessee’s baseball franchise to a location other than the Baseball Facility.48

. . . .

9.2—American League Franchise

. . . Except as authorized . . . , Licensee shall not permit or cause to occur any event that may result in the transfer of its Franchise or any of its Home Games to any other city or

location or do or fail to do anything which will cause its right to play major league professional baseball in the Stadium to be lost, impaired or transferred to any other city or location.49

Of the twenty-two MLB teams that have non-relocation agreements that are currently in effect, twenty-one are bound by a specific prohibition of team transfer or relocation.50

**B. All Home Games to be Played at Home Stadium**

The home city receives direct economic benefits primarily from the eighty-one home games that each MLB team plays each season, with the possibility of extra revenue from any playoff home games as well. A team that plays any of these games at another location deprives the home city of these direct economic benefits. Businesses in the area surrounding the stadium, which often rely on the increased traffic on game days, also tend to suffer economic loss if a home game is played elsewhere. Home playoff games bring even more economic benefit to local businesses. Covenants to play all team regular-season and playoff home games at the home stadium protect these sources of economic benefit. Of the twenty-two currently active MLB team non-relocation agreements, all twenty-two contain a covenant to play team home games at the team’s designated home stadium. The Detroit Tigers’ lease contains a typical clause:

Article 14—Relocation of Team

The Tigers shall, from and after the Commencement Date and until the expiration of the Term, and subject to the provisions of Article 10.1 of this Agreement, play all its regular season home games and post-season home games (including without limitation home games of Divisional and League Championships and the World Series) for each season at Tiger

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49. Lease by and between Oakland Athletics and Oakland-Alameda County Coliseum, Inc. § 9.2 (1995) [hereinafter A's Lease].

50. See chart *infra* Section VIII for a list of these teams. The Seattle Mariners lease does not contain an explicit prohibition on relocation/transfer; however, the lease does include a requirement that 90% of Mariners regular-season home games and 100% of Mariners home playoff games are played in Safeco Field. *See Ballpark Operations and Lease Agreement between the Washington State Major League Baseball Stadium Public Facilities District and the Baseball Club of Seattle, L.P. § 14.1 (1996)* [hereinafter Mariners' Lease].
The non-relocation agreement for the new Yankee Stadium also contains language typical of "home game" covenants, along with language that contemplates the team's then-impending transfer to the newly constructed Yankee Stadium.

2.1 Non-Relocation. The Partnership covenants and agrees as follows:

2.1.1 Requirement to Play. Subject only to the exceptions described . . . , it shall cause the Team to play all its Home Games (a) in the Existing [Yankee] Stadium from the Effective Date until the end of the Regular MLB Season immediately preceding the First Season Commencement Date and (b) in the [new Yankee] Stadium during each Regular MLB Season from the First Season Commencement Date through the Initial Term.\(^5\)

Generally, there are limited exceptions to this requirement, under which a home game may be permitted at an alternate location. The first exception covers situations in which a team's home stadium is unfit for use. In these cases, a "force majeure" provision allows the team to play at an alternate location while the home stadium is repaired. The second exception is an allowance for the current MLB practice of exporting a few games each season to selected foreign nations—thus far, usually Japan or Mexico.\(^5\) Non-relocation agreements that were drafted following the inception of overseas scheduling typically contain provisions that allow a limited number of games to be played away from the home stadium.\(^5\) The Yankees agreement contains

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\(^5\) In any event, because compliance with MLB is necessary to maintain the franchise in good standing and because the home city has no interest in jeopardizing its team's MLB affiliation, teams without specific exceptions in their non-relocation agreement are permitted to play in MLB scheduled overseas games.
both of these exceptions.

2.2.1 Exception for Home Games. Subject to Section 2.2.2, up to twelve (12) Home Games over any two (2) consecutive Regular MLB Seasons may be played in venues other than (a) the Existing Stadium for Regular MLB Seasons ending prior to commencing on or after the First Season Commencement Date or (b) the Stadium for Regular MLB Seasons commencing on or after the First Season Commencement Date; provided that, in no event shall the number of Home Games played during any Regular MLB Season in venues other than the Existing Stadium or the Stadium, as the case may be, equal or exceed the number of Home Games that would cause or constitute a Prohibited Relocation under Section 2.1.3; and, provided, further, that Home Games which are cancelled or suspended in accordance with the MLB Trinity due to weather or due to field conditions other than field conditions resulting from actions of the Partnership or the failure by the tenant under the Lease Agreement to perform its obligations thereunder, and are rescheduled and played in the home ballpark of another Major League Baseball Club in accordance with the MLB Trinity, shall be treated, for purposes of Section 2.1.1, as having been played in the Existing Stadium or the Stadium, as applicable. 55

2.2.2 Force Majeure; Casualty; Temporary Taking; Termination of Lease.

(a) If an event of Force Majeure, a Casualty or a Temporary Taking renders the Stadium, on or after the First Season Commencement Date, or the Existing Stadium, prior to the First Season Commencement Date, not reasonably fit for use for MLB games in accordance with the Stadium Sublease or MLB Trinity, the Team may play Home Games in a location other than the Stadium or Existing Stadium, as applicable, but only during the period of time that such event of Force Majeure, Casualty or Temporary Taking continues or the

55. Yankees' Non-Relocation Agreement, supra note 52, § 2.2.1. A “Prohibited Relocation” is defined in this contract as “the failure . . . to play at least 87.5%” of home games at Yankee Stadium. Id. at App’x A.
Stadium or Existing Stadium, as applicable, remains not reasonably fit for use, provided that (i) the Partnership promptly provides notice to the City . . . , (ii) the Partnership provides updates to such notice on at least a monthly basis . . . , (iii) the Partnership . . . [uses] commercially reasonable and diligent efforts to remediate or repair such event . . . , and (iv) the Team plays such Home Games in a location in one of the five boroughs of New York City if a Substantially Equivalent Facility is available for such purpose.56

C. Prohibition of Application to Transfer Team

To further impede team relocation efforts, many non-relocation agreements contain a prohibition of application to MLB for a transfer of team location. Many agreements integrate this clause into the general relocation prohibition; other agreements, such as the Houston Astros’, state this prohibition separately:

Section 3.2 Prohibited Actions. Houston McLane shall not apply for or seek approval from Major League Baseball or the National League for (i) the relocation of the Astros or the home territory of the Astros outside the boundaries of the City and County or (ii) the reduction of the Astros’ territorial or circuit rights, as defined under Major League Rule 1(a), for the playing of Baseball Home Games through the exclusion of any of the following counties: Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery or Waller counties.57

Some agreements, including the Astros’, specify circumstances under which the team may negotiate with other parties about the possibility of relocating the team:

Section 3.3 Third-Party Negotiations. Notwithstanding Section 3.2 to the contrary, during (y) the period of five (5)

56. Id. § 2.2.2. Section 2.2.2 also specifies an exception to breach for cancelled games due to an “MLB-wide umpire or players strike, slowdown, walkout or lockout,” as long as those games are not played at any other location. Id.

57. Non-Relocation Agreement by and between Harris County-Houston Sports Authority and Houston McLane Company, Inc. d/b/a Houston Astro Baseball Club (1998), § 3.2 [hereinafter Astros’ Non-Relocation Agreement].
years prior to the expiration of the [stadium lease] . . . or (z) the existence of a [default, by the home city representative, of the stadium lease, licensing agreement, or project agreement] . . . , then and only then [the Astros] may, after giving prior written notice to the Sports Authority, enter into negotiations or agreements with third parties concerning the relocation of the Astros or the home territory of the Astros outside the boundaries of the City and the County, but [the Astros] shall remain, and any other third party agreements shall be, subject to all other provisions of this Non-Relocation Agreement including, without limitation, Section 2.2.1 above. 58

Of the twenty-two MLB team non-relocation agreements that are currently in effect, seventeen contain a specific prohibition of applying to MLB for a transfer of the team. 59

D. Transferee Must Assume Non-Relocation Obligations

The home city's primary interest is in retention of the MLB franchise, regardless of who owns the team. Transferee assumption covenants protect the home city through a change in team ownership. The Cincinnati Reds' lease contains a typical covenant requiring a transferee to assume non-relocation obligations:

18.2 Permitted Assignments or Subletting . . .

18.2.1 The Team may, without prior consent of County, assign this Lease to any person, firm, corporation or entity which acquires the Cincinnati Reds Franchise strictly in accordance with applicable MLB Documents; provided the following conditions are satisfied: (a) Such assignee assumes all of the obligations of the Team under this Lease and agrees to be bound all [sic] of the terms and provisions of this Lease pursuant to an instrument, in form and substance reasonably acceptable to the County. 60

58. Id.
59. See chart infra at Section VIII for a list of these teams.
60. Lease Agreement by and between the Board of Commissioners of Hamilton County, Ohio and the Cincinnati Reds, § 18.2 (1999) [hereinafter Reds' Lease].
Transferee and assignee assumption covenants are found in eighteen of the twenty-two MLB team non-relocation agreements.61

E. Maintenance of Franchise/Team Office Location

For the home city to receive the benefits of hosting an MLB team, the team must of course remain a part of MLB. The home city also has a strong interest in maximizing team presence in and connection to its home city. To these ends, several non-relocation agreements contain covenants that require the team to maintain good standing within their league. Some agreements go further by requiring the team to maintain its corporate offices in the home stadium or within the home territory. The St. Louis Cardinals’ non-relocation agreement contains typical provisions requiring maintenance of the franchise’s good standing and team headquarters in the home city:

2.3 Maintenance of Franchise. At all times during the Term the Cardinals shall (a) maintain the membership in good standing of the Team in Major League Baseball and (b) hold, maintain and defend the right of the Team to play baseball as a member of Major League Baseball and (c) use reasonable efforts to oppose the adoption of any Major League Baseball Rules and Regulations that would cause the Cardinals to be unable to comply with any of the terms of this Agreement.

2.4 Maintenance of Headquarters. The Cardinals shall maintain their headquarters and their principal place of business within the City during the Term.62

Good standing covenants are found in fourteen of the twenty-two MLB non-relocation agreements; corporate office location covenants are found in nine of the twenty-two agreements.63

V. SPECIALIZED ADDITIONS TO NON-RELOCATION AGREEMENTS

Over time, non-relocation agreements of MLB teams have become increasingly complex. Many non-relocation agreements now contain covenants designed to protect the home city in specialty situations and may go

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61. See chart infra at Section VIII for a list of these teams.
62. Operations and Non-Relocation Agreement by and between the Land Clearance for Redevelopment Authority of the City of St. Louis and the St. Louis Cardinals, §§ 2.3–2.4 (2002) [hereinafter Cardinals’ Lease].
63. See chart infra at Section VIII for a list of these teams.
beyond simply protecting team location for the term of the agreement.

A. Protection of Team Name and History

Much of the psychic income that flows from a team to its fans is intertwined with the team name, uniform, and other identifying marks of the team. Historical records and memorabilia, which are created while a team is in a particular city, are another source of civic pride. The Atlanta Braves’ lease contains an early example of language designed to protect these sources of psychic income:

16.1.4. [The Braves] shall not assign, transfer or convey, or attempt to assign, transfer or convey, its name, good will, trademarks or the whole or any substantial part of its player and other contracts except in accordance with [non-assignment clause] above, except that the Team in the ordinary course of business may grant such licenses with respect to names and trademarks and assign such player and other contracts as the Team deems commercially appropriate. 64

A more complete protection is found in the Minnesota Twins’ agreement from 2007:

Section 2.3 Covenants not to Relocate and to Oppose Contraction.

... In the event of any dissolution or relocation of the [Twins] Franchise during the Term, the [Twins] shall transfer (and shall use best efforts to cause the MLB to cooperate in the transfer of) the Franchise’s heritage and records to the State of Minnesota, including the name, logo, colors, history, playing records, trophies and memorabilia. Notwithstanding anything to the contrary set forth in this Section 2.3, during any Renewal Term the covenants of this section will be subject to MLB approval and the [Minnesota] Authority’s right to

64. Operating Agreement between City of Atlanta and Fulton County Recreation Authority and Atlanta National League Baseball Club, Inc., § 16.1.4. (1993) [hereinafter Braves’ Lease].
challenge pursuant to the Act.65

The Minnesota provision highlights a primary difficulty with some clauses—the requirement of MLB approval. Still, considering (1) fans’ intense attachment to team name, colors, etc.; (2) the significant investments by local businesses and fans in producing or acquiring “team gear;” and (3) the manner in which Cleveland was able to replace the NFL Browns, such that no changes in team name or other identifying marks were required, it is a worthwhile goal for a city to attempt to protect the team’s identifying marks and team history. It is therefore surprising that so few agreements include these clauses.66

B. Right of First Refusal for Team Sale

If the sale of a team becomes necessary during the term of a non-relocation agreement, the home city would like to control, to the greatest extent possible, to whom the team is sold. Although the buyer will be subject to any non-relocation agreement that contains a clause requiring this, a few cities have gone further and included a right of first refusal in the agreement.67 A right of first refusal gives the home city the option to purchase the franchise at the same terms that the franchise owner is able to obtain from a third party.68

C. Secured Creditor Restrictions

Secured creditor issues came to the forefront of a proposed 2010 sale of the Texas Rangers, reportedly leading to a clash between the creditors and baseball’s Commissioner.69

65. Baseball Playing and Use Agreement by and between Minnesota Ballpark Authority and Minnesota Twins, LLC., § 2.3(c) (2007) [hereinafter Twins’ Lease].

66. Only five agreements mention team marks at all, and three of these agreements—A’s, Mets, Yankees—merely require that the team keep its current name during the term of the agreement.

67. A’s’ Lease, supra note 49, § 23; Twins’ Lease, supra note 65, § 2.5.

68. In essence, then, the home city has the right to match the offer made to the franchise owner from a third-party within a specified period of time. See, e.g., Creque v. Texaco Antilles Ltd., 409 F.3d 150, 152 (3d Cir. 2005) (stating “A right of first refusal is a conditional option empowering its holder with a preferential right to purchase a property on the same terms offered by or to a bona fide purchaser”). This must be a bona fide offer, the result of arm’s length dealing, id., and because they are restrictions on alienation, rights of first refusal will be interpreted narrowly by courts. Frandsen v. Jensen-Sundquist Agency, Inc., 802 F.2d 941, 946 (7th Cir. 1986). An example right of first refusal clause is given infra Part 2 Section VII. 4. See also infra Section VII.D.2. for a discussion of how a right of first refusal has been paired with a sale proceeds clause in the agreement between the city of Indianapolis and the NBA’s Indiana Pacers.

Because secured creditors possess rights in their loans’ collateral (in this case, the collateral was the Rangers franchise), the Rangers’ secured creditors were able to impact the sale of the team and nearly affected who the ultimate purchaser turned out to be.\textsuperscript{70} Although the Rangers sale does not appear to be leading toward relocation of the team, it is illustrative of how a franchise’s ownership can be affected by lenders with secured creditor status.

1. Pledging the Franchise as Collateral

To generate cash for operating expenses or other purposes, a franchise may need to borrow. A lender may require, as one form of collateral for the loan, a security interest in the franchise.\textsuperscript{71} To accomplish this, the team owners will enter into a security agreement with the lender.\textsuperscript{72} In the security agreement, the franchise owner will grant (pledge) a security interest in the franchise to cover the loan amounts; the security agreement will include events of default, usually for the team not meeting payments; it may also include an acceleration clause that allows the lender to demand immediate full repayment on certain conditions.\textsuperscript{73} If the team defaults on a properly perfected\textsuperscript{74} security agreement, the lender could then, among other possible remedies, “take possession of the collateral,” i.e., claim an ownership interest in the team.\textsuperscript{75} If the loan amount represents a majority of the team’s worth, the foreclosing lender, upon successful completion of the court proceedings, could become the majority owner. In this way, it is possible for ownership of a home city’s MLB team to transfer to a new owner, one that is not a party to the non-relocation agreement. In the current case involving the Texas Rangers, the secured creditors became involved in controlling the sale of the team.\textsuperscript{76} This led to speculation that, in order to get the Rangers sold, MLB was considering seizing the franchise or attempting to invalidate existing loan arrangements under the “best interests” clause.\textsuperscript{77}

On March 31, 2009, Hicks Sports Group, a company whose holdings included the Rangers, Dallas Stars, and the Liverpool Football Club, defaulted on $525 million in loans to forty lenders, some or all of which were secured by

\textsuperscript{70} Id.
\textsuperscript{71} U.C.C. § 1-201(23) (2010) (definition of security interest); § 9-109 (scope of UCC Article 9).
\textsuperscript{72} § 9-102(a)(73); § 9-201(a).
\textsuperscript{73} § 1-309.
\textsuperscript{74} § 9-301; § 9-310(a).
\textsuperscript{75} § 9-609(a)(1); § 9-620.
\textsuperscript{76} Sandomir, supra note 69.
\textsuperscript{77} Id.
an interest in the Rangers. Hicks Sports Group took steps to sell the Rangers franchise, with MLB approval, to a group including sports lawyer Chuck Greenberg and Hall-of-Famer Nolan Ryan. It was reported that the Rangers’ secured creditors were unhappy with the proposed sale price of the team, believing that higher bids were made by others, and the creditors attempted to block the sale. This reportedly led MLB Commissioner Selig to consider using the “best interests of baseball” power to make the sale happen. Reaction was hyperbolic, including claims that Selig was attempting to “revoke” or “invalidate” the creditors’ liens. Creditors reportedly warned that “if the commissioner were to invalidate their rights, it could decimate sports finance in baseball.” Others took a more moderate stance. Smith College Professor of Economics Andrew Zimbalist noted that the best interest power “is only applicable to internal relationships in baseball. Creditors are not part of baseball. The application is between baseball and Mr. Hicks.” Seeing the situation as more of a negotiation tactic, Zimbalist said further, “I don’t think Bud Selig and Bob DuPuy thought by invoking the clause, the lenders would lie down.”

Ultimately, both sides appeared to get what they wanted. Creditor objections appear to have increased the ultimate sale price, but the buyers remained the group that earlier received MLB approval. On May 24, 2010, the Texas Rangers filed for Chapter 11 bankruptcy protection, reportedly “in an effort to skirt the creditors’ objections.” The creditors succeeded, however, in bringing other bidders to the table, and another group led by Dallas Mavericks’ owner Mark Cuban participated in the bankruptcy

79. Id.
80. Id.
81. Id.
82. Id.
83. Sandomir, supra note 69. Although an MLB Commissioner could not unilaterally remove a lawfully obtained security interest without providing replacement collateral or other compensation, it is possible that a Commissioner’s actions could impact the value of a secured interest in a franchise by blocking approval of a prospective buyer that has outbid all others, as NHL Commissioner Bettman did with the recent sale of the Phoenix Coyotes. See infra Part 2 Section III.B.4. (text accompanying nn. 291-294) and the In re Dewey Ranch Hockey opinions 406 B.R. 30 (Bankr. D. Ariz. 2009), and 414 B.R. 577 (Bankr. D. Ariz. 2009) for more on the Coyotes’ sale.
84. Kaplan, supra note 78.
85. Sandomir, supra note 69.
86. Id.
auction. On August 5, 2010, the team was sold at bankruptcy auction to the Chuck Greenberg–Nolan Ryan group, who finally outbid the Cuban group in a nearly sixteen-hour auction. The final purchase price was $593 million. Although Greenberg–Ryan was the group that initially was going to buy the Rangers, the purchase price was reported to be almost $80 million higher than the initial Greenberg–Ryan buying price.

Although the issue of team relocation did not arise in that case, the Rangers sale is an excellent illustration of how secured creditors can play an important role in team affairs, possibly even in team ownership, and therefore, secured creditor restrictions should be considered when drafting a non-relocation agreement.

2. Protection Outside the Non-Relocation Agreement

The 2010 Rangers sale also demonstrates that, notwithstanding any language in a security agreement, the MLB Constitution can provide another significant protection for the home city against the holders of a security interest in the team. The MLB Constitution regulates the acquisition of a controlling interest in an MLB franchise. Article 5 of the MLB Constitution requires approval of three-fourths of all MLB “Clubs” (teams) to approve “the sale or transfer of a control interest in any Club.” Article 7 of the MLB Constitution establishes the MLB Constitution as superseding “any conflicting provisions of any other agreement . . . to which any Major League Club is a party.” The MLB Constitution also gives the MLB Commissioner the power to take actions that are “in the best interests of baseball;” such actions could preclude a foreclosing secured creditor from assuming control of a team.

88. Daniel Kaplan, Banker’s Gamble Pays Off in Rangers Auction, STREET & SMITH’S SPORTSBUSINESS J., August 16, 2010, at 10. In the bankruptcy process, disputes also arose between “first priority” and “second priority” secured creditors, leading to another blocked sale to the Greenberg-Ryan group and to threats of litigation between creditors only two days before the August 5, 2010 bankruptcy auction. See id.


91. Greenberg-Ryan Group Tops Cuban in Lengthy Rangers Auction, supra note 89.

92. MLB CONST. art. V., § (2)(b)(2).

93. Id.

94. MLB CONST. art.VII.

95. See, e.g., Sandomir, supra note 69; see also Daniel Kaplan, Rangers Repercussions Already
However, the MLB Constitution cannot provide the complete protection that a home city desires. To begin, provisions in the MLB Constitution can be altered or repealed without the consent of the home city.\(^\text{96}\) Or, the Clubs may vote against the home city's interest and allow ownership to pass to the secured lender. In fact, since each Club's vote is the vote of the team owner, a team wishing to relocate will have input in the decision to approve transfer of ownership and may be able to influence the votes of fellow team owners. If MLB Club owners vote to allow the security interest holder to take control of the franchise, the new owner may proceed to explore relocation options,\(^\text{97}\) and the home city would be left without any protection, unless the non-relocation agreement applies to the foreclosing secured creditor. The MLB commissioner may have the power to intervene under the best interests power, but the home city cannot rely on such action being taken. Therefore, it remains imperative that the home city protect itself beyond the MLB Constitution, to which the city is not a party, against a security-interest-related transfer.

3. Pledge Restrictions Within the Non-Relocation Agreement

Pledge restrictions can prevent a non-relocation agreement from being undermined by a lender's foreclosure on a security interest in the franchise by requiring a lender to agree, prior to the loan, to abide by the non-relocation agreement in the case of security interest foreclosure. The Yankees' agreement includes such a requirement:

\section{2.4.3 Covered Pledge}

a. Any pledge, lien, security interest, hypothecation, or similar conditional assignment of the Team or of a controlling interest therein given to secure indebtedness for borrowed money or a guarantee of indebtedness for borrowed money is referred to as a "Covered Pledge." In the absence of a specific intent to use a Covered Pledge to effect a Prohibited Relocation, the making of a Covered Pledge is not deemed to be a Transfer for purposes of this Section 2.4

b. The Partnership shall not grant or permit to exist any Covered Pledge, unless the documents and other instruments


\(^{96}\) \textit{See MLB CONST. art. VI., § (b)(7).}

\(^{97}\) Relocation of a team must also be approved by a vote of MLB clubs. \textit{Id.}
implementing the Covered Pledge expressly provide, and the
pledgee agrees in writing for the intended third-party benefit
of the City, ESDC, NYCIDA, and their respective successors
and assigns that (i) such Covered Pledge is subject to this
Agreement, and (ii) any Transfer of the Team upon
foreclosure or other enforcement of the Covered Pledge shall
be on the condition that (x) the pledgee/transferor comply
with Section 2.4.2 in lieu of the Partnership and (y) that the
Transferee comply with Section 2.4.2

c. Concurrent with execution thereof or on the Effective Date
(prior to execution of this Agreement) if such Covered Pledge
exists at such date, the Partnership shall provide to the City,
ESDC and NYCIDA, a copy of any documents and other
instruments implementing such Covered Pledge certified as
true and complete by an officer of the Partnership and
including the express agreement of the pledgee required by
Section 2.4.3(b) and third party beneficiary language in favor
of the City, ESDC and NYCIDA which permits any of them
to enforce such agreement. Nothing in this Agreement shall
restrict the Partnership’s ability to redact the financial or other
material terms (other than the express agreement and third
party beneficiary language referenced in the preceding
sentence, any language which would undermine the operation
or effectiveness thereof, the notice of Transfer required by
Section 2.4.2(a), and the Assumption and Agreement to be
Bound) which it may deliver to the City, the ESDC or the
NYCIDA in connection with any Covered Pledge. 98

The Yankees’ relocation covenant should be compared with the Brewers’
relocation covenant, in which a pledge relationship is not subject to the
relocation covenant or agreement:

2(g). Notwithstanding anything to the contrary set forth in
clauses (i), (ii) or (iii) above, it is expressly understood and
agreed that the Team shall have the right to grant a mortgage,
pledge, assignment and/or other security interest in any of the
Team’s trade fixtures, equipment, personal property,
receivables, accounts, contract rights, general intangibles,

98. Yankees’ Non-Relocation Agreement, supra note 52, § 2.4.3.
tangible and intangible assets, any of the Team’s revenue streams derived from any source whatsoever, and/or the Team’s Franchise to obtain financing and/or secure a loan or loans from one or more lenders. It is further expressly understood and agreed that such lender(s) or their successors and assigns shall not be bound by the terms of this Agreement and that such lender(s)’ mortgage, pledge, assignment or security interest shall not be subject to nor limited or restricted, in any way, by the terms of this Agreement.\footnote{Exclusion of secured creditors, and their successors or assigns, from the contractual obligations of the non-relocation agreement presents a potentially serious risk if a franchise were to go heavily into debt and be unable to repay. Subject to three-fourths approval of MLB franchise owners, the secured lenders could take control of the team from the current owners and then relocate the team because the secured lenders would not be bound by the non-relocation agreement.} Exclusion of secured creditors, and their successors or assigns, from the contractual obligations of the non-relocation agreement presents a potentially serious risk if a franchise were to go heavily into debt and be unable to repay. Subject to three-fourths approval of MLB franchise owners, the secured lenders could take control of the team from the current owners and then relocate the team because the secured lenders would not be bound by the non-relocation agreement.\footnote{Of course, there are other restrictions in place that may hinder such a move, primarily the requirement of approval from Major League Baseball. And with the Brewers' former owner, and current MLB Commissioner, overseeing the approval process, MLB approval for relocation of the Brewers might not be so forthcoming. Still, the protections and the remedies provided by the non-relocation agreement would be unenforceable.}

Accordingly, an express provision in the non-relocation agreement, requiring a lender’s written agreement to abide by the non-relocation obligations, is the best means to protect the home city should an involuntary transfer occur.

\textit{D. Team-Specific Covenants}

Some of the more specialized covenants are tailored to deal with issues of specific concern for a city. Such covenants are typically useful only for the specific team and city involved, although some repetition may be found in the agreements of teams that play in similarly sized markets. For example, the non-relocation agreement of the Minnesota Twins contains a clause requiring the team to “oppose contraction of the [f]ranchise by MLB.”\footnote{This was included because in the past the Twins were specifically targeted for contraction should MLB decide to reduce the number of teams.} For the

\footnote{Amended and Restated Non-Relocation Agreement by and among Southeast Wisconsin Professional Baseball Park District, State of Wisconsin and Milwaukee Brewers Baseball Club, Limited Partnership, § 2(g) (2004) [hereinafter Brewers’ Lease].}

\footnote{See infra Section IX.B.}
same reason, the Florida Marlins' agreement also prohibits the team from volunteering for or voting in favor of its own contraction.\textsuperscript{103} Concerns about possible MLB contraction are obviously not shared by the large-market cities that are home to MLB franchises. To account for the variability in each home city's specific situation, each non-relocation agreement must contain protections that are tailored to any specific concerns that a city may have.

VI. TRADITIONAL REMEDIES FOR BREACH OF NON-RELOCATION AGREEMENTS

The earliest non-relocation agreements typically have general remedy provisions that are applicable to the non-relocation covenants. Because the non-relocation covenants are part of a larger stadium lease, general remedies for breach of the lease will normally apply to breach of non-relocation covenants. Additionally, many agreements, including those agreements containing specific remedies for breach of the non-relocation covenants, focus exclusively on equitable remedies for breach.

A. Equitable Remedies—Specific Performance, Injunctive Relief, Temporary Restraining Orders

The cornerstone remedies of non-relocation agreements are the equitable remedies of specific performance, injunctive relief, and the temporary restraining order. These are the preferred remedies for the home city in virtually any situation; therefore, they are present, in some form, in every MLB non-relocation agreement.

Specific performance represents the ideal remedy for a city—a court order that requires a team to play out its lease in its current location.\textsuperscript{104} If a suit for specific performance of a non-relocation agreement is successful, the court will enter an order requiring the team to fulfill its actual performance obligations under its agreement with the home city, rather than simply requiring the team to compensate the home city for damages caused by the breach. Specific performance is one of the most common remedy provisions, appearing in twenty of twenty-two agreements.\textsuperscript{105}

\textsuperscript{103} Non-Relocation Agreement by and among Miami-Dade County and the Florida Marlins, § 2.2 [hereinafter Marlins' Lease].

\textsuperscript{104} See \textit{BLACK'S LAW DICTIONARY} 1407 (7th ed. 1999) (defining specific performance as "[a] court-ordered remedy that requires precise fulfillment of a legal or contractual obligation when monetary damages are inappropriate or inadequate, as when the sale of real estate or a rare article is involved."); see \textit{e.g.}, Bali v. Christiana Care Health Serv., 1999 Del. Ch. LEXIS 128 (Del. Ch. June 16, 1999).

\textsuperscript{105} See chart infra Section VIII.
Temporary restraining orders (TROs),\textsuperscript{106} preliminary injunctions,\textsuperscript{107} and permanent injunctions\textsuperscript{108} bear some resemblance to specific performance as remedies. Although none of these remedies will necessarily require a team to specifically perform its contractual obligations (as specific performance would), these remedies, if granted, will prohibit the team from proceeding with any plans to relocate. TROs and injunctive relief are also common remedies, with at least one of these remedies appearing in all twenty-two agreements.\textsuperscript{109}

A TRO or preliminary injunction, if granted, prohibits the team from relocating during court proceedings to enforce the non-relocation agreement. A negative injunction would prohibit the team from playing in any other location for the remainder of the lease term, although it does not compel a team to play in the home city.\textsuperscript{110} Negative injunctions are the more common remedy for courts to grant, generally, because they do not require a court to closely monitor performance to ensure that a team performs its lease obligations in good faith.\textsuperscript{111} Because courts may be reluctant to compel specific performance of a stadium lease,\textsuperscript{112} non-relocation agreements should also include negative injunctions and TROs as remedies.

B. Language That Justifies or Facilitates the Pursuit of Equitable Relief

1. Specific Language Justifying Equitable Relief

To increase the chances that a suit for specific performance or other injunctive relief will succeed, cities include provisions with specific language designed to justify equitable remedies. Typically, these provisions state that breach of the non-relocation agreement would cause “irreparable harm,” that

\begin{itemize}
  \item \textsuperscript{106} A temporary restraining order is a “court order preserving the status quo until a litigant’s application for a preliminary or permanent injunction can be heard.” BLACK’S LAW DICTIONARY, supra note 104, at 1477.
  \item \textsuperscript{107} A preliminary injunction is “[a] temporary injunction issued before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case.” \textit{Id.} at 358.
  \item \textsuperscript{108} A permanent injunction will be granted only at the end of a trial or hearing on the merits of a case. \textit{See id.}
  \item \textsuperscript{109} \textit{See chart infra} at Section VIII.
  \item \textsuperscript{110} Technically, the team could refuse to play anywhere, however unlikely that may be.
  \item \textsuperscript{111} \textit{See Burton & Mitten, supra} note 47, at 821–22.
  \item \textsuperscript{112} Courts may be reluctant to grant specific performance because of, among other reasons, the administrative burdens of supervising the parties to make sure each side is fulfilling its obligations over the full term of the contract, which could be twenty plus years in the case of an MLB team non-relocation agreement. \textit{See also infra Section X.A.1.}
\end{itemize}
there is "no adequate remedy at law," or that "monetary damages would not fully compensate" for a breach. This language mirrors language that past courts have used when granting injunctive relief. Such language is present, in some form, in twenty-one of the twenty-two agreements.

2. Provisions That Facilitate the Pursuit of Equitable Relief

a. Choice of Remedies

Many agreements also include a "choice of remedies" provision to further clarify the desirability of injunctive relief over monetary damages. This provision often specifies that contractual remedies are cumulative. A choice of remedies provision is included in sixteen of the twenty-two agreements.

b. Named Third-Party Beneficiaries

The city or county in which the stadium is located may also be specified as third-party beneficiaries to the agreement. Third-party beneficiaries, though not a party to the contract, stand to benefit from the contract. This language supports a stadium owner's position that the bargained-for value of the contract goes far beyond any direct revenue from stadium rent, includes intangible economic and non-economic benefits to the larger community, and can only be received by a team complying with its lease. Third-party beneficiary provisions are found in eleven of the twenty-two agreements.

3. No Bond/Waiver of Defenses/Appointment of Receiver

To further streamline the pursuit of equitable relief, many agreements include a team waiver of any requirements that the home city post a bond in a suit for equitable relief. Bond waivers are included in fifteen of twenty-two

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113. See chart infra at Section VIII (sixteen team non-relocation agreements include "irreparable harm" or "no adequate remedy at law" language in their non-relocation covenants).
114. See chart infra at Section VIII (nineteen team non-relocation agreements include "monetary damages would not fully compensate" language).
115. See e.g., Morales v. Trans. World Airlines, 504 U.S. 374, 380 (1992) (stating "It is a basic doctrine of equity jurisprudence that courts of equity should not act . . . when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief") (citations and internal quotation marks omitted).
116. See chart infra Section VIII for a list of these teams.
117. See chart infra at Section VIII for a list of these teams.
118. See e.g., Winter v. Floorpro, Inc., 570 F.3d 1367, 1370 (Fed. Cir. 2009).
119. See chart infra at Section VIII for a list of these teams.
agreements. Some agreements also contain a waiver of any defense by the franchise that monetary damages could compensate for breach of the non-relocation promise. If the franchise can prove to a court that the home city could be adequately compensated by money, equitable remedies such as specific performance and injunctive relief typically will not be granted by a court. Waiver of this defense is included in six agreements. Finally, two agreements require the appointment of a receiver.

4. Venue Selection and Arbitration

Many non-relocation agreements stipulate the venue where disputes must be resolved. By choosing a venue believed to be favorable to its position, the city seeks a “home court advantage” in a suit for equitable and other remedies. Venue selection is included in thirteen of the twenty-two agreements.

The Houston Astros’ agreement specifies that disputes will be resolved through the arbitration process. The choice of arbitration is based upon the same considerations as the choice of a specific court—the home city seeks a venue that will provide a favorable result. Arbitration may also be a quicker and less expensive alternative to court action; it also may provide greater confidentiality. However, arbitration decisions typically do not offer an extensive appeals process, and court review of arbitration decisions is extremely limited. Considering the enormity of the stakes involved,

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120. See chart infra at Section VIII for a list of these teams. The White Sox agreement provides for a bond refund.

121. See e.g., Morales v. Trans. World Airlines, 504 U.S. 374, 380 (1992) (stating, “It is a basic doctrine of equity jurisprudence that courts of equity should not act . . . when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief”) (citations and internal quotation marks omitted).

122. See chart infra Section VIII.

123. The Braves and Cardinals agreements include this provision.

124. See chart infra at Section VIII.

125. Astros’ Non-Relocation Agreement, supra, note 57, §§ 5.1, 5.2. Although under the Astros agreement all disputes are to be ultimately resolved by the arbitration process, the parties retain the right to petition a court for a temporary restraining order or other relief to maintain the status quo, while the dispute proceeds through the arbitration process. Id. at § 4.3(v) § 5.3.


127. See e.g., Stolt-Nielsen S. A. v. AnimalFeeds Int’l Corp., 130 S. Ct. 1758, 1767 (2010) (stating, “It is not enough for petitioners to show that the panel committed an error—or even a serious error. It is only when [an] arbitrator strays from interpretation and application of the agreement and effectively dispense[s] his own brand of industrial justice that his decision may be unenforceable.”) (internal citations and quotes omitted, brackets in original).
agreeing to abide by an essentially unappealable decision seems to be a serious risk.

VII. MODERN ADDITIONS TO REMEDIES—PROVISIONS FOR MONETARY RECOVERY

Barring unique and remote circumstances, when faced with an actual or potential breach of non-relocation covenants, the home city’s preferred remedies will be equitable. However, the inclusion of equitable remedies in a non-relocation agreement does not guarantee that those remedies will be granted. If an action seeking specific performance or other equitable remedies is unsuccessful, the home city could be left without a team and receive nothing as compensation. Acknowledging this possibility, modern non-relocation agreements contain remedies that provide for monetary compensation for the total anticipated losses the home city would incur following the loss of its team. These additional monetary remedies not only provide the home city with greater protection from possible financial harm; they also serve as an additional disincentive for a team to breach—if team ownership were of the opinion that a home city’s suit for equitable remedies would fail, the monetary remedies would remain.

A. Liquidated Damages

Calculating a total amount of damages to a city and its inhabitants that would be caused by the relocation of a city’s MLB team is an impossible task. Damage to a city’s prestige and the loss of psychic income for its resident fans are inherently unquantifiable. Ancillary economic benefits, such as potential revenues and growth of businesses near the stadium, may be quantifiable but are inherently uncertain. As such, courts are reluctant to assign a value to these interests, yet the interests are certainly among those that the non-relocation agreement was designed to protect. A liquidated damages provision establishes an agreed-upon value for the team’s performance of its obligations under a non-relocation agreement. Liquidated damages are “an amount of compensation to be paid in the event of a breach of contract, the sum of which

128. A city would have to be guaranteed a replacement MLB team; as discussed above, such a guarantee is virtually impossible. And even in this situation, a strain from the loss of “psychic income” would occur.

129. A home city will likely sue for specific performance of the non-relocation agreement, an injunction prohibiting the team from playing in another location, and a temporary restraining order prohibiting the team from proceeding with relocation plans during the pendency of the lawsuit.

130. Traditional remedies for breach would not provide any compensation for loss of ancillary economic benefits to the community or for loss of psychic income.
is fixed and certain by agreement." Liquidated damages clauses are appropriate in situations where damages amounts may be difficult to determine. A liquidated damages clause, however, cannot impose a penalty for breach.

With a liquidated damages clause in the non-relocation agreement, there is no need for the home city to attempt to prove damages for breach because the damages amount is included in the contract. This amount is typically reduced for each year of performance to account for the city's receipt of the benefits of hosting the team for that year. Liquidated damages provisions have been a relatively recent addition to non-relocation agreements, included in only five current MLB team non-relocation agreements. Four of these provisions are provided below:

1. Florida Marlins

5.3 Liquidated Damages. The parties acknowledge and agree that if the County or the City do not obtain injunctive or other equitable relief pursuant to Section 5.2, the County and the City each shall be entitled to seek and obtain relief pursuant to this Section 5.3 in the event a court of competent jurisdiction determines, in a final and non-appealable order, that the Team has breached its covenants under Section 2(c) (a "Final Order"). The Parties also recognize, agree, and stipulate that the financial, civic, and social benefits to the County and the City from the presence of the Team and the playing of its MLB Home Games in Miami, Florida are great, but that the precise value of those benefits cannot be estimated with any degree of certainty due to the number of citizens and businesses that rely upon and benefit from the presence of the Team in Miami, Florida. Accordingly, the magnitude of the damages that would result from a breach of Section 2(c)

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132. See e.g., Ladco Props. XVII v. Jefferson-Pilot Life Ins. Co., 531 F.3d 718, 720 (8th Cir. 2008). ("[A] liquidated damages provision is enforceable and will not be considered a penalty where (1) damages are speculative or difficult to ascertain, and (2) the amount stipulated is a reasonable estimate of probable damages or the amount stipulated is reasonably proportionate to the damages actually caused by the breach."). Id.

133. See e.g., id. ("Such a provision is valid if the liquidated damages amount represents an estimate of actual damages likely to result from the breach; if instead it represents a fixed amount designed solely to punish a party for a breach, it amounts to an unenforceable penalty."). Id.

134. The Mets' agreement parallels that of the Yankees, with different values inserted.
hereof that is not enjoined by a court of competent jurisdiction notwithstanding the intent of the parties, would be very significant in size but are not readily ascertainable and would include damages to the reputation and finances of the County and the City. Therefore, the Parties agree that in the event of a violation of Section 2(c) hereof, including, without limitation, any such breach arising pursuant to the provisions of section 365(g) of the United States Bankruptcy Code or similar provision of any successor thereto, the County and the City will be entitled to recover from the Team the amounts set forth in Subsection 5.3.1:

5.3.1: Liquidated Damages. If the County or the City do not obtain injunctive or other equitable relief pursuant to Section 5.2 and the violation of Section 2(c) is not cured prior to the date that a court of competent jurisdiction enters a Final Order, the County shall be entitled to receive, as reasonable estimated liquidated damages and not as a penalty, the County Liquidated Damages (as hereafter defined) and the City shall be entitled to receive, as reasonable estimated liquidated damages and not as a penalty, the City Liquidated Damages (as hereafter defined). For purposes of this Agreement, “County Liquidated Damages” shall mean the sum of (a) the then outstanding balance of principal and interest of the County Bonds (as such term is defined in the Construction Administration Agreement), (b) the unamortized amount of Public Infrastructure Costs and any other costs for the Baseball Stadium Project paid by the County under the Construction Administration Agreement (which amount shall be amortized on a straight line basis over 30 years) without duplicating amounts in (a) if such Public Infrastructure Costs or other costs are funded from County Bonds, and (c) the present value of all Capital Reserve Fund contributions required to be made by the Stadium operator pursuant to Section 9.3(b) of the Operating Agreement. For purposes of this Agreement, “City Liquidated Damages” shall mean the sum of (i) the then outstanding balance of principal and interest of the City Bonds (as such term is defined in the Construction Administration Agreement), (ii) the unamortized balance of the funds (other than the proceeds of the City Bonds) deposited in the City Account (as such term is defined
in the Construction Administration Agreement) in an amount that, together with proceeds of the City Bonds, will be equal to $13,000,000 (which balance shall be amortized on a straight line basis over 30 years), (iii) the present value of all regular season MLB Home Game parking fees owed to the City under Section 6.3(a) of the City Parking Agreement (assuming 81 regular season MLB Home Games) prior to the end of the Term (as such term is defined in the City Parking Agreement), and (iv) the unamortized amount of Public Infrastructure Costs and any other costs for the Baseball Stadium Project paid by the City under the Construction Administration Agreement (which amount shall be amortized on a straight line basis over 30 years), without duplicating amounts in (i) and (ii) if such Public Infrastructure Costs or other costs are funded from City Bonds or amounts referred to in (ii).135

2. St. Louis Cardinals

5.3 Certain Equitable or Liquidated Damages. The Parties acknowledge and agree that (i) the Ballpark Project is being constructed with the assistance of the Authority pursuant to the Redevelopment Plan and the Redevelopment Agreement to enable the Cardinals and the Team to remain in the city and to enable the Team to play its Home Games in the Ballpark and (ii) Section 2.1 of this Agreement is intended to ensure, among other things, that the Cardinals will not relocate the Team. The Parties acknowledge and agree that (i) particular and highly unique circumstances have given rise to this Agreement, (ii) the Authority will be immediately, uniquely and irreparably harmed by any violation by the Cardinals of Section 2.1 of this Agreement, (iii) monetary damages could not be calculated to compensate the Authority for any breach by the Cardinals of Section 2.1 of this Agreement and (iv) the Authority does not have an adequate remedy at law for the breach by the Cardinals of Section 2.1 of this Agreement. The Parties acknowledge and agree that the economic, financial, civic and social benefits to the Authority and the City from the presence of the Cardinals and the Team and the playing by the

135. Marlins' Lease, supra note 103, §§ 5.3, 5.3.1.
Team of its Home Games in the City are great, but that the precise value of those benefits is difficult to quantify due to the number of citizens and businesses that rely upon and benefit from the presence of the Cardinals and the Team in the City. Accordingly, the magnitude of the damages that would result from the loss of those benefits due to a violation by the Cardinals of Section 2.1 of this Agreement would be significant in size but difficult to quantify.

The parties agree that in the event of a material default, violation or breach, or threatened material default, violation or breach, by the Cardinals of any provision of Section 2.1, the sole and exclusive remedy of the Authority shall be any one, but not both, of the remedies specified in (a) and (b) below:

the Authority may, without the necessity of posting any bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or inadequacy of money damages, be entitled to seek and obtain an injunction, specific performance or any other preliminary or permanent equitable relief from any court of competent jurisdiction to prevent such violation or breach, and the Cardinals agree and stipulate that the rights of the Authority to equitable relief pursuant to this Section 5.3 shall not constitute a “claim” pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving the Cardinals; or

the Authority shall be entitled to terminate this Agreement and the Redevelopment Agreement and receive, and the Cardinals shall pay, liquidated damages in the applicable amount ("Liquidated Damages Amount"), determined as follows based upon the date on which the violation or breach of Section 2.1 occurs: for the period commencing on the Effective Date and ending on the last day of the calendar year in which Substantial Completion of the Ballpark occurs, the Liquidated Damages Amount shall be $145,000,000 ("Initial Liquidated Damages Amount"), thereafter, the Liquidated Damages Amount shall be reduced by 1/29 of the Initial Liquidated Damages Amount on the last day of each calendar
year during the remaining Term of this Agreement. The Parties acknowledge that they have negotiated the above amounts in an attempt to make a good faith effort to quantify the amount of damages that would result from a violation of Section 2.1 despite the difficulty in making such determination. Accordingly, in the event the Authority or any other Person shall collect the above-described liquidated damages, then the Authority and any such other Person shall not have, and hereby waive, the right to collect additional monetary or any other damages for breach of Section 2.1, whether for lost or prospective profits, or for special, indirect, incidental, consequential, exemplary or punitive damages, or for any other loss or consequence. 136

3. Houston Astros.

Section 4.4 Liquidated Damages. The Parties also recognize, agree, and stipulate that the financial, civic, and social benefits to the Sports Authority, the City and the County form the presence of the Astros and the playing of its Baseball Home Games in the City and County are great, but that the precise value of those benefits is difficult to quantify due to the number of citizens and businesses that rely upon and benefit from the presence of the Astros in the City and County. Accordingly, the magnitude of the damages that would result from a violation of Section 3.1 hereof would be very significant in size but difficult to quantify including, without limitation, damages to the reputation and finances of the Sports Authority, the City, and the County. Therefore, the Parties agree that in the event of a violation of Section 3.1 hereof including, without limitation, any such breach arising pursuant to the provisions of section 365(g) of the United States Bankruptcy Code or similar provision of any successor thereto, the Sports Authority will be entitled to recover from Houston McLane the following sums, which are stipulated to be reasonable estimated damages in the event of a violation of Section 3.1 hereof, as reasonable liquidated damages and not as a penalty:

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136. Cardinals' Lease, supra note 62, §§ 5.3, 5.3(a)–(b).
Date of Breach | Liquidated Damages  
---|---  
7/1/98 – 6/30/2003 | $250,000,000  
7/1/03 – 6/30/2008 | $200,000,000  
7/1/08 – 6/30/2013 | $150,000,000  
7/1/13 – 6/30/2018 | $125,000,000  
7/1/18 – 6/30/2023 | $100,000,000  
After 7/1/2023 | $ 75,000,000  

The parties hereby acknowledge that they have negotiated the above amounts in an attempt to make a good faith effort in quantifying the amount of damages due to a violation of Section 3.1 hereof despite the difficulty in making such determination. Accordingly, in the event the Sports Authority collects the above referenced liquidated damages then the Sports Authority hereby waives any right to collect additional monetary damages (other than as provided pursuant to Section 6.18 hereof) including lost or prospective profits, or for any other special, indirect, incidental, consequential, exemplary, or punitive damages.137


Section 3.3.2 Liquidated Damages. Solely with respect to an Event of Default under Section 3.1.1, if the City, the ESDC and/or the NYCIDA is unable to obtain an equitable remedy in accordance with Section 3.3.1, then the City and/or the ESDC, as the case may be, (but not, for the avoidance of doubt, the NYCIDA) shall have the right to recover from the Partnership, and the Partnership agrees to pay within thirty (30) days following demand therefor, in immediately available funds and in lieu of any and all other damages payable, and other remedies available, under this Agreement and applicable law, the applicable amount set forth on Appendix C attached hereto and made a part hereof, to be paid to the City, which amounts are stipulated to be reasonable estimated damages for loss of a bargain in the event of an Event of Default under Section 3.1.1. for a Prohibited Relocation, as reasonable liquidated damages and not as a

137. Astros' Non-Relocation Agreement, supra note 57, § 4.4.
penalty (and because the parties hereto agree that damages for breach of Section 3.1.1 would be difficult or impossible to determine, but that they intend to provide for damages, and the amounts set forth on Appendix C are a reasonable estimate of such damages). Notwithstanding anything herein to the contrary, nothing in this Section 3.3.2 is intended to limit any remedies available to the City and/or ESDC under applicable law to enable them to collect liquidated damages payable under this Agreement.138

Appendix C: Liquidated Damages

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Especially in the first years of performance, liquidated damages clauses provide a strong financial disincentive to relocate; this protection decreases, however, as the amount is reduced over the course of performance. It is also unknown whether courts might be less inclined to grant equitable remedies when liquidated damages are available.140 Still, considering that, without such a provision, a city’s failure to obtain equitable relief would result in a total loss of compensation for loss of ancillary and intangible benefits,

138. Yankees’ Non-Relocation Agreement, supra note 52, § 3.3.2.
139. Id. at App. C.
140. A choice of remedies provision can protect the city somewhat, but a court could still deny equitable relief, forcing the city to settle for liquidated damages.
including a liquidated damages clause seems the better-reasoned approach.

It is also possible that the relationship between a team and its home city may simply turn sour—the team may be losing money, fans may have lost interest, or a small market may not be able to support the enterprise. This may be not only an issue of wanting to relocate, it may be an issue of the team’s ability to function and compete with other teams on an equal playing field in a particular city. In these situations, a liquidated damages clause essentially provides the team with a buy-out option, but one that the home city can negotiate more favorably in advance.

B. Recoverable Monetary Damages

Some agreements do not contain a liquidated damages clause but still provide for the home city’s recovery of monetary damages for the team’s breach. Recoverable damages in such clauses may include (1) expenditures for stadium construction and payment of bonds, (2) loss of stadium generated revenue, and (3) recovery of attorney fees incurred in obtaining relief for breach. The Washington Nationals’ agreement contains all three:

4.2 Commission Special Remedies

... all costs and expenses incurred by the District Government, the Commission or any other affected party claiming through the District Government or the Commission, including (A) all costs and expenses incurred by the District Government and the Commission to construct the Baseball Stadium, including, without limitation, the amount required to repay principal and interest on (and premium, if any, on) the Stadium Revenue Bonds, (B) any lost net revenue arising out of or created by the operation and use of the Baseball Stadium that the Commission would have received if the Team had complied with the Team Non-Relocation Obligations, and (C) all costs and expenses incurred by the Commission, including attorneys’ fees and disbursements (other than as provided for in Section 6.17), in seeking to enforce its remedies hereunder.141

The Cincinnati Reds’ lease also includes express provisions for monetary

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22.5 Final Damages. If this lease is terminated by the County as provided for by Section 22.2.1 [termination for event of default], the County shall be entitled to recover from the Team all Rent accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by the Team or for which the Team is liable or in respect of which the Team has agreed to indemnify the County under any of the provisions of this Lease, which may be then owing and unpaid, and all costs and expenses, including court costs and attorneys' fees, incurred by the County in the enforcement of its rights and remedies hereunder, and, in addition, the County shall be entitled to recover as damages for loss of the bargain and not as a penalty: (a) the aggregate sum which at the time of such termination represents the excess, if any, of the present value of the aggregate rents which would have been payable after the termination date had this Lease not been terminated, including, without limitation, Base Rent at the annual rates or respective annual rates for the remainder of the Term provided for in Article 6 of this Lease or elsewhere herein, over the then-present value of the then-aggregate fair rental value of the Stadium Project for the balance of the Term, such present worth to be computed in each case on the basis of a five percent (5%) per annum discount from the respective dates upon which such rentals would have been payable hereunder had this Lease not been terminated; and (b) any damages in addition thereto, including reasonable attorneys' fees and court costs, which the County shall have sustained by reason of the breach of any of the covenants of this Lease other than for the payment of Rent.\textsuperscript{142}

Currently, thirteen MLB teams are party to non-relocation agreements that contain monetary recovery provisions. The primary weaknesses of these provisions are that (1) they do not account for the loss of intangible benefits and (2) the damage amounts must be proven. These provisions are worthwhile inclusions, but they should be accompanied by other provisions that quantify recoverable values, including values for intangible benefits such as psychic

\textsuperscript{142} Reds' Lease, supra note 60, § 22.5.
C. Subordinate Security Interest in Franchise

A unique provision, which one city has used to compliment their equitable and monetary remedies, is Washington, D.C.’s acquisition of a subordinate security interest in its team, the Nationals. Unlike a traditional security interest, this subordinate lien does not serve the purpose of securing collateral as a means for monetary recovery; Washington, D.C.’s security interest is designed to secure the performance of the team’s non-relocation obligations. The Washington Nationals’ agreement provides the following:

2.4 Subordinate Lien on Franchise.

To secure the Team Non-Relocation Obligations, the Team hereby grants to the Commission a subordinated security interest in the Franchise (the Subordinate Lien”) on the terms set forth in this Section 2.4. The granting and terms of the Subordinate Lien shall be subject to each and all of the following conditions:

(a) The Subordinate Lien shall become effective contemporaneously with the deposit by the District Government into the Project Account of the net proceeds from the issuance of the Initial Stadium Revenue Bonds.

(b) The Subordinate Lien may be foreclosed upon by the Commission only in the event of a breach by the Team of the Team Non-Relocation Obligations. The Subordinate Lien secures only the performance of the Team Non-Relocation Obligations.

(c) The Subordinate Lien shall be fully subordinate as to payment and line priority to any then-current or future Covered Pledge given by the Team to secure payment and performance of its obligations, without limit as to amount, including guarantee obligations, in respect of any then existing or future indebtedness (including capitalized leases and other obligations classified as liabilities in accordance with generally accepted accounting principles) of the Team or any person or entity that is affiliated with the Team or has invested in the Team or in which the Team is an investor,
provided that the principal purposes of the indebtedness in respect of which such Covered Pledge is granted relates to the acquisition, promotion, financing or operation of the Team or any business venture related to the business of the Team or the development of the Baseball Stadium Complex and surrounding area ("Senior Secured Indebtedness"). No proceeds of the Subordinate Lien may be paid to the Commission unless and until all Senior Secured Indebtedness is paid in full. No consent of the Commission is required for the incurrence of Senior Secured Indebtedness.

(d) The Commission hereby disclaims any right that might otherwise implicitly or explicitly arise under or in respect of the Subordinate Lien to review, approve or consent to (i) the loan, security and other documentation for Senior Secured Indebtedness or any guarantee thereof and (ii) any transfer or the making of a Covered Pledge of the Franchise, the Team or a Control Interest in either (or any financing relating thereto) that does not involve a violation of the Team Non-Relocation Obligations.

(e) If then customarily required by Major League Baseball in connection with the grant of liens in Major League Baseball franchises generally, in connection with the grant of the lien as provided in clause (a) above, the Commission and Major League Baseball will enter into a standard form Major League Baseball lien consent agreement on customary terms generally applied by Major League Baseball to third party holders of liens on Major League Baseball franchises and in which, among other things (A) Major League Baseball will confirm its approval of this Agreement and consent to the terms of the Subordinate Lien, and (B) the Commission will agree with, for the benefit of Major League Baseball, to the provisions set forth in Exhibit A.

(f) The Subordinate Lien shall automatically terminate and be void in the event of a termination of the Lease pursuant to Section 3.4 thereof, other than with respect to a termination of the Lease following:

(i) the Team filing a petition in bankruptcy or insolvency or
for reorganization under any bankruptcy act, or voluntarily
taking advantage of any such act by answer or otherwise, or
making an assignment for the benefit of creditors;

(ii) the Team being adjudicated bankrupt or insolvent by any
court;

(iii) involuntary proceedings under any bankruptcy law or
insolvency act being instituted against the Team or a receiver
or trustee being appointed for all or substantially all of the
property of the Team, and such proceedings shall not be
dismissed or the receivership or trusteeship vacated within 90
days after the institution of appointment; or

(iv) the Team making an assignment for the benefit of
creditors or the Team petitioning for composition of debts
under any law authorizing the composition of debts or
reorganization of the Team.

(g) The Commission and the Team shall cooperate reasonably
and in good faith in the negotiation and execution of any
financing, subordination or other documents and instruments
as may be necessary more fully to effectuate the intentions of
this Section 2.2. Without limiting the generality of the
foregoing (i) the Commission agrees, promptly upon written
request by the Team, to enter into subordination or other
agreements with the holders of Senior Secured Indebtedness,
in form and substance reasonably satisfactory to the Team and
such holders, to acknowledge and effectuate the subordination
and other limitations on the Subordinate Lien agreed by the
Commission herein, provided that they do not increase the
obligations of the Commission under the Lease or materially
adversely affect the leasehold interest thereby created or
detract from the Commission’s rights under the Lease; and (ii)
the Team agrees, promptly upon written request by the
Commission, to deliver to the Commission, at the Team’s sole
expense, such financing statements and other documents as
the Commission may reasonably request, in form and
substance reasonably satisfactory to the Commission, to
further evidence and perfect the Subordinate Lien.\textsuperscript{143}

The limited nature of this provision is clear from its language. This security interest as a subordinate lien (hereinafter lien) is designed only to secure the location of the team, not to collateralize Washington, D.C.'s investment in the stadium. Foreclosure is allowed only when non-relocation provisions are breached. Because the lien is subordinate, its value is limited if the team becomes insolvent. However, the lien does further limit the Nationals' ability to breach their non-relocation agreement because foreclosure by the city could block the team from moving. This possibility should also discourage outside investors looking to purchase and move the franchise.

\textit{D. Percentage of Proceeds from Sale of the Team; Percentage of Contraction Proceeds}

1. Sale Proceeds Clauses in MLB Team Non-Relocation Agreements

Sale proceeds and contraction proceeds clauses are part remedy, part investment return. Proceeds from a contraction sale are essentially a contracted remedy in case a breach is forced by MLB. A contracted team's owners will receive a buyout as compensation for their agreement to MLB contraction; the contraction sale proceeds clause allows the home city to recover a portion of this buyout.

Sale proceeds clauses move beyond simply providing recovery for breach and grant the home city a portion of the proceeds of \textit{any} sale of the team. This allows a city to possibly recover some of its investment, even without a breach of non-relocation provisions. Two examples of sale proceeds clauses, from the Florida Marlins' and St. Louis Cardinals' agreements, are provided below:

\textit{a. Florida Marlins}

Payment Upon Sale of Team. Upon either a sale to a third party of a "control interest" (defined as the sale of more than 50% of the voting, actual or beneficial interest in the franchise, occurring within the period commencing with the approval of the Stadium Agreements by the City Commission and the Board of County Commissioners and ending thirty six (36) months following Substantial Completion, whether through a sale of equity shares or partnership interests, to the

\textsuperscript{143} Nationals' Lease, \textit{supra} note 141, § 2.4.
extent proceeds are paid to the owners of the Team and not contributed to Team Affiliates involved in baseball related businesses) (other than following the death of the controlling owner), the Team shall or shall cause the seller to pay to the County and the City, to be split on a pro-rata basis (including the value of the City’s contribution of the Baseball Stadium Site, the amount of the City’s and the County’s expenditures as required by the Construction Agreement, and the value of the City and the County’s respective expenditures associated with the Public Infrastructure) determined by each respective parties’ contribution to the Baseball Stadium, an amount equal to the following percentage of the Net Proceeds of the sale that are attributable to any increase in value of the franchise (pro-rated in the case of a sale of the control interest) (the “County/City Equity Payment”):

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<tr>
<th>Phase of Project</th>
<th>Year</th>
<th>Description of Time-Frame</th>
<th>Percentage</th>
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<tr>
<td>Construction</td>
<td>Year 1</td>
<td>If sale occurs within 12 months of approval date of Stadium Agreements</td>
<td>18.0%</td>
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<td>Construction</td>
<td>Year 2</td>
<td>Sale occurs within 24 months of approval date of Stadium Agreements</td>
<td>16.2%</td>
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<td>Construction</td>
<td>Year 3</td>
<td>Sale occurs within 36 months of approval date of Stadium Agreements</td>
<td>14.4%</td>
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<td>Construction</td>
<td>Year 4</td>
<td>Sale occurs within 48 months of approval date of Stadium Agreements, or, prior to Substantial Completion of Stadium, whichever occurs first</td>
<td>12.6%</td>
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<tr>
<td>Operational</td>
<td>Year 1</td>
<td>Sale occurs within 12 months of Substantial Completion</td>
<td>10.0%</td>
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<tr>
<td>Operational</td>
<td>Year 2</td>
<td>Sale occurs within 24 months of Substantial Completion</td>
<td>7.5%</td>
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<tr>
<td>Operational</td>
<td>Year 3</td>
<td>Sale occurs within 36 months of Substantial Completion</td>
<td>5.0%</td>
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The increase in value shall be based on an assumed value of the franchise of $250,000,000 as of the date of the BSA, which assumed value shall be increased to give effect to any additional debt incurred by, or equity capital contributions made to the Team, Stadium Developer or Operator, including the capital contributions made to, or the debt incurred by, the Stadium Developer or the Team pursuant to the Construction Administration Agreement (net of distributions to any such Team owners) and an imputed increase in value of 8% per annum from the date of the BSA. “Net Proceeds” shall mean
the fair market value of all proceeds received from the sale plus any indebtedness for borrowed money of the Team or any Team Affiliate assumed by the buyer in the sale, less (x) the assumed value of the franchise determined under the preceding sentence, (y) all transaction-related expenses and taxes payable by the Team Affiliates and/or their direct and indirect owners to unaffiliated third parties solely as a result of the sale, and (z) any liabilities or obligations retained by the Team (in the case of a sale of the franchise) and/or its direct or indirect owners relating to the Marlins or its affiliated businesses.

The Team shall cause its independent accountants to provide the County and City a reasonably detailed calculation of the County/City Equity Payment (on a combined basis) under this Section 6, including a detailed calculation showing the assumed value, Net Proceeds and any other calculations the Team used to determine the amount payable, as promptly as practicable following any applicable sale. If the County or City do not provide a notice of objection within thirty (30) days after receiving the accountant's calculation, such calculation shall be final and binding and payment of any amount due shall be made not later than thirty (30) days after the expiration of such period. If the County or City does provide a notice of objection, it shall specify in reasonable detail the basis for its objections. The objecting Government Party and the Team shall then seek to resolve any disagreements between them within the succeeding period of sixty (60) days. If the objecting Government Party and the Team are unable to resolve the dispute within such sixty (60) day period, each of them shall have the right to commence arbitration in accordance with the Operating Agreement. If the arbitrator shall enter a final, non-appealable order requiring payment from the Team under this Section 6, the Team shall pay such amount within thirty (30) days thereafter. 144

b. St. Louis Cardinals

3.1 Sale of Team. Subject to the provisions of this Article, the
Cardinals shall have the right to sell or transfer ownership in whole or in part of the Team during the Term to the extent permitted by Major League Baseball without the Authority’s consent; provided that (a) in connection with such sale, the new Team owner must concurrently agree in writing, in form and substance reasonably acceptable to the Authority, to assume the Cardinals’ obligations under this Agreement for the remainder of the Term (unless waived by the Authority) and (b) the provisions of Section 3.2 shall not apply to the new Team owner. In addition, the Cardinals covenant and agree that the Cardinals shall not transfer, sell or assign the Team in any manner unless such transfer of the Team is approved in accordance with applicable Major League Baseball Rules and Regulations.

3.2 Ballpark-Related Profits from Sale.

(a) In the event that there is a Sale in whole or in part of any ownership interest in the Cardinals Ownership Entities, the Cardinals shall cause the Selling Owner(s) to pay to the Authority the Ballpark-Related Profits, and the Authority shall be responsible for paying to the County that portion of such amount agreed upon by the Authority and the County. By way only of example and without limitation, the Ballpark-Related Profits from the Sale of the total ownership interests in the Cardinals Ownership Entities are set forth in Exhibit A.

(b) Not later than 30 days after the consummation of a Sale, the Cardinals shall furnish to the Authority a notice setting forth their determination of the amount, if any, due pursuant to this Section 3.2. If Authority fails to object to such determination within 30 days following receipt of such notice, the Cardinals’ determination shall be final and binding, and payment of the amount, if any, due shall be made not later than 15 days after the expiration of the latter 30-day period. If Authority objects to such determination, the notice of objection shall specify in reasonable detail the basis for such objection. The Authority and the Cardinals shall thereupon seek to resolve such disagreement and, if they are unable to resolve the disagreement with 30 days following the Cardinals’ receipt of notice of such objection, then their
disagreement shall be settled by arbitration in accordance with Section 6.3 of this Agreement.\textsuperscript{145}

### EXHIBIT A – Ballpark-Related Profits from Sale*

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* All amounts in millions.

Allowing the home city to share in the proceeds of a team sale acknowledges the influence of a new or renovated stadium on franchise value. By providing a state-of-the-art venue for the team to play in, the stadium builder adds value of potentially hundreds of millions of dollars to an MLB team's market price, at least part of which is traceable to the home city's investment in the team's stadium. Sale proceeds clauses also provide compensation for the uncertainty caused by a change in team ownership. Although a buyer is likely bound to honor the non-relocation covenants,\textsuperscript{146} the new team owners may not have any prior relationship with the home city, possibly compromising city efforts to retain the team beyond the term of the agreement.\textsuperscript{147} At the very least, the home city is provided with compensation for its efforts that increased the team's selling price, should the signatory team owners decide to sell the team and profit from this increased value.

\textsuperscript{145} Cardinals’ Lease, supra note 62, §§ 3.1, 3.2.

\textsuperscript{146} The buyer would agree to abide by the non-relocation agreement before a sale occurred. By operation of the non-relocation agreement's restrictions on assignment, the selling team owner would be required, to avoid a breach, to secure the buyer's consent to be bound by the non-relocation obligations. See infra section IV.D.

\textsuperscript{147} Often a buyer will have a relationship with another city and intend to eventually relocate the team as soon as possible. See blocked sale of San Francisco Giants, Phoenix Coyotes, etc.
2. Case Study: Threat of Relocation of the National Basketball Association’s Indiana Pacers: Sale Proceeds Clause With a Right of First Refusal

The leasehold agreements by and between the Capital Investments Board (CIB) and the Indiana Pacers (Pacers) with respect to Conseco Fieldhouse represent good examples of where both a right of first refusal and a percentage of sale proceeds play a role with respect to non-relocation.

It has been reported that the Pacers have lost money in twenty-five of the last twenty-seven years, including nine of the last ten seasons at Conseco Fieldhouse. Owner Herb Simon claims that the team has lost more than $200 million since the Simon family bought the team in 1983. Simon claims the economics of operating a small market National Basketball Association (NBA) franchise make it fiscally impossible to also pay to keep the arena operating. In order to keep the Pacers in Indianapolis, Pacer management has asked the CIB to absorb the cost of operating the Fieldhouse.

The Pacers received Conseco Fieldhouse courtesy of taxpayers in 1999, keeping all arena revenues and paying one dollar in rent; however, they agreed to pay operating and maintenance costs, now estimated to cost about $15 million per year.

A recent study by Hunden Strategic Partners conducted for the Marian County Capital Improvement Board indicates that Indianapolis would lose approximately $55 million a year if the Pacers left town.

The Pacers’ request has been tagged as a taxpayer bailout. The Pacers’ leasehold agreement, however, states that, if the team is experiencing financial losses after its eighth season in the building, the franchise can ask to renegotiate its twenty-year lease after ten years.

The right of first refusal and the non-relocation penalties are part of both an Operating Agreement and Financial Services Agreement. The Pacers have

149. Id.
150. Id.
the right to terminate the lease after the first ten years provided that the Pacers give written notice to the CIB within thirty days of the Pacers’ notifying the NBA of its intent to relocate. However, all of the following conditions must be met:

1. [The] Pacers have experienced a “significant net cash flow loss” for the fiscal year for the previous season.[1]

2. [The] Pacers reasonably expect that they will produce a “significant net cash flow loss” for the following fiscal year;

3. [The] Pacers reasonably believe it will produce a cumulative “net cash flow” from July 1, 1997 through the end of the contract.

4. [The] CIB does not within [sixty] days of the “early termination notice” agree to subsidize the Pacers in an amount which covers the “net cash flow loss” for the following fiscal year;

5. [The] Pacers intend to structure a sale which triggers the CIB’s First Refusal Rights or the Pacers intend to sell or transfer all or a substantial portion of its assets.[2]

The right of first refusal is provided for in the Operating Agreement and indicates that, if the Simons or the Pacers notify the CIB of meaningful negotiations and are prepared to accept an offer to sell the Pacers stock or a substantial portion of the Pacers assets, the CIB has forty-five days to match the offer. Even if the Pacers would exercise the early termination right that gives effect to the right of first refusal, penalties are outlined in Section 5 of the Financial Services Agreement. There are two penalty formulas provided for early termination.

Penalty 1 is the total of the Aggregate Advance Amount not yet forgiven (basically the CIB advanced utilities at Market Square Arena that is being forgiven on a declining basis every year) and an amount equal to the

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“applicable termination percentage” (which is in Exhibit B of the Financial Services Agreement) multiplied by the net sales proceeds. That applicable termination percentage starts out at 50% in 2009 and declines about 3% to 6% every year. For instance, if the Pacers had sold for $300 million in 2009, then the penalty would have been $15 million (approximate balance of Unforgiven Utilities from MSA) plus $150 million ($300 million multiplied by 50%), equaling $165 million.156

Penalty 2 is $50,000,000 plus an “Applicable Scale Amount,” which is located in Exhibit A. This is an amount that starts out at $184 million in 2009 and 2010 and then declines about $9 to $10 million every year. If the Pacers exercise the early termination provision in 2009 or 2010, then Penalty 2 is $50 million plus $184 million, which equals $234 million. Under the contract, Penalty 1 applies unless Penalty 2 is a lesser amount. Thus, the penalty the Pacers would owe to the CIB and the taxpayers, should they sell the team for $300 million and terminate the contract in 2010, would be $165 million.157

It was announced in July of 2010 that the Indiana Pacers and CIB had reached an interim lease amendment to resolve the current issue.158 CIB will contribute $30 million for Conseco Fieldhouse operations payable over the next three years in $10 million installments, plus a minimum investment of $3.5 million in capital improvements to the facility, which could actually grow to more than $8 million under the deal.159 The $30 million, three-year contribution is not characterized as a subsidy to the franchise, but the lease amendment calls it a loan.160 The first $10 million installment is due upon the execution of the lease amendment.

The Pacers, for and in consideration of the accommodation, give up their right to terminate the leasehold agreement through June 30, 2013.161 However, the Pacers are given the right to serve notice on the CIB of a lease termination on July 1, 2012, to become effective at the end of the 2012–2013 season.162 The loan over the three-year period is interest free.163 The second and third installments of the loan, payable in January 2011 and January 2012,

156. See id.; see also Ogden, supra note 154.
157. See Ogden, supra note 153; Ogden, supra note 154.
159. Id.
160. More on that $33.5 Million Gift to Herb Simon’s Pacers, supra note 148.
161. Pacers to Receive $33.5M Over Next Three Years to Remain in Indy, supra note 158.
162. More on that $33.5 Million Gift to Herb Simon’s Pacers, supra note 148.
163. Id.
are subject to Indianapolis City-County Council approval. If the Council refuses to appropriate the money for the loans, the deal is terminated as to the restriction on the Pacers’ early termination of the lease, and furthermore, the first installment of the loan, i.e., $10 million given upon execution of the lease amendment, is forgiven in its entirety if the Council fails to approve the second and third installments on the loans.

If the Council approves the second installment but not the third installment, then the second installment is forgiven, and the first installment is subject to repayment on a sliding scale basis.

The lease amendment further states that repayment of the loan proceeds does not alter the CIB’s right to collect a penalty for early termination of the lease that is determined on a sliding scale basis. The proceeds of the loan are to be used exclusively for maintenance of the Fieldhouse. At the conclusion of the 2013–2014 season, portions of the loans will be forgiven on a sliding scale basis, starting with $2 million the first year and increasing to $3 million the second year, to $6 million each of the next four years, and $1 million by the end of the 2018–2019 season. After that, the loan repayment is forgiven in its entirety. Obviously this is contingent upon the Pacers staying at the Conseco Fieldhouse.

Although the lease amendment was hailed by some as an important step in protecting the financial state of the city, others characterized the lease amendment as “a multi-million dollar bailout of a professional sports team and its billionaire owner.”

164. Id.
165. Id.
166. Id.
167. Id.
168. Id.
169. Id.
170. Pacers to Receive $33.5M Over Next Three Years to Remain in Indy, supra note 158.
### VIII. Summary of Covenants and Remedies in All Current MLB Team Non-Relocation Agreements

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<th>No Transfer of Team</th>
<th>No Applying to Transfer Team</th>
<th>All Home Games at Stadium</th>
<th>Any Buyer/Assignee Must Assume NRA</th>
<th>Maintain Team Office in Stadium City</th>
<th>Maintain Good Standing in League</th>
<th>Non-Disposition of Assets (Trademark, Name, Player's Good Will)</th>
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IX. Litigation Involving Non-Relocation Agreements

There are few examples of litigation over non-relocation covenants between an MLB team and a stadium owner. Two disputes reached final court dispositions. In each of these cases, the non-relocation provisions were enforced by the court, and equitable remedies were granted to the home city.


The first court decision that directly implicated an MLB team's non-relocation agreement was handed down in January 1983 when a New York state court ruled on the City of New York's motion for a preliminary injunction, asking the court to enjoin the New York Yankees' attempt to play its first three scheduled home games of the 1983 season in Denver, Colorado. New York City had been renovating Yankee Stadium in the off-season, and although the playing field was unaffected by this project, between 1,000 and 2,000 seats would not be available for the first three games of the season while the renovations were completed. When the Yankees informed the city of their plans to play three games in Denver, the city immediately sued for declaratory and injunctive relief and moved for a preliminary injunction.

The court found that the lease provision requiring all home games to be played at Yankee Stadium would be violated if the Yankees played games in Denver under these circumstances. The court found that the city faced a

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171. Litigation in other sports between team and stadium owner is also sparse. See, e.g., Coyotes, Penguins, Sonics.
173. City of New York, 117 Misc. 2d at 332.
174. Id. at 334.
175. Id. at 332.
176. Id. at 334. Section 4.7 of the Yankees lease at that time contained a clause requiring all home games be played at Yankee Stadium:

§4.7 Except during the period of renovation, Lessee shall schedule and play all of its home games at the stadium except where transfers of such games to other locations are necessitated by postponements or the unplayable condition of the playing field or force majeure. Notwithstanding the foregoing, if pursuant to an arrangement equally affecting all baseball teams in the same division of the American League as Lessee, Lessee shall be required by the American League schedule to play any baseball game where Lessee is designated as the home team elsewhere than in the stadium, Lessee may do so provided (a) no more than eleven (11) such baseball games are scheduled in any baseball occupancy period, and (b) no such game shall be played within fifty (50) miles of the stadium.
“threat of irreparable injury” from such a breach. Finding that the balance of equities favored New York City, the court acknowledged the special relationship between New York and the Yankees, using the following language:

Much more is at stake than merely the loss of direct and indirect revenue to the city. The Yankee pinstripes belong to New York like Central Park, like the Statue of Liberty, like the Metropolitan Museum of Art, like the Metropolitan Opera, like the Stock Exchange, like the lights of Broadway, etc. Collectively they are ‘The Big Apple’. Any loss represents a diminution of the quality of life here, a blow to the city’s standing at the top, however narcissistic that perception may be. . . .

[I]t is the symbolism of the act not the quantity which counts. Any reduction in the number of home games, especially if it involves the home opening games eagerly awaited by the real fans after a long winter in the hot stove league, erodes the ties of loyalty between the people of the city and their team. Dare one whisper the dreaded words: ‘The Denver Yankees’.

No money damages can measure or assuage this kind of harm.

The court granted New York’s motion for a preliminary injunction, and the Yankees played their 1983 home opening series in Yankee Stadium, not in Denver.


On November 6, 2001, amid reports that MLB intended to eliminate the Minnesota Twins by buying and then folding the franchise as part of a MLB contraction plan, the Metropolitan Sports Facilities Commission brought a declaratory judgment action, seeking specific performance of the Use Agreement between the Commission and the Twins—specifically, Section 2.3 of the Use Agreement:

177. Id. at 336.
178. Id. at 336–37.
179. Id. at 337.
2.3. The Team agrees that, during each baseball season, it will play all of its baseball games scheduled to be played in the Minneapolis/St. Paul franchise area at the Stadium as more specifically provided throughout the Agreement. If the Team begins using the Stadium after the start of a baseball season, only the remainder of the Team’s games scheduled to be played in the Minneapolis/St. Paul franchise area that baseball season will be played at the Stadium.\textsuperscript{180}

The Commission also sought an injunction preventing MLB from interfering with the Commission’s contractual relationship with the team.\textsuperscript{181} On November 16, 2001, the Hennepin County District Court granted the Commission a temporary injunction, pending resolution on the merits.\textsuperscript{182} On January 22, 2002, the Court of Appeals of Minnesota upheld the district court’s decision to issue the injunction.\textsuperscript{183} This was a victory for the Commission, as it ensured that the Minnesota Twins would play the 2002 season in the Hubert H. Humphrey Metrodome (Metrodome).\textsuperscript{184}

The court of appeals ruled that it was not an abuse of discretion for the district court to temporarily enjoin the Twins from breaking the remaining term of its Use Agreement, nor for the district court to enjoin MLB from interfering with the Commission’s contractual relationship with the Twins, due in part to the irreparable harm that would result to the Commission if the Twins breached its promise to play its home games for the 2002 season at the Metrodome.\textsuperscript{185}

In issuing the temporary injunction, the district court noted that the contractual relationship between the Twins and the Commission was not a typical landlord-tenant relationship.\textsuperscript{186} The appellate court also gave several reasons why the harm suffered by the Commission could be considered an

\textsuperscript{180} Twins Lease, \textit{supra} note 65, § 2.3. Default of the Use Agreement would occur if the Twins stopped playing home games at the Metrodome or if the Twins “cease playing major-league professional baseball for any reason.” \textit{Metro. Sports Facility Comm’n v. Minnesota Twins P’ship}, 638 N.W.2d 214, 219 (Minn. Ct. App. 2002). Only an event outside the Twins’ control, one that triggered the Use Agreement’s \textit{force majeure} clause, could excuse the Twins from the obligations of the Use Agreement. \textit{Id.}

\textsuperscript{181} \textit{Metro. Sports Facility Comm’n}, 638 N.W.2d at 219–20. For another in-depth analysis of this case, including suggestion that MLB contraction plans may have been a tactical maneuver to get a new stadium built for the Twins, see Burton & Mitten, \textit{supra} note 47.

\textsuperscript{182} \textit{Id.}

\textsuperscript{183} \textit{Id.} at 218.

\textsuperscript{184} \textit{Id.} at 226.

\textsuperscript{185} \textit{Id.} at 229–30.

\textsuperscript{186} \textit{Id.} at 221.
intangible loss to the community and not merely lost concessions and advertising revenues: (1) the Twins paid no rent for its eighty-one home games nor for year-round use of locker and office space; \(^{187}\) (2) the “benefit of the bargain” was the Twins’ promise to play in the Metrodome; \(^ {188}\) (3) “the stated purpose for building and operating the . . . [Metrodome] was to attract major league sports franchises to play at the . . . [Metrodome] for the enjoyment of fans;” \(^ {189}\) (4) the Metrodome was financed by legislation that authorized the issuance of bonds and a collection of taxes; \(^ {190}\) (5) the Metrodome was generally exempt from taxation as it was used for public, governmental, and municipal purposes; \(^ {191}\) and (6) legislation was enacted to exempt the Metrodome from property taxes. \(^ {192}\)

The Minnesota Court of Appeals opinion in the Twins case is, as of this writing, the most recent court decision involving a MLB team’s non-relocation agreement. Nor has any other court, as of this writing, directly ruled on the enforceability of a non-relocation agreement involving any of the four major U.S. professional sports leagues.

C. NBA 2006: Basketball’s Super Sonics’ Exit from Seattle

The latest litigation involving a non-relocation covenant was that of the Seattle Super Sonics.

Starbucks founder Howard Schultz purchased the Sonics in 2001 for a reported $200 million. \(^ {193}\) On July 18, 2006, Schultz sold the Sonics and the Seattle Storm to an Oklahoma City group, Professional Basketball Club, LLC, led by Clay Bennett, for a reported $350 million. \(^ {194}\) Immediately, there were rumors that Clay purchased the Sonics with the intention to relocate the team to a new state-of-the-art facility called the Ford Center in Oklahoma City, which had previously been the temporary home of the New Orleans Hornets. Bennett had said that “KeyArena is not a viable NBA arena . . . . Renovated, KeyArena is not a viable NBA arena. The franchise will not remain in this marketplace without a new arena.” \(^ {195}\)

\(^{187}\) Id. at 223.
\(^ {188}\) Id.
\(^ {189}\) Id.
\(^ {190}\) Id. at 224.
\(^ {191}\) Id.
\(^ {192}\) Id.
\(^ {194}\) Id.
\(^ {195}\) Gary Washburn, Bennett Opens Up About Sonics’ Potential Future, SEATTLE POST-
Bennett proposed a $500 million facility in the neighboring city of Renton, Washington on a twenty-one-acre parcel owned by the Boeing Company. On February 13, 2007, Bennett appeared before the Washington legislature asking for passage of Senate Bill 5986.

His proposal for the facility was roundly rejected by the state legislature. In addition, Bennett placed a time limit of October 31, 2007 to receive an acceptable proposal for a new facility or he would seek to relocate the team.

On February 13, 2007, Bennett appeared before the Washington legislature asking for passage of Senate Bill 5986. On November 7, 2006, Seattle voters approved Initiative 91, which required a guaranteed minimum return to the city on par with a thirty-year treasury bond on any public investment in city-owned facilities. As a result of this Initiative, the construction cost of a new facility would be dramatically increased, and it would be unlikely that the team would stay inside the city limits. The Initiative was approved with 74.08% of the vote.

The Official Voters Pamphlet urged voters to approve the Initiative:

As a result of Bennett’s inability to get the State of Washington or the City of Seattle to fund or create a new facility, Bennett issued a relocation statement on November 2, 2007:

On behalf of the owners of the Seattle SuperSonics and Seattle Storm, I am disappointed that our efforts over the last fifteen months to foster the development of a new multi-purpose arena in the Greater Seattle area were not successful. From the beginning, it has been my absolute hope and expectation that we would be able to secure the necessary governmental commitments to build a successor venue to KeyArena. Even though our proposal for a new state-of-the-art multi-purpose facility to be built in Renton was

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198. Id.
199. Id.
200. Id.
201. Id.
thoughtfully developed by a world-class team, was financially reasonable and was realistically attainable, we were unable to persuade the Washington Legislature to vote on our bill. The region is still in need of a modern building, not just for the Sonics and Storm, but also for the broad commercial and quality of life benefits such facilities provide.

We now understand and respect that there is very limited public support for such a public investment. As we stated on July 18, 2006, and have stated on many occasions thereafter, KeyArena is not a viable modern venue for the NBA and if a successor facility is not identified by October 31, 2007, we would evaluate our options, which would include relocation. Given the clear lack of public, political, and business support for a new multi-purpose arena, plus the enactment of Initiative 91 as a City of Seattle ordinance following a public vote authorized by the Seattle City Council itself, and the significant operating losses the businesses are now incurring, we have no option but to commence the NBA relocation process.203

It is interesting to note that, over the last thirty years, few NBA teams have switched cities:

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<th>Franchise Relocations</th>
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<td>1985 Kings</td>
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<td>1979 Jazz</td>
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<td>1978 Clippers</td>
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In fact, since David Stern was appointed NBA commissioner in 1984, only two franchises have relocated: the Grizzlies in 2001 and the Hornets after the 2002 season.205

203. Id.
205. Bloom, supra note 197.
The Sonics’ use of KeyArena is governed by the KeyArena Agreement.\textsuperscript{206} The Agreement began in 1995 and runs through September 30, 2010.\textsuperscript{207}

On September 10, 2007, by an eight to zero vote, the Seattle City Council approved an ordinance demanding that the City enforce the KeyArena lease pursuant to its terms, blocking any efforts by Clay Bennett to escape the team’s lease before it expires at the end of September 2010.\textsuperscript{208}

In response to the Common Council vote, Bennett made an arbitration demand to the American Arbitration Association, dated September 19, 2007 and filed September 21, 2007.\textsuperscript{209} He sought a determination that under Sections XXVI and XXVII of the Sonics’ Lease Agreement, specific performance was not available to force the Sonics to play the 2008, 2009, and 2010 NBA seasons in KeyArena.\textsuperscript{210} Bennett maintained that the City was instead entitled to the traditional remedy, the monetary consideration it bargained for under the Lease Agreement.\textsuperscript{211}

In essence, what Bennett was asking for was an arbitrator to decide, under the arbitration clause of the Lease, that the Sonics should be allowed to pay a monetary settlement to Seattle instead of playing out the remainder of its KeyArena lease.

In response, the City argued that, although the Lease requires most disputes between the City and the Sonics to be resolved through arbitration, disputes about the length of the lease and termination of the lease were not subject to arbitration.\textsuperscript{212}

Shortly after Bennett’s demand for arbitration, the City filed a complaint for declaratory relief in the Superior Court of the State of Washington for King County.\textsuperscript{213}

In Article II of the Lease, the Sonics promised to “play all Home Games . . . exclusively in [KeyArena]” through September 30, 2010.\textsuperscript{214} The City claimed that the fifteen-year lease term was an essential element of the

\begin{itemize}
  \item \textsuperscript{207} Id.
  \item \textsuperscript{209} Clay Bennett’s Arbitration Demand, \textit{supra} note 206.
  \item \textsuperscript{210} Id.
  \item \textsuperscript{211} Id. at 3:12–16.
  \item \textsuperscript{213} Id. at *3.
  \item \textsuperscript{214} Id. at *4.
\end{itemize}
Lease and a principal incentive for the Seattle Common Council to approve the Lease.\textsuperscript{215} In order to ensure that the Sonics would play all of their home games in KeyArena through the duration of the lease, the lease included a specific performance clause.\textsuperscript{216} This clause was necessary in part due to the fact that the Sonics are a wholly unique tenant and an asset to the City that would be impossible to replace. The City requested a declaratory judgment that Article II of the Lease was enforceable through specific performance and that the rights and obligations under the lease were not subject to arbitration.\textsuperscript{217}

On October 29, 2007, United States District Judge Ricardo Martinez found that this dispute related to Article II of the lease and that disputes relating to Article II are excluded from arbitration.\textsuperscript{218}

On April 18, 2008, by a twenty-eight to two vote, NBA owners approved Clay Bennett’s proposal to move the franchise to Oklahoma City “pending the resolution of a federal lawsuit by the City of Seattle that aims to keep the Sonics [in town] at least until their KeyArena lease expires in 2010.”\textsuperscript{219} A $30 million relocation fee was required as part of said franchise move.\textsuperscript{220}

The trial commenced before U.S. District Judge Marsha Pechman on June 16, 2008. The key issue in the case was whether the Sonics should be forced to fulfill the remainder of its lease under the specific performance clause of the lease rather than paying money damages for an early departure.

Prior to the issuance of a decision by Judge Pechman, the parties settled.\textsuperscript{221} In exchange for permission to leave Seattle before the KeyArena lease expired, Bennett agreed to pay $45 million to the City immediately.\textsuperscript{222} He is also required to contribute another $30 million in the event that Seattle is unable to secure another NBA team by 2013, and that payment is further dependent upon the Washington state legislature giving Seattle or King County the authority to raise $75 million in public money to help pay for a

\textsuperscript{215} Id. at *4.
\textsuperscript{217} City of Seattle, 2007 WL 3217556 at *3.
\textsuperscript{218} Id. at *4-5.
\textsuperscript{220} Id.
\textsuperscript{222} Id.
$300 million KeyArena renovation.223 The Legislature must act by the end of 2009.224

Aside from the cash, Oklahoma City's new basketball team will also leave behind the Sonics name, the team's green and gold colors, and all memorabilia collected by the franchise since the first Sonics team tipped off in 1967. 225

X. CONSIDERATIONS IN DRAFTING NON-RELOCATION AGREEMENTS

A. A Complete Remedies Package

1. Equitable Remedies May Not Be Enough

The Yankees and Twins cases, discussed above, demonstrate the importance of including provisions allowing equitable remedies in a non-relocation agreement. Specific performance, injunctive relief, and temporary restraining orders should be stated as alternative remedies in any non-relocation agreement. However, the inclusion of equitable remedies for breach does not guarantee that those remedies will always be granted. In such cases, liquidated damages clauses will become vital to the recovery of damages for loss of intangible benefits to the city.

Specific performance, especially, tends to be a remedy that courts generally disfavor.226 As with other equitable remedies, specific performance is a discretionary remedy dependent on the specific facts and circumstances of each case.227 Problems with court supervision of the ordered performance often weigh heavily in a court's decision to deny specific performance of a contract.228 Further, for a court to grant any equitable remedy, specific requirements must be satisfied. These requirements typically include (1)

224. Id.
225. Id.
Many courts, in many jurisdictions, have refused to specifically enforce obligations of continuous operation in commercial leases, even where those obligations are unambiguously expressed. The theory behind this hard and fast rule is that courts should refuse to order specific performance of contracts where such an order would require continuing court supervision.

227. See Metro Sports Facilities Comm'n., 638 N.W.2d at 227.
irreparable harm to the plaintiff, (2) a likelihood of prevailing on the merits, (3) the plaintiff’s clean hands, (4) weighing the harm to the defendant, and (5) weighing the public interest.

Immediately, problems with court supervision of specific performance are apparent. The term of a non-relocation agreement or a stadium lease typically covers twenty-five to thirty years or longer. In the previous successful actions for equitable remedies, there were no supervisory concerns—in the Yankees case, specific performance was limited to three games over three days; in the Twins case, the injunction lasted only until resolution at trial. In cases where multiple years, and possibly decades, of performance are still due under the non-relocation agreement, it remains to be seen whether courts will be as receptive to a request for specific performance or a negative injunction.

Further, it is unclear what acts by a team would fulfill the team’s obligations to the satisfaction of the home city. Simply remaining in the home city may prove not to be enough. Team owners that want to relocate but cannot due to a court order may decide that making significant investments that are necessary to field a team that is both successful and a “good citizen” of its community has suddenly become a low priority. The team owners may decide to trade their best or highest paid players and limit or cancel community outreach activities in an effort to maximize owner profits over the remainder of the lease term. Should this occur, a home city may claim that the team is not meeting its performance obligations. Courts may be unwilling or unable to enforce an agreement that requires a “certain kind of performance” to satisfy a home city. In this sense, the team-city relationship bears some resemblance to personal services contracts, which are generally not

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230. *Id.* at 226.
231. *Id.* at 221.
232. *Id.*
233. *Id.* at 223–26.
234. See, e.g., Non-Relocation Agreement Between Miami-Dade County, the City of Miami, and Florida Marlins, L.P. (2009), at 9 (35 years) [hereinafter Marlins Agreement]; Operations and Non-Relocation Agreement between the Land Clearance for Redevelopment Authority of the City of St. Louis and the St. Louis Cardinals, L.P., (Nov. 1, 2002), 30 years [hereinafter Cardinals Agreement].
237. MLB revenue sharing and broadcast revenues would allow an owner to maximize profits in this manner despite the reduced fan interest that would surely result from a team trading its best players.
subject to specific performance. A court inclined to deny specific performance could find ample justification in the impossibility of measuring good faith performance over an exceedingly long term.

Additionally, the requirements for a grant of equitable relief do not necessarily weigh clearly in favor of the home city. From a court’s perspective, much of the damages a city would incur may be to a large extent calculable. Public funds a city has invested and stadium rents are measurable to the dollar; expected revenues from games that would have been played in the home stadium are calculable to some certainty. Reasonably calculable damages strongly suggest that the harm is not “irreparable” and that monetary damages would be an adequate remedy. This leaves only the intangible value of living in a city with a MLB team, or “psychic income,” as damages that the city can rest its claim for equitable relief.

Other requirements for equitable relief could be similarly problematic. The team could claim that the city does not have clean hands and draw upon any issues with the city’s maintenance and management of the stadium as justification, claiming that the city’s actions contributed to an untenable situation where the team could not prosper in that city. Similarly, the team may claim that equitable relief would cause extreme harm to the team. Considering the possibility of reluctant, possibly ambivalent performance if an equitable remedy is granted, it is unclear whether forcing a team to remain in a bad situation serves the public interest.

Of course, a denial of equitable remedies does not necessarily mean that a home city would receive no damages; the court may convert an equitable remedy claim to a claim for money damages. However, the absence of provisions that either set liquidated damages amounts or provide a method for damage calculation is a squandered opportunity for the home city to account for the loss of intangible psychic income in the calculation of equitable damages. If nothing else, it creates another issue that will have to be litigated. The advantage of silence as to the monetary value of the contract is unclear.

238. See, e.g., Gov’t Guar. Fund of Fin. v. Hyatt Corp., 95 F.3d 291, 303 (3d Cir. 1996); Infusaid Corp. v. Intermedics Infusaid, Inc., 739 F.2d 661, 668 (1st Cir. 1984) (quoting Karrick v. Hannaman, 168 U.S. 328, 335 (1897)).

239. See also Burton & Mitten, supra note 47, at 828–29.


241. Perhaps the reasoning is that inclusion of money damage language weakens the claim for equitable relief by assigning a value to non-performance. However, the non-relocation agreements that include liquidated and/or other money damages also include provisions whereby the team agrees that the stated monetary amounts do not fully compensate for the home city’s loss. See, e.g., Non-Relocation Agreement between the District of Columbia Sports and Entertainment Commission and
From the home city’s perspective, the traditional damages of lost rents for breach of a commercial lease will not be enough. MLB stadiums are not built with any hope of profitability measured by positive cash flow; stadium rents paid by the team may be nominal. For example, in the Twins case, pursuant to their use agreement, the Twins paid zero rent for the use of their stadium. Noting this, the court remarked that the Twins agreement “may not be a typical commercial lease between landlord and tenant.” The recovery of lost rents in the Twins case would have been zero.

As can be seen equitable remedy provisions are important within a non-relocation agreement. In the only judicial decisions regarding this issue the court granted the home city’s request for a remedy. The best agreements will include both equitable and non-equitable remedy options.

2. Supplementing Equitable Remedies

The true benefit of the bargain for the city is having the home team play and the intangible benefits to the city’s residents that flow from having a team. As long as a court recognizes this and grants equitable remedies, these intangible benefits are preserved. However, should a court find that an equitable remedy is not appropriate, assigning a value to these intangible benefits would be impossible, and a court may not even attempt such a task. Therefore, a value amount for intangible benefits should be assigned within the contract as part of a liquidated damages provision.

Although intangible “psychic income” is a somewhat nebulous concept, and its value debatable, psychic income remains an important consideration.


244. Id. at 227.

245. The Yankees case involved only three games; in the Twins case, no relocation would occur—the Twins would have ceased to exist.

246. Although admittedly unlikely, a situation could arise in which the home city does not particularly want the breaching team to play out its lease. This could occur if a city were confident that a better replacement team would be available. In that case, the inclusion of liquidated or other recoverable monetary damages would allow the home city to pursue the then-preferred monetary remedy for breach.

247. See, e.g., Pomeranz v. McDonald’s Corp., 843 P.2d 1378, 1381 (Colo. 1993) (“[D]amages are not recoverable for losses beyond an amount that a plaintiff can establish with reasonable certainty by a preponderance of evidence.”) (emphasis in original). Id.

for the home city in drafting a non-relocation agreement.\textsuperscript{249} That cities are willing to spend such high-dollar amounts on MLB stadiums\textsuperscript{250} speaks to, at least, the perception that benefits beyond monetary value will accrue. In fact, considering the exorbitant amount a city may invest in building a state-of-the-art stadium for its team and the uncertainty of stadium revenues dependant on attendance and concessions, psychic income may ultimately be the only net return on the city’s investment.

The inclusion of psychic income damage calculations need not undermine a home city’s preferred remedy of specific performance or other equitable relief. As discussed above, specific language in the agreement can establish an agreement that damage amounts do not fully compensate for the loss, while maintaining the option of some monetary recovery for loss of psychic income, instead of nothing at all. Given that psychic income damages are not reasonably calculable, their inclusion in a non-relocation agreement may be the city’s only chance at recovery.

Despite the possibility of limitations in agreements containing only equitable remedies, equitable remedy provisions are a vital part of a well-drafted non-relocation agreement. As mentioned above, in the only two enforcement suits that reached a decision, the court in each case granted the home city’s request for an equitable remedy, although it is noteworthy that neither suit involved a team attempting to permanently relocate.\textsuperscript{251} Considering the goal of providing the maximum protection for the city’s interest in having a team and for its investment in building a stadium for that team, the best agreements will include both equitable and non-equitable remedy options.\textsuperscript{252}

\textbf{B. Bankruptcy Considerations}

The implications of an MLB franchise entering bankruptcy proceedings should be of special concern to the home city. Many of the non-relocation agreements involving MLB teams, whether a standalone agreement or one incorporated into a team’s stadium lease, contain language that is designed to protect the home city’s interest in preventing team relocation should a bankruptcy occur. Different non-relocation agreements may approach the bankruptcy issue somewhat differently.\textsuperscript{253} Regardless of the approach,

\textsuperscript{249} Id. at 63–66, 72; Mitten & Burton, supra note 47, at 817–820.
\textsuperscript{251} See note 245.
\textsuperscript{252} See note 246.
\textsuperscript{253} Compare, \textit{e.g.}, Baseball Playing and Use Agreement between Minnesota Ballpark Authority
attempts at ensuring non-relocation in the bankruptcy context are of questionable value. However, separating a non-relocation agreement from the stadium lease may provide some protection, and bankruptcy courts may ultimately aid the home city’s cause.

1. Ipso Facto Clauses

The typical non-relocation agreement includes language to the general effect that (1) the commencement of any bankruptcy or other insolvency proceedings, voluntary or involuntary, or (2) the appointment of a trustee or receiver, or (3) an assignment for the benefit of creditors all constitute an event of default or breach of the non-relocation agreement and that the non-relocation agreement is not dischargeable in any such proceeding.²⁵⁴

Although these provisions appear to give protection to the city, they are essentially worthless; such provisions are expressly contemplated and expressly rejected by the Bankruptcy code.²⁵⁵ Section 365(e)(1) of the Bankruptcy code states:

[A]n executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

(A) the insolvency or final condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title; or

(C) the appointment of or taking possession by a [bankruptcy] trustee . . . or a custodian before such commencement."²⁵⁶

Known as “ipso facto” clauses, these provisions will not be enforced by a

and Minnesota Twins, LLC, § 6.1, at 14 (April 26, 2007) [hereinafter Twins Agreement] (bankruptcy/insolvency a defined “event of default”), with Marlins Agreement, supra note 234, § 5.2, at 4 (bankruptcy language included in “Declaratory or Injunctive Relief” clause).

254. See, e.g., Twins Agreement, supra note 253, § 6.1, at 14.


256. Id.
bankruptcy court.257 Therefore, they are of no assistance to the home city in securing the team’s location exiting bankruptcy, absent a ruling that the non-relocation agreement is not part of an executory contract or an unexpired lease.

2. Section 365, Unexpired Leases, and Executory Contracts

Section 365 of the Bankruptcy code grants a bankrupt debtor the right to reject “any executory contract or unexpired lease . . . .”258 Because of Section 365, any non-relocation obligations contained in a team’s stadium lease, along with the stadium lease itself, can be rejected.259

A few agreements attempt to structure the non-relocation agreement in a way that moves the agreement outside the reach of Section 365.260 Avoiding the application of Section 365 appears to be a primary motive for separating a team’s non-relocation agreement from its stadium lease.261 Standalone non-relocation agreements may also contain language that attempts to establish that the agreement is not an executory contract.262

Executory contract is not defined in the Bankruptcy code.263 Determining the meaning of this term, and the scope of its application to Section 365, has been the source of much confusion, litigation, and academic debate.264 Under

257. See, e.g., Daimler Chrysler Fin. Servs. Am., LLC v. Jones (In re Jones), 591 F.3d 308, 312 (4th Cir.2010); Dumont v. Ford Motor Credit Co. (In re Dumont), 581 F.3d 1104, 1115 (9th Cir. 2009).
259. Id.; see also Ralph C. Anzivino, Reorganization of the Professional Sports Franchise, 12 MARQ. SPORTS L. REV. 9, 40–41 (2001).
261. Structurally, standalone NRAs typically recite that the consideration supplied by the home city for the NRA is the construction of a new stadium. This bolsters the argument that, because performance does not remain on both sides, the “Countryman Test” is not satisfied, and therefore, the NRA is not an executory contract.
262. Some NRAs include language to the effect that the parties agree that the NRA is not an executory contract and does not constitute a claim. For the reasons discussed in this section, contract language modifying the effects of the Bankruptcy code will not be enforced.

Bankruptcy is that volume of the law that might have been written by Lewis Carroll . . . . In no chapter of that volume has the law become more psychedelic than in the one titled “executory contracts.” The courts increasingly voice cries of confusion and frustration over the treatment of contracts in bankruptcy.

Id. at 228. Cohen v. Drexel Burnham Lambert Group (In re the Drexel Burnham Lambert Group), 138 B.R. 687, 696 (S.D.N.Y. 1992) (“The psychedelic confusion in the area of executory contracts has infected every aspect of the matter before us, providing textbook examples of the errors in analysis that Westbrook and Andrew complain about.”).
the "Countryman Test," adopted by many courts, a contract must have material performance due on both sides to be an executory contract eligible for rejection under Section 365. However, a "growing case law trend" has adopted a "functional analysis test," which considers the best interests of the estate to be the primary concern in determining whether a contract can be rejected.

In an attempt to avoid rejection under Section 365, some non-relocation agreements are (1) separated from the stadium lease so that the agreement cannot be rejected as an "unexpired lease" and (2) consideration from the home city is limited to performance that is completed very early in the contract term (i.e., construction of the stadium), so that material performance will not remain on both sides.

It is certainly possible that a bankruptcy court could find that a standalone agreement, with no consideration left due from the home city, cannot be rejected under Section 365, but that is far from certain. Obviously, whether a court applies the Countryman Test or the functional analysis test will be important. Other potential pitfalls include (1) the court may treat the non-relocation agreement and the stadium lease as a single contract, (2) if the contract is not executory, it may be considered a "claim," and (3) if the non-relocation agreement is blocking the debtor from accomplishing an effective reorganization, it may be seen as contrary to fundamental bankruptcy policy to let the agreement stand.

3. Federal Bankruptcy Policy

In general, bankruptcy courts have wide latitude to act in furtherance of the goals of bankruptcy law. This includes the power to modify creditor-debtor relations. And the fundamental goal of bankruptcy law—effective reorganization of the debtor—may well be at odds with the interests of the


267. A stadium lease will often contain references to the corresponding standalone non-relocation agreement if the agreements are separate; stadium leases and non-relocation agreements are also typically executed in the same general time period.


269. See infra section X.B.3.

270. § 105(a).


home city—exiting bankruptcy with the non-relocation agreement intact.

Given the wide-ranging powers of bankruptcy courts, it may not be possible to draft a "bankruptcy-proof" agreement. However, the strategy of separating the non-relocation agreement from the stadium lease is advisable. Although the executory contract issue will have to be litigated, a separate agreement provides the greatest protection for the city in the bankruptcy context. If the bankruptcy court adopts the Countryman test, the non-relocation agreement has at least a chance of surviving an attempt to reject under Section 365. If the non-relocation provisions are contained in a stadium lease, it is likely that Section 365 permits the team to reject the agreement.

4. Bankruptcy Law May Protect the Home City

Although a non-relocation agreement cannot supersede or alter bankruptcy law and might not even be able to avoid Section 365 rejection, the bankruptcy process does not provide a convenient means for a franchise owner to avoid non-relocation obligations. Indeed, the bankruptcy code contains provisions that will serve to protect the interests of the home city, and bankruptcy courts, in two cases involving NHL franchises, have applied the bankruptcy code in a manner that maintained each franchise’s location.

First, there is a good faith requirement for bankruptcy filings. A bankruptcy petition must be filed for a legitimate bankruptcy purpose. The bankruptcy court will apply an objective test to determine whether a petition was filed in good faith. A petition filed solely as a litigation strategy is not a good faith filing. The good faith requirement will prohibit a franchise from filing bankruptcy for the sole purpose of avoiding enforcement of a non-relocation agreement.

Second, the absolute priority rule will limit a franchise owner’s ability to relocate a team by using the bankruptcy process. Under the absolute priority rule, unless all unsecured creditors are paid in full, the franchise owner cannot retain any interest in the franchise. This includes the home city, regardless of whether the non-relocation agreement is rejected in bankruptcy. Even if a

F.3d 36, 41 (1st Cir. 2003) ("The paramount objective of a Chapter 11 reorganization is to rehabilitate and preserve the value of the financially distressed business.").

273. 11 U.S.C. § 1112(b); In re 15375 Mem’l Corp. v. BEPCO, L.P., 589 F.3d 605, 618 (3d Cir. 2009).

274. Id.

275. Id. at n.7–8.

276. Id. at 625.

franchise owner is able to reject the non-relocation agreement under Section 365, the home city will have a claim against the bankruptcy estate for breach of the non-relocation agreement. Accordingly, the home city’s damages claim must be paid in full in order for the pre-filing team owner to remain the team owner exiting bankruptcy. In such a case, even if equitable remedies are unavailable, the monetary value of the home city’s claim remains a deterrent to relocation through the bankruptcy process. This underscores the importance of a liquidated damages clause to establish the value of a damages claim.

Third, relocation by means of an expedited sale through the bankruptcy process may not be available. Under Bankruptcy Code Section 363, it is possible for a franchise to be sold shortly after entering bankruptcy, “free and clear of any interest,” if a sale is necessary to preserve the value of the franchise. However, Section 363 sales are closely scrutinized by the bankruptcy court, and the sale must provide adequate protection of any interest that the franchise is sold free and clear of. The court is required to prohibit a franchise sale that does not provide adequate protection.

Team relocation by means of a Section 363 sale was unsuccessfully attempted by the Phoenix Coyotes of the NHL because the bankruptcy court rejected the Section 363 sale to the buyer that would have relocated the team. The team owner filed bankruptcy and attempted to sell the Coyotes, using Section 363, to a new owner (PSE Sports and Entertainment LP) that would have moved the Coyotes to Canada. The city and the NHL sued to block this sale. The bankruptcy court dismissed with prejudice the sale to PSE, finding that adequate protection was not provided to the NHL of its interests in membership control and control over team location. Other issues were not decided by the court; therefore, it is unknown whether the home city’s interests would have been protected without intervention by the NHL.

278. COR Route 5 Co., LLC v. Penn Traffic Co. (In re Penn Traffic Co.), 524 F.3d 373, 378 (2d Cir. 2008).
279. However, there is a “new value exception” recognized by some courts, whereby a pre-filing team owner could hold an ownership interest in the team by contributing additional capital (new value) to the team’s assets. See, e.g., In re Bonner Mall P’ship, 2 F.3d 899, 901 (9th Cir. 1993).
283. Id. at 591.
284. Id.
285. Id. at 580.
286. For example, one of the undecided issues in Dewey Ranch was the city’s claim that its right to specific performance was non-dischargeable. Id. at 589–90.
Ultimately, a sale of the Coyotes franchise to the NHL was approved, and the Coyotes remained in Phoenix. 287

Finally, a bankruptcy court may utilize its broad authority to protect the home city’s interest. This was the case in 1998 when the NHL’s Pittsburgh Penguins entered bankruptcy. 288 In that case, the U.S. Bankruptcy Court for the Western District of Pennsylvania first issued a temporary injunction, then a permanent injunction to enjoin team owners from breaching non-relocation obligations. 289 The court, upholding the terms of the Penguins non-relocation agreement, found that a monetary claim for damages would not adequately compensate the city of Pittsburgh’s equitable claim and that Pittsburgh’s equitable remedies did not constitute a claim in bankruptcy. 290 Although arguably not in the best interests of the debtor franchise, the court used its broad equitable powers to enjoin the franchise from soliciting bids from buyers that would relocate the team. 291 Thus, in light of the attempts by the Coyotes and Penguins franchises to relocate during bankruptcy, MLB franchise owners should be reluctant to pursue the bankruptcy process as a means of circumventing a non-relocation agreement.

Ultimately, the most serious threat for the home city—one that a non-relocation agreement might not be able to survive—is a situation where the home team has a legitimate reason to file for bankruptcy protection and where relocation is in the best interests for the team to remain viable. The purpose of federal bankruptcy law is to allow a financially distressed debtor a fresh start and the opportunity to be successful. If a bankruptcy court determines that the franchise’s viability is threatened by the continued existence of a non-relocation agreement but that the franchise could recover if not bound by the agreement, the court has the authority to take the steps necessary to preserve the franchise. Perhaps the only certainty is that the outcome of a franchise bankruptcy filing is unpredictable. 292 A liquidated damages clause is crucial in this situation for the home city to maximize its recovery, should a court deny the home city’s request for equitable relief.

289. Id. at *7-9.
290. Id. at *19-33.
291. Id. at *18-19.
C. Antitrust

Major professional sports league constitutions, not non-relocation agreements, demarcate the means by which an owner can move a franchise; they also serve as the antitrust battlefield between any affected party and the league with which they deal.

Section 1 of the Sherman Antitrust Act prohibits any "contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." "Single entity" status will defeat a Section 1 lawsuit because there must be multiple entities that do not have a "complete unity of interest" to form a "contract, combination . . . or conspiracy."

It is unquestionably in the best interest of the professional sports league to be considered a single entity. However, the single entity defense has been largely unsuccessful in team relocation suits, and a recent Supreme Court opinion, although not specifically ruling on team relocation, appears to have further limited the viability of the single entity defense for leagues such as the NFL and NBA.

In the most notorious antitrust case involving team relocation, in which the Oakland Raiders and owner Al Davis sued the NFL for blocking the Raiders' proposed move to Los Angeles, the court ruled that the NFL was not a single entity, and a jury returned a verdict against the NFL. Antitrust law generally protects the interests of would-be competitors and, therefore, works against the interests of a home city.

MLB however, controls team relocation relatively free of concerns for antitrust violations because MLB operates under a federal antitrust exemption that dates back to a 1922 Supreme Court decision, Federal Baseball Club v. National League of Professional Baseball. MLB's exemption generally has been held to apply to the entire "business of baseball."

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293. Non-relocation agreements merely contractually restrict a team owners' ability to utilize the processes in the MLB Constitution to relocate their teams.


295. See, e.g., Chi. Prof'l Sports Ltd. v. Nat'l Basketball Ass'n, 95 F.3d 593 (7th Cir. 1996).


301. See, e.g., Charles O. Finley & Co. v. Kuhn, 569 F.2d 527 (7th Cir. 1978); Flood v. Kuhn, 443 F.2d 264, 271 (2d Cir. 1971).
Although it has been criticized by commentators and courts, and even by the Supreme Court, MLB's antitrust exemption has been reaffirmed by the Supreme Court and likely will continue to exist absent a Congressional action to repeal it. Challenges under state antitrust laws have been generally denied, or overturned, as preempted by federal antitrust laws. In the mid-1990s, two courts held that the exemption does not apply to team relocation but rather only to baseball's reserve system. More recent cases, however, indicate that MLB's antitrust exemption is alive and well.

The goals of antitrust law stand in opposition to the goals of the non-relocation agreement. Antitrust law is designed to protect the existence of markets with multiple competitors; the non-relocation agreement is drafted to prevent another city from “stealing” the home city’s team by making a better offer.

The non-relocation agreement itself runs little risk of violating antitrust law. The Sherman Act has been interpreted to prohibit only contracts that unreasonably restrain interstate commerce. A team can only play in one place at a time so, for a team to have a home city, exclusion of other possible home cities is unavoidable. Because the non-relocation agreement enables the home city to build new facilities, the non-relocation agreement can be said to facilitate commerce rather than restrain it. However, it is possible that an unreasonably long contract term, far beyond that needed to justify the construction of new facilities, could unreasonably restrain the competition between cities for a professional sports franchise. Much more likely are antitrust lawsuits that challenge league constitutions and league actions that control team relocation. The non-relocation agreement, as a contract between an individual franchise and its home city, would not be implicated in such lawsuits.

Northern California may be the site of the next antitrust battle over MLB team relocation, as the city of San Francisco and the San Francisco Giants battle to keep their interleague rival, the Oakland A’s, from moving to San Jose. The Oakland A’s stadium lease expires in 2013. The A’s owners,

303. See, e.g., State v. Milwaukee Braves, Inc., 144 N.W.2d 1 (Wis. 1966).
307. See, e.g., Pete Toms, LWIB: MLB's Anti-Trust Exemption and Franchise Relocation, BIZOFBASEBALL.COM, Jan. 4, 2010 available at http://www.thefreelibrary.com/LWIB%3a+MLB%27s+
John Fisher and Lewis Woolf, are in the market for a new stadium in Northern California, and San Jose has emerged as a contender. Although the A’s would be moving farther away from San Francisco, the city of San Francisco believes that an A’s move to San Jose would cause the Giants’ revenues to drop, which, in turn, would economically harm San Francisco, as the city depends on Giants’ revenues to pay off the bonds that paid for improvements to San Francisco’s AT&T Park. San Francisco City Attorney Dennis Herrera has threatened to sue MLB if the A’s are allowed to move to San Jose.

A suit by San Francisco would be unique. Apart from the initial standing issues, San Francisco would be asking a court to enforce an anticompetitive territory restriction that MLB was not attempting to impose. The typical antitrust action involves a team owner or a city filing suit because team relocation has been denied by league officials, asserting that the professional sports league’s relocation restrictions unreasonably restrain competition between cities for a professional franchise. Here, the city of San Francisco would sue to block the relocation of the A’s to a more competitive market, specifically because the move would increase the number of competitors in the relevant market.

A suit by San Francisco would renew the battle over the scope of MLB’s antitrust exemption. Opposing sides will argue that either (1) MLB’s exemption extends to the entire “business of baseball,” including team relocation or (2) the exemption extends only to baseball’s reserve clause. Because the U.S. Supreme Court has not specifically ruled on the application of baseball’s antitrust exemption to team relocation, this issue remains a

Anti-Trust+Exemption+and+Franchise+Relocation.-a0215726071.

308. See id.
309. Id.
310. Id.
311. See id.
312. See, e.g., Raiders I, 726 F.2d 1381 (9th Cir. 1984), and Raiders II, 791 F.2d 1356 (9th Cir. 1986). Another typical antitrust action is a suit by the city that is losing its home team. These suits have been brought under state antitrust laws and have never successfully blocked the relocation of a pro sports franchise. Such suits are usually held to be preempted by federal antitrust laws. See, e.g., State v. Milwaukee Braves, Inc., 144 N.W.2d 1 (Wis. 1966) (Milwaukee suit to block the Braves’ move to Atlanta); L.A. Mem’l Coliseum Comm’n v. National Football League, 726 F.2d 1381 (9th Cir. 1984) (Oakland suit to block Oakland Raiders from moving to LA).
subject of vigorous debate.

D. The Future of Sports Franchise Relocation Litigation: Tropicana Field v. Tampa Bay Rays

The next battleground for a stadium relocation debate is none other than “build it and they will come” St. Petersburg, Florida, one of the foreclosure capitals of America.315 Tropicana Field, originally known as the Florida Suncoast Dome, opened in 1990 to attract a MLB team to downtown St. Petersburg, Florida.316 The city first attempted to acquire a Major League tenant in 1989 when Jerry Reinsdorf used Tropicana Field as leverage to get a new stadium built for the White Sox in Chicago.317 From 1990 until 1995, Tropicana Field was unable to acquire an MLB franchise and instead became home to the National Hockey League’s Tampa Bay Lightning. In 1995, MLB expanded to the Tampa Bay area and Tropicana Field underwent a $70 million renovation to upgrade a stadium that had originally cost $138 million to build.318 Overall, public financing was responsible for all but $14 million of the total cost of Tropicana Field.319

The Tampa Bay Rays (Rays) were purchased by an ownership group led by Vincent J. Naimoli in 1995.320 The Tampa Bay ownership group signed a thirty-year Use Agreement (by and between the City of St. Petersburg, Florida and the Tampa Bay Devil Rays, Ltd. (Rays) dated April 28, 1995) that included a non-relocation clause, which stated as follows:

Section 2.04. Provision of Major League Baseball. In
consideration for the CLUB’s rights under his Agreement, during the Term the CLUB . . . shall:

Cause the Franchise to play all of its Home Games in the DOME; . . .

Not play any of the Franchise’s Home Games in any facility other than the DOME without the CITY’s consent, which may be withheld in the CITY’s sole discretion

Not permit relocation of the Franchise from the DOME. 321

The Use Agreement included remedies, which specifically addressed a breach of the non-relocation clause, and an exclusive dealings clause, which defined the actions that would constitute a breach:

Section 8.03. Remedies. The CLUB and CITY agree that neither has an adequate remedy at law for breach of this Agreement. The CLUB and CITY agree that, in the event of a violation of this Agreement, the party not in default shall be entitled as a non-exclusive remedy, and in addition to an action for damages, to seek and obtain an injunction or decree of specific performance or an equitable remedy from a court of competent jurisdiction to enjoin or remedy any violation of the Agreement. In the event a court refuses to grant specific enforcement of Section 2.04, the parties agree that one element of the damages to be considered by the court as having been incurred by the CITY for a breach of Section 2.04 would be the outstanding bond debt at the time of the breach on those bonds backed by the Franchise Funds. 322

Section 11.01. Exclusive Dealings. While this agreement is in effect . . . neither the CLUB nor any of its respective parties, principals, directors, officers, employees, owners, or agents will enter into, initiate or conduct any agreement or


322. Id. at 28–29.
negotiations (directly or indirectly) for the use of any facility other than the DOME for the Home Games of the Franchise except to the extent permitted by Section 2.04. The parties recognize that any violation of this provision will result in irreparable harm and damages that are not readily calculable. Accordingly, as a non-exclusive remedy, in addition to any damages that may be deemed to be appropriate, the CITY and the CLUB acknowledge that each party shall be entitled to injunctive relief in the event of a violation of this Section by any other party.\textsuperscript{323}

The City’s remedies include the right to specific performance or an injunction in the event that the Rays breach the non-relocation clause. In the event that a court refuses to grant specific performance, one element of damages to be considered is the outstanding bond debt. Most interestingly, the Rays’ Use Agreement considers even indirect contact with another venue to be a breach; therefore, the Rays would not be permitted to use another stadium as leverage against the City in future negotiations, similar to how Jerry Reinsdorf used the Florida Suncoast Dome in 1989.

Stuart Sternberg purchased a controlling interest in the Rays from Naimoli and became the team’s Managing General Partner in 2004.\textsuperscript{324} Since the ownership change, the Rays have been very successful, including a trip to the World Series in 2008. However, despite its achievements on the field, the Rays franchise has been unable to generate the revenues necessary to support a Major League franchise in downtown St. Petersburg. The New York-based Sternberg is a strong supporter of relocating the franchise, saying Tropicana Field would not “last” until 2020 and that the Rays “were not going to be there through 2027.”\textsuperscript{325}

Although the Rays are locked into their Use Agreement through 2027, St. Petersburg Mayor, Rick Baker, commissioned “A Baseball Community” Coalition (ABC Coalition) in an effort to determine the best strategies for maintaining the long-term viability of MLB in the Tampa Bay area.\textsuperscript{326} The ABC Coalition report ultimately determined that both a new stadium and

\textsuperscript{323} Id. at 32.
\textsuperscript{324} Topkin, supra note 320.
A new stadium was deemed necessary because Tropicana Field was considered to be at the end of its economic usefulness and was missing key architectural features that would not be cost-effective to renovate. Challenges to Tropicana Field’s revenue-generating capacity included (1) a complex movement pattern throughout the stadium, which limited the potential for fan access to amenities, (2) compromised views from both general admission and premium seating, (3) roof catwalks that interfere with play, and (4) a pervasive lack of natural light. The ABC Coalition Report also determined that Tropicana Field was missing features that have become standards for modern ballparks. The stadium lacked open concourses, more comfortable seating, club lounges with field views, fan-friendly amenities, and, most significantly, a retractable roof. Tropicana Field is currently the only stadium in the MLB to have a non-retractable roof. Ultimately, the ABC Coalition Report determined that these upgrades would cost between $200 and $475 million to renovate the current stadium, which was considered too costly. Therefore, the ABC Coalition Report concluded that Tropicana Field is near the end of its economically useful life.

Most detrimental to the city of St. Petersburg is the ABC Coalition’s finding that a new location was also necessary to increase the franchise’s revenue generating capacity and to enhance corporate support. The ABC Coalition determined that it was necessary for the team to take advantage of the growing population of Tampa Bay and to be more accessible to its corporations. Corporations are traditionally the backbone of an MLB franchise’s revenue, normally accounting for two-thirds of a team’s season ticket sales. However, in St. Petersburg, only one-third of the Rays’ season tickets are bought by corporations. Since 2005, Tropicana Field’s overall location would be necessary.

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328. *ABC REPORT*, supra note 326, at 5.
329. *Id.* at 15.
330. *Id.*
331. *Id.*
332. *Id.*
333. *Id.* at 16.
334. *Id.*
335. *See id.* at 9–14.
336. *Id.* at 12–13.
337. *Id.* at 11.
338. *Id.*
attendance has ranked between twenty-third and thirtieth in the MLB.\textsuperscript{339} However, the Rays were one of only nine teams to increase their average attendance in 2009.\textsuperscript{340}

With the potential of relocation, the loss of a valuable community asset, and an adversarial stadium debate, a number of interested parties have begun to take action. The Tourist Development Commission is drafting a plan that could reserve hotel tax dollars to fund a new park for the Tampa Bay Rays as early as 2015.\textsuperscript{341} “The Tourist Commission... controls a 5% tax on temporary lodging like hotel and motel rooms. The tax brings in approximately $25 million a year that is largely spent on tourist marketing, beach re-nourishment, and sports facilities.”\textsuperscript{342}

The Tampa Bay Partnership has offered to mediate and work with all parties in deciding the very best location for venue replacement. Rays majority owner Stewart Sternberg has indicated that he wants to consider sites throughout the Bay area, including Hillsborough County and Tampa.\textsuperscript{343} Mayor Bill Foster has indicated that he would be willing to consider sites adjacent to the city borders as a possible new home for the Tampa Bay Rays.\textsuperscript{344} This would include the greater Gateway area, which would include land outside the city limits such as a Greyhound Race Track, Derby Lane, and Pinellas County’s Airco Golf Course.

Sports venues have become the most important source of revenues for a team owner because the income is oftentimes not shared with the league or other owners and may make the difference in profitability. Tropicana Field is a stadium that is antiquated, not state-of-the-art, cannot produce enough revenue to be competitive, and puts the team at an economic disadvantage, with a Use Agreement that requires an on-going relation with the stadium for seventeen more years.

Tropicana Field has all the characteristics of an ensuing stadium debate: an antiquated stadium, a community group that says if baseball is going to be viable in the area, a new stadium is needed, and an owner who does not


\textsuperscript{340} ABC REPORT, supra note 326, at 10.


\textsuperscript{342} Id.


\textsuperscript{344} Id.
necessarily have home roots in St. Petersburg. Although equitable remedies requiring specific performance are present in most stadium leases, the St. Petersburg situation gives rise to the necessity of a negotiated non-relocation agreement. The government entity will want equitable remedies to keep the team at home for the lease term, while the team will want some type of monetary exit, which may be in the long run mean less dollars lost by virtue of the ability to relocate into a state-of-the-art facility. Economic viability to compete based on a state-of-the-art venue needs to be a concern of every owner. Locking into the term of a lease without an ability to move, by virtue of economic necessity, could be a financial disaster for an ownership group. What may be a compromise is exclusive, equitable remedies for a certain number of years of the lease with the right of the team thereafter to buy out of the lease for a specified amount, which would take into consideration the principal of any outstanding bonds plus interest, lost revenues, and loss of psychic income, all agreed to on a liquidated amount basis.

Some balancing of the equities with respect to relocation agreements could ultimately mean that the government unit will want more private equity side coming to the table. Maybe this is the very reason that we are seeing more sophisticated agreements, such as the agreements entered into by the Yankees, the Twins, the Cardinals, and the Nationals, which attempt to more effectively balance the equities.

PART TWO – BEST PRACTICE CLAUSES

I. INTRODUCTION: NON-RELOCATION AGREEMENTS

In writing this article, we specifically reviewed all leases and separate non-relocation agreements addressing the issue of “keeping the team at home.” Although each of the leases or agreements is different, there are basic themes contained in each of the lease or separate non-relocation agreements. The terms of a specific non-relocation agreement will greatly depend upon the needs of the parties, its purpose, political or otherwise, and the leverage of the parties.

II. PREAMBLE – QUID PRO QUO

In most of the separate non-relocation agreements, there is a preamble or “whereas” clause wherein there is a recitation of some form of subsidy or government participation that the public has made in order to create the new facility, the quid pro quo for which is an agreement by the team to stay at home in the form of a non-relocation covenant or agreement.
A. Preamble – Quid Pro Quo

1. St. Louis Cardinals\textsuperscript{345} – Operations and Non-Relocation Agreement

WHEREAS, by Ordinance No. 65669, the Board of Aldermen approved certain amendments to the Entertainment License Tax codified in Chapter 8.08 of the Revised Code of the City of St. Louis (the “Code”), which provides a tax rate incentive in connection with the substantial investment in the new construction or redevelopment of a Recreation Facility (as defined in Ordinance No. 65669) and the substantial investment in the development of adjacent mixed-use development within a blighted or insanitary area pursuant to a redevelopment plan approved by the City and a redevelopment agreement approved by the Authority, and to aid in the retention and acquirement of professional sports teams;\textsuperscript{346} and

WHEREAS, by Ordinance No. 65668, the Board of Aldermen approved that certain redevelopment plan titled “Blighting and Insanitary Study and Redevelopment Plan for the South Downtown Redevelopment Project Area” dated September 24, 2002, (the “Redevelopment Plan”) which plan designates a certain area of the City as the “South Downtown Redevelopment Project Area” (the “Redevelopment Area”), provides for assistance in connection with the redevelopment and construction of a new professional sports facility to serve as the home of the Team within the Redevelopment Area, and provides for up to 25 years of tax abatement within certain portions of the Redevelopment Area as an incentive for the construction and development of a sports facility;\textsuperscript{347} and

WHEREAS, the Cardinals and/or its Affiliates will substantially benefit from the incentives and assistance

\textsuperscript{345} Operations and Non-Relocation Agreement between the Land Clearance for Redevelopment Authority of the City of St. Louis and the St. Louis Cardinals, L.P., (Nov. 1, 2002) (hereinafter Cardinals Agreement).

\textsuperscript{346} Id. at 1.

\textsuperscript{347} Id.
provided by Ordinances Nos. 65668 and 65669;\textsuperscript{348} and

WHEREAS, the Cardinals and/or its Affiliates and the Team will substantially benefit from the redevelopment of the Redevelopment Area and the construction of the Ballpark;\textsuperscript{349} and

WHEREAS, the incentives and assistance provided for Ordinance Nos. 65668 and 65669 and the Redevelopment Plan will significantly aid the redevelopment of the Redevelopment Area and the construction of the Ballpark;\textsuperscript{350} and

WHEREAS, the City has vested in the Authority the responsibility to undertake and administer the Redevelopment Plan and the redevelopment of the Redevelopment Area;\textsuperscript{351} and

WHEREAS, as an inducement to the Authority to enter into a redevelopment agreement with the Redeveloper which will effectuate and make available the incentives and assistance provided for in Ordinance Nos. 65668 and 65669, the Cardinals have agreed to enter into this Agreement upon the terms and conditions set forth herein.\textsuperscript{352}

2. Florida Marlins\textsuperscript{353} – Recitals

A. The Team owns the Major League Baseball franchise known as the Florida Marlins.\textsuperscript{354}

B. Contemporaneously with the execution of this Agreement, (i) the County, the City and Marlins Stadium Developer, LLC, an affiliate of the Team, are entering into a Construction Administration Agreement (the "Construction Agreement")

\begin{itemize}
\item \textsuperscript{348} Id.
\item \textsuperscript{349} Id. at 2.
\item \textsuperscript{350} Id.
\item \textsuperscript{351} Id.
\item \textsuperscript{352} Id.
\item \textsuperscript{353} Marlins Agreement, supra note 234.
\item \textsuperscript{354} Id. at 1.
\end{itemize}
providing for the planning, design and construction of the Baseball Stadium and the Public Infrastructure; and (ii) the County, the City and Marlins Stadium Operator, LLC, another affiliate of the Team (the "Stadium Operator"), are entering into an Operating Agreement (the "Operating Agreement") providing for the operation and management of the Baseball Stadium by the Stadium Operator. (Capitalized terms used but not defined in this Agreement have the meanings set forth in the Operating Agreement.)\(^{355}\)

C. As a material inducement to the County and the City to enter into the Construction Agreement and the Operating Agreement, the Team has agreed to enter into this Agreement to assure that the Team will play its MLB home games at the Baseball Stadium on the terms and conditions set forth herein.\(^{356}\)

3. Houston Astros\(^{357}\) – Recitals

1. Houston McLane is the holder of the franchise for the City of Houston, Texas issued by the National League and is the owner of the Houston Astros Baseball Club.\(^{358}\)

2. The project known as "The Ballpark at Union Station" includes the design, development, construction, and furnishing of the Stadium pursuant to the Project Agreement and the lease, use, and operation thereof by Houston McLane pursuant to the terms and conditions of the Stadium Lease and the License Agreement.\(^{359}\)

3. The Sports Authority, the City, and the County have invested and contemplate continuing to invest a substantial amount of funds for the design, development, construction, and furnishing of the Stadium and such public entities have a

\(^{355}\) Id.

\(^{356}\) Id.

\(^{357}\) Non-Relocation Agreement Between Harris County-Houston Sports Authority and Houston McLane Company, Inc. d/b/a Houston Astro Baseball Club (June 17, 1998) [hereinafter Astros Agreement].

\(^{358}\) Id. at 1.

\(^{359}\) Id.
significant interest in assuring that Houston McLane shall cause the Astros to play its Baseball Home Games at the Stadium upon completion of construction.360

4. As an inducement to the Sports Authority to enter into the Project Agreement, the Stadium Lease, and the License Agreement, Houston McLane has agreed to enter into this Non-Relocation Agreement upon the terms and conditions set forth herein.361

4. Milwaukee Brewers362 – Recitals

A. The presence and conduct of professional baseball in the State of Wisconsin stimulates economic activity in the State and, therefore, the creation of a modern state-of-the-art baseball stadium facility for the playing of professional baseball will be beneficial to the State.363

B. To promote the conduct of professional baseball in the State, the District was established by the State’s legislature pursuant to Act 56 of the Wisconsin Legislature enacted on October 12, 1995, and published on October 25, 1995, for the purpose of financing, acquiring, developing, construction, owning, leasing and operating a modern state-of-the-art baseball stadium facility.364

C. The Team is the holder of the franchise for the City of Milwaukee (the “City”) issued by the National League or Professional Baseball Clubs (the “National League”) and is the owner of the Milwaukee Brewers professional baseball team (the “Milwaukee Brewers”).365

D. The State and the District desire that the Milwaukee

360. Id.
361. Id.
363. Id. at 2.
364. Id.
365. Id.
Brewers continue to play their Baseball Home Games in the City and the Team desires to cause the Milwaukee Brewers to continue to play their Baseball Home Games in the City.\textsuperscript{366}

E. As an inducement to the Team to continue to cause the Milwaukee Brewers to play their Baseball Home Games in the City, the District, the State and the Team have agreed to cause the "Stadium Project" and "Infrastructure" (as such terms are defined in that certain Lease Agreement dated as of December 31, 1996, as amended and restated as of May 2004 [the "Lease"] between the District and the Team) to be constructed pursuant to that certain Construction Administration Agreement (the "Construction Administration Agreement") dated December 31, 1996.\textsuperscript{367}

F. As an inducement to the District and the State to assist the Team in causing the Stadium Project and Infrastructure to be constructed, the Team has agreed to enter into this Non-Relocation Agreement upon the terms and conditions set forth herein.\textsuperscript{368}

G. The District and the Team previously entered into that certain Non-Relocation Agreement dated as of December 31, 1996 (the "Original Non-Relocation Agreement").\textsuperscript{369}

III. BASIC COVENANTS

Most of the non-relocation lease clauses or agreements will have basic non-relocation covenants, which basically include (1) that the team will maintain its principal place of business in the home city, (2) that the team will maintain the franchise under MLB rules, (3) that, during the term of the lease or some other identifiable term, the team will not relocate from the home city, (4) that the team will play all of its home games, with some listed exceptions, in the home city stadium, (5) that the team will not enter into negotiations with respect to relocation, and (6) that prior to negotiations the team will give the governmental unit notice of such negotiations.

\textsuperscript{366} Id.
\textsuperscript{367} Id.
\textsuperscript{368} Id.
\textsuperscript{369} Id. at 3.
A. Principal Place of Business

1. St. Louis Cardinals

"2.4 Maintenance of Headquarters. The Cardinals shall maintain their headquarters at the principal place of business within the city during the term."\(^{370}\)

2. Florida Marlins

"2 Covenant to Play at Baseball Stadium. . . . 1. The Team shall maintain its principal place of business in the City."\(^{371}\)

3. Washington Nationals

"2.1—Obligation to Maintain Franchise In the District. (i) [T]he Team shall maintain its principal place of business in the District of Columbia as a registered business in good standing under all applicable laws."\(^{372}\)

4. Kansas City Royals

Section 22.01 — (G) [I]t is a corporation organized and existing under the laws of the State of Missouri, is now in good standing under the laws of the State of Missouri and its principal office is in Kansas City, Missouri. . . . (H). [I]t will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it.\(^{373}\)

B. Maintain Franchise Under MLB Rules

1. Washington Nationals

"2.1. (ii) [T]he Team shall maintain the franchise as a validly existing and participating Major League Baseball Franchise under Baseball Rules and

\(^{370}\) Cardinals Agreement, supra note 345, at 7.

\(^{371}\) Marlins Agreement, supra note 234, at 1.


\(^{373}\) Lease Agreement between Jackson County Sports Complex Authority and Kansas City Royals Baseball Corporation, at 34–35 (January 19, 1990) [hereinafter Royals Agreement].
Regulations.”374

2. St. Louis Cardinals

2.3 Maintenance of Franchise. At all times during the Term the Cardinals shall (a) maintain the membership in good standing of the Team in Major League Baseball and (b) hold, maintain and defend the right of the Team to play baseball as a member of Major League Baseball and (c) use reasonable efforts to oppose the adoption of any Major League Baseball Rules and Regulations that would cause the Cardinals to be unable to comply with any of the terms of this Agreement.375

3. Minnesota Twins

Section 2.1 Maintenance of Franchise/Corporate Existence; Covenant to Operate. (a) At all times during the Term, the Team shall, subject to the provisions of this Article 2, (i) maintain its membership and Franchise in the MLB in good standing, (ii) own, hold, maintain and defend its rights and Franchise to play baseball as a member of MLB in the City. . . .376

C. Team Shall Not Relocate

1. New York Yankees

“2.1.3 – Prohibited Relocation. From the Effective Date through the Initial Term, the Partnership shall not cause, nor permit to occur, any Prohibited Relocation.”377

2. Milwaukee Brewers

“ARTICLE II – Transfer of Team’s Franchise. b. The Team shall not enter into any contract or agreement of any kind to transfer the Team’s

376. Twins Agreement, supra note 253, at 5.
Franchise outside the City of Milwaukee to a location other than the Stadium Complex without the prior written consent of the State and the District.”\textsuperscript{378}

3. Florida Marlins

“2. Covenant to Play at Baseball Stadium. . . . 4. [T]he Team shall not enter into any contract or agreement or make any request or application to Major League Baseball to (i) relocate its franchise outside the City in violation of clause (b) above . . . .”\textsuperscript{379}

4. St. Louis Cardinals

“2.1 Agreement to Play and Not to Relocate. (b) The Cardinals shall not relocate or transfer the Team outside the boundaries of the City, and shall not change or move the home territory of the Team in any manner that would exclude the City or the County.”\textsuperscript{380}

5. Washington Nationals

“2.1 Obligations to Maintain Franchise in the District. (iv) [T]he Team shall not relocate, attempt to relocate, or permit the relocation of, the Franchise outside of the District of Columbia.”\textsuperscript{381}

D. Play All Home Games

1. Atlanta Braves

“16.1.1 It shall play all of its Regular Season Home Games and Post Season Home Games at the Olympic Stadium as required by Article 15.”\textsuperscript{382}

2. Milwaukee Brewers

“2. d. The Team shall, from and after the Commencement Date and until the termination or expiration of the Lease, subject to Force Majeure, any Untenantability Period, and to Baseball Rules and Regulations, play all of its Baseball Home Games for each Season at the Stadium Complex.”\textsuperscript{383}

\textsuperscript{378}. Brewers Agreement, supra note 362, at 3.
\textsuperscript{379}. Marlins Agreement, supra note 234, at 2.
\textsuperscript{380}. Cardinals Agreement, supra note 345, at 6.
\textsuperscript{381}. Nationals Agreement, supra note 372, at art. 2.1.
\textsuperscript{382}. Operating Agreement between City of Atlanta and Fulton County Recreation Authority and Atlanta National League Baseball Club, Inc., at 62 (March 16, 1993) [hereinafter Braves Agreement].
\textsuperscript{383}. Brewers Agreement, supra note 362, at 3.
3. Washington Nationals

"2.1(iii). [T]he Team shall play all of the Franchise’s Regular Season and Post Season Baseball Home Games at the Baseball Stadium." 384

E. Exceptions to Home Game Requirements

1. Florida Marlins

3. Exceptions. Notwithstanding Sections 1 and 2 above, the Team shall be permitted to play what would otherwise be an MLB Home Game at a location other than the Baseball Stadium:

(a) In the case of an Alternate Site Condition as provided in Section 4;

(b) in any consecutive five-year period, up to three (3) regular season MLB home games (not including any games played in different locations under Section 3(a) above) in an international or other location as permitted or requested by Major League Baseball;

(c) in the case of playoff MLB games, at any location required by Major League Baseball; and

(d) in the case of MLB games other than regular season and playoff games, at any location it chooses. 385

2. New York Yankees

2.2.1 Exception for Home Games. Subject to Section 2.2.2, up to twelve (12) Home Games over any two (2) consecutive Regular MLB Seasons may be played in venues other than (a) the Existing Stadium for Regular MLB Seasons ending prior to the First Season Commencement Date or (b) the Stadium for Regular MLB Seasons commencing on or after the First Season Commencement Date; provided, that, in no event shall the number of Home Games played during any Regular MLB

Season in venues other than the Existing Stadium or the Stadium, as the case may be, equal or exceed the number of Home Games that would cause or constitute a Prohibited Relocation under Section 2.1.3; and, provided, further, that Home Games which are cancelled or suspended in accordance with the MLB Trinity due to weather or due to field conditions other than field conditions resulting from the actions of the Partnership or the failure by the tenant under the Lease Agreement to perform its obligations thereunder, and are rescheduled and played in the home ballpark of another Major League Baseball Club in accordance with the MLB Trinity, shall be treated, for purposes of Section 2.1.1, as having been played in the Existing Stadium or the Stadium, as applicable.  

3. Washington Nationals

"2.1(c). Once every five years, up to three Regular Season Home Games in an international or other venue as requested by Major League Baseball."  

4. Minnesota Twins

2.1(e). At all times during the Term, the Team shall play all regular and post season games at the Ballpark unless otherwise required by any Untenantability Period and subject to Section 11.4(d) of the Ballpark Lease Agreement; provided that on a non-regular basis, the Team may, if required by MLB, play no more than 5 home games per year in a foreign country. Preseason games and MLB All-Star Games scheduled to be played in the Twin Cities metropolitan area shall be played at the Ballpark unless otherwise required by MLB Rules and Regulations, or any Untenantability Period and subject to Section 11.4(c) of the Ballpark Lease Agreement.  

5. Houston Astros

2.1.1 Covenant to Play in Astrodome Complex

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386. Yankees Agreement, supra note 377, at 3.
387. Nationals Agreement, supra note 372, at art. 2.1.
388. Twins Agreement, supra note 376, at 5.
Notwithstanding the foregoing, the Astros shall be entitled to play, and the foregoing covenant shall not prevent or prohibit the Astros from playing, up to five (5) of their Baseball Home Games outside the Astrodome Complex during each Major League Baseball Season during the Astrodome Non-Relocation Period; provided that none of such five (5) Baseball Home Games shall include any game in the opening homestand of a Major League Baseball Season (excluding any pre-season play), any game during the final four (4) weeks of the Major League Baseball Season (excluding any post-season play), or any playoff game or game of the World Series. The right to play certain Baseball Home Games outside the Astrodome Complex as provided in the preceding sentence shall be non-cumulative and any unused portion shall expire at the end of each Major League Baseball Season.  

2.1.2 Untenantability of Astrodome Complex

Notwithstanding the provisions of Section 2.1.1 to the contrary, if an Astrodome Untenantable Condition shall exist at any time during the Astrodome Non-Relocation Period, then Houston McLane shall be entitled to make arrangements for alternate sites and the Astros shall be entitled to play their Baseball Home Games at such alternate sites but only during the period of time that any such Astrodome Untenantable Condition shall exist and provided that Houston McLane uses commercially reasonable and diligent efforts to mitigate and overcome such Astrodome Untenantable Condition.

6. San Diego Padres

13.1. Exclusive Venue

13.1.2 Notwithstanding paragraphs 13.1.1 the Padres may, without the City’s consent:

(a) during each Major League Baseball Season included in the Term, play up to three (3) Home Games outside the

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390. Id.
continental United States;

(b) play one home series not to exceed five (5) Major League Baseball Games in Asia during the period commencing on the first day of the first Major League Baseball Season after the Commencement Date and ending three (3) years after that date, and during each successive three (3) year period thereafter; provided, however, that the Padres may not, without the City's prior written consent, play a home series in Asia in any Season immediately following a Season in which the Padres played a home series in Asia; and

(c) play Home Games at a facility other than the Ballpark Property if any Governmental Authority with jurisdiction over the Ballpark Property and its use

F. No Negotiations and/or Notice of Negotiations

1. Milwaukee Brewers

ARTICLE II - Transfer of Team’s Franchise. f.

The State and the District shall be given prior written notice of any negotiations regarding:

i. Any proposed relocation of the Team’s Franchise to a location other than the Stadium Complex;

ii. Any proposed sale or transfer that would involve relocation of the Team’s Franchise to a location other than the Stadium Complex; or

iii. Any related sale or transfer of the Team’s Ownership Interest in the Stadium Complex.391

2. New York Mets

2.1.4

No Adverse Action. From the Effective Date through the

Initial Term, the Partnership will not (a) cause, nor (b) to the extent within its powers, permit to occur, nor (c) enter into or participate in any negotiations or discussions with, or apply for or seek approval from, third parties, including MLB or any MLB Entity, with respect to any agreement, legislation or financing that contemplates, or would be reasonably likely to result in, any action that would contravene or result in contravention of Section 2.1 (Non-Relocation). 392

IV. REMEDIES

A. Equitable Remedies

Non-relocation agreements contain equitable remedies. The equitable language in these non-relocation leases and agreements recognizes and acknowledges that a non-relocation covenant is an essential element of the bargain and consideration of creating the stadium for purposes of protecting the business and good will of the governmental units; that the asset of having a team in the home city is unique and cannot be valued monetarily; that there is normally a listing of those economic values, which include, but are not limited to, new jobs, additional revenue sources, economic development, and increased tourism; that the governmental unit will suffer irrevocable injury and harm if there is a breach of the obligation to play its home games in the home city facility; that monetary damages could not be calculated to compensate the governmental unit for any breach of the non-relocation covenant; that, in the event of any form of material default, violation, or breach of the covenant, the governmental unit may, without the necessity of posting any bond or other security and without any further showing of irreparable or irrevocable injury or harm, be entitled to seek and obtain an injunction for specific performance or any other preliminary or permanent equitable relief from a court of competent jurisdiction.

1. Washington Nationals

4.2 Commission Special Remedies

The Team acknowledges and agrees that the rights and duties

established under Article 2 are of a unique and special nature and that any violation thereof by the Team will resort in immediate and irreparable harm to the Commission and the District Government. Among other considerations, the Commission and the District Government are detrimentally relying on the Team's compliance with Article 2 in connection with taking certain financial and non-financial governmental actions required to enable the planning, development and financing of the Baseball Stadium Complex. Accordingly, in the event of any actual or threatened breach or violation of any of the provisions of Article 2, the Commission shall be entitled as a matter of right to an injunction or decree of specific performance, without bond, from any equity court of competent jurisdiction compelling the Team to comply fully with the terms of Article 2. The Team waives the right to assert the defense that such breach or violation can be compensated adequately in damages in an action of law.393

2. St. Louis Cardinals

5.3 Certain Equitable or Liquidated Damages.

The Parties acknowledge and agree that (i) the Ballpark Project is being constructed with the assistance of the Authority pursuant to the Redevelopment Plan and the Redevelopment Agreement to enable the Cardinals and the Team to remain in the City and to enable the Team to play its Home Games in the Ballpark and (ii) Section 2.1 of this Agreement is intended to ensure, among other things, that the Cardinals will not relocate the Team. The Parties acknowledge and agree that (i) particular and highly unique circumstances have given rise to this Agreement, (ii) the Authority will be immediately, uniquely and irreparably harmed by any violation by the Cardinals of Section 2.1 of this Agreement, (iii) monetary damages could not be calculated to compensate the Authority for any breach by the Cardinals of Section 2.1 of this Agreement and (iv) the Authority does not have an adequate remedy at law for the

393. Nationals Agreement, supra note 372.
breach by the Cardinals of Section 2.1 of this Agreement. The Parties acknowledge and agree that the economic, financial, civic and social benefits to the Authority and the City from the presence of the Cardinals and the Team and the playing by the Team of its Home Games in the City are great, but that the precise value of those benefits is difficult to quantify due to the number of citizens and businesses that rely upon and benefit from the presence of the Cardinals and the Team in the City. Accordingly, the magnitude of the damages that would result from the loss of those benefits due to a violation by the Cardinals of Section 2.1 of this Agreement would be significant in size but difficult to quantify.

The Parties agree that in the event of a material default, violation or breach, or threatened material default, violation or breach, by the Cardinals of any provision of Section 2.1, the sole and exclusive remedy of the Authority shall be any one, but not both, of the remedies specified in (a) and (b) below:

(a) the Authority may, without the necessary of posting any bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or inadequacy of money damages, be entitled to seek and obtain an injunction, specific performance or any other preliminary or permanent equitable relief from any court of competent jurisdiction to prevent such violation or breach, and the Cardinals agree and stipulate that the rights of the Authority to equitable relief pursuant to this Section 5.3 shall not constitute a “claim” pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving the Cardinals.\footnote{Cardinals Agreement, supra note 345, at 10-11.}

3. Florida Marlins

5.2 Declaratory or Injunctive Relief.

Upon the occurrence of a Non-Relocation Default, each of the County and the City shall be entitled to seek injunctive relief.
prohibiting or mandating action by the Team in accordance with, or a declaratory relief with respect to, the Non-Relocation Covenants. In addition, the Team: (a) acknowledges that the Non-Relocation Covenants are an essential part of the bargain and consideration of the Stadium Agreements and are necessary to protect the business and goodwill of the County and the City; (b) recognizes that the Baseball Stadium is being constructed and certain debt is being incurred by the County and the City to permit the MLB Home Games in the Baseball Stadium during the Non-Relocation Term; (c) recognizes that having the Team play its MLB Home Games in the Baseball Stadium throughout the Non-Relocation Term provides a unique value to each of the County and the City, including generating new jobs, additional revenue sources and economic development and increased tourism for the County and the City; and (d) acknowledges and agrees that any breach by the Team of the Non-Relocation Covenants shall cause irreparable and continual harm to the County and the City and that damages for a default under such Non-Relocation Covenants cannot be estimated with any degree of certainty and that monetary damages cannot fairly or adequately compensate the County and the City for a breach of such Non-Relocation Covenants. Accordingly, the Team agrees that, in the event of any of the actual or threatened breach by the Team of any one of the Non-Relocation Covenants (i) each of the County and the City shall be entitled to seek and obtain, a temporary restraining order, together with temporary, preliminary and permanent injunctive or other equitable relief, from any court of competent jurisdiction, to restrain or enjoin any actual or threatened breach by the Team of any Non-Relocation Covenant without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, (ii) the administration of an order for injunctive relief would not be impractical and, in the event of any breach of any Non-Relocation Covenant by the Team, the balance of hardships would weigh in favor of entry of injunctive relief, and (iii) each of the County and the City may enforce any Non-Relocation Covenant contained in this Agreement through
specific performance.\textsuperscript{395}

4. Houston Astros

4.3 Declaratory or Injunctive Relief

Any Party or express beneficiary of this Non-Relocation Agreement shall be entitled to seek injunctive relief prohibiting or mandating action by any other Party in accordance with this Non-Relocation Agreement, or declaratory relief with respect to any matter under this Non-Relocation Agreement. In addition, Houston McLane (a) recognizes that the Stadium is being constructed, certain taxes are being imposed by the Sports Authority, and certain debt is being incurred in order to permit the Baseball Home Games in the Astrodome Complex during the Astrodome Non-Relocation Period and in the Stadium during the Lease Term, all as provided in Article 2, and (b) acknowledges and agrees that monetary damages could not be calculated to compensate the Sports Authority for any breach by Houston McLane of the covenants and agreements contained in this Non-Relocation Agreement. Accordingly, Houston McLane agrees that (i) the covenants and agreements contained in this Non-Relocation Agreement shall constitute an agreement described by Subsection (a)(2) of Section 335.004 of Chapter 335 of the Texas Local Government Code, (ii) the Sports Authority may restrain or enjoin any breach or threatened breach of any covenant, duty, or obligation of Houston McLane contained in this Non-Relocation Agreement without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, (iii) the administration of an order for injunctive relief would not be impractical and, in the event of any breach of any covenant, duty or obligation contained in this Non-Relocation Agreement, the balance of hardships would weigh in favor of entry of injunctive relief, (iv) the Sports Authority may enforce any such covenant, duty or obligation of Houston McLane contained in this Non-Relocation Agreement through

\textsuperscript{395} Marlins Agreement, \textit{supra} note 234, at 4-5.
specific performance if so awarded pursuant to the Arbitration Procedures, and (v) the Sports Authority may seek injunctive or other form of ancillary relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of this Non-Relocation Agreement on an interim basis pending the outcome of arbitration of the applicable Dispute or Controversy pursuant to the Arbitration Procedures. The Parties hereby agree and irrevocably stipulate that the rights of the Sports Authority to injunctive relief pursuant to this Non-Relocation Agreement shall not constitute a "claim" pursuant to section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving Houston McLane.\footnote{Astros Agreement, supra note 357, at 5-6.}

5. Atlanta Braves

16.2

The Team further acknowledges and agrees that the duties, obligations and responsibilities of the Team under this Article 16 and Article 15 are unique, and that monetary damages would not fully compensate the Authority, the City and the County, all of which are agreed to be beneficiaries of this Agreement, from the direct and indirect consequences of any breaches thereof. Therefore, the Team agrees that the Authority does not have an adequate remedy at law, and that the Authority shall have the right to seek appropriate equitable relief, including appointment of a receiver, specific performance and injunctive remedies without regard to whether the Authority is also entitled to damages for such breaches. The Team further agrees that the Superior Court of Fulton County, Georgia is an appropriate and convenient forum to resolve any dispute arising under this Agreement (except for those matters for which the parties have chosen arbitration as a dispute resolution mechanism), and hereby consents to such court’s jurisdiction to hear matters arising hereunder. Furthermore, the Team expressly waives and relinquishes the right to seek to require the Authority, the City or the County to post any bond or other security in connection
with or as a condition to the granting of any equitable relief such court may order. No allegations of insolvency, value of collateral or other security or other similar matters usually incident to equitable proceedings need be established by the Authority, the City or the County as part of any such equitable proceedings.397

6. Colorado Rockies

Article XIII

(c) The Partnership recognizes that the stadium is being constructed, the sales tax was imposed, and the bonds were issued solely to bring the Team and the franchise to the District, and agrees that in the event of a violation of this Article XIII, the District shall, without posting any bond, be entitled to seek and obtain an injunction from the District Court of the City and County of Denver, Colorado, or any other court of competent jurisdiction, to enjoin any violation of this Article XIII. Additionally, the District shall have the right to enforce any breach of Sections 5.1(3) or 24.6 through specific performance as provided in Section 11.2(a), or otherwise as provided in this Agreement.398

V. LIQUIDATED DAMAGES

Some of the leases and non-relocation agreements have an optional remedy; that is, in the event the governmental units do not obtain injunctive or equitable relief, the governmental unit will be entitled to seek and obtain stipulated or liquidated damages. The team and government unit will agree and stipulate that the financial, civic, and social benefits to the government unit from the presence of the team in the home city cannot be estimated with a precise value or with any degree of certainty, but such damages would be significant in size. The governmental unit will be entitled to collect liquidated damages, which are either a stipulated amount, a de-escalating amount, or an amount based upon a formula. In some instances, the liquidated damages are reduced by the number of years in which the team plays its games in the home

397. Braves Agreement, supra note 382, at 63-64.
city facility; therefore, damages are reduced for each year that the Team has fulfilled its lease.

A. Florida Marlins

5.3 Liquidated Damages. The parties acknowledge and agree that if the County or the City do not obtain injunctive or other equitable relief pursuant to Section 5.2, the County and the City each shall be entitled to seek and obtain relief pursuant to this Section 5.3 in the event a court of competent jurisdiction determines, in a final and non-appealable order, that the Team has breached its covenants under Section 2(c) (a "Final Order"). The Parties also recognize, agree, and stipulate that the financial, civic, and social benefits to the County and the City from the presence of the Team and the playing of its MLB Home Games in Miami, Florida are great, but that the precise value of those benefits cannot be estimated with any degree of certainty due to the number of citizens and businesses that rely upon and benefit from the presence of the Team in Miami, Florida. Accordingly, the magnitude of the damages that would result from a breach of Section 2(c) hereof that is not enjoined by a court of competent jurisdiction notwithstanding the intent of the parties, would be very significant in size but are not readily ascertainable and would include damages to the reputation and finances of the County and the City. Therefore, the Parties agree that in the event of a violation of Section 2(c) hereof, including, without limitation, any such breach arising pursuant to the provisions of section 365(g) of the United States Bankruptcy Code or similar provision of any successor thereto, the County and the City will be entitled to recover from the Team the amounts set forth in Subsection 5.3.1:

5.3.1: Liquidated Damages. If the County or the City do not obtain injunctive or other equitable relief pursuant to Section 5.2 and the violation of Section 2(c) is not cured prior to the date that a court of competent jurisdiction enters a Final Order, the County shall be entitled to receive, as reasonable estimated liquidated damages and not as a penalty, the County Liquidated Damages (as hereafter defined) and the City shall be entitled to receive, as reasonable estimated liquidated
damages and not as a penalty, the City Liquidated Damages (as hereafter defined). For purposes of this Agreement, “County Liquidated Damages” shall mean the sum of (a) the then outstanding balance of principal and interest of the County Bonds (as such term is defined in the Construction Administration Agreement), (b) the unamortized amount of Public Infrastructure Costs and any other costs for the Baseball Stadium Project paid by the County under the Construction Administration Agreement (which amount shall be amortized on a straight line basis over 30 years) without duplicating amounts in (a) if such Public Infrastructure Costs or other costs are funded from County Bonds, and (c) the present value of all Capital Reserve Fund contributions required to be made by the Stadium operator pursuant to Section 9.3(b) of the Operating Agreement. For purposes of this Agreement, City Liquidated Damages” shall mean the sum of (i) the then outstanding balance of principal and interest of the City Bonds (as such term is defined in the Construction Administration Agreement), (ii) the unamortized balance of the funds (other than the proceeds of the City Bonds) deposited in the City Account (as such term is defined in the Construction Administration Agreement) in an amount that, together with proceeds of the City Bonds, will be equal to $13,000,000 (which balance shall be amortized on a straight line basis over 30 years), (iii) the present value of all regular season MLB Home Game parking fees owed to the City under Section 6.3(a) of the City Parking Agreement (assuming 81 regular season MLB Home Games) prior to the end of the Term (as such term is defined in the City Parking Agreement), and (iv) the unamortized amount of Public Infrastructure Costs and any other costs for the Baseball Stadium Project paid by the City under the Construction Administration Agreement (which amount shall be amortized on a straight line basis over 30 years), without duplicating amounts in (i) and (ii) if such Public Infrastructure Costs or other costs are funded from City Bonds or amounts referred to in (ii).399

5.3 Certain Equitable or Liquidated Damages. The Parties acknowledge and agree that (i) the Ballpark Project is being constructed with the assistance of the Authority pursuant to the Redevelopment Plan and the Redevelopment Agreement to enable the Cardinals and the Team to remain in the city and to enable the Team to play its Home Games in the Ballpark and (ii) Section 2.1 of this Agreement is intended to ensure, among other things, that the Cardinals will not relocate the Team. The Parties acknowledge and agree that (i) particular and highly unique circumstances have given rise to this Agreement, (ii) the Authority will be immediately, uniquely and irreparably harmed by any violation by the Cardinals of Section 2.1 of this Agreement, (iii) monetary damages could not be calculated to compensate the Authority for any breach by the Cardinals of Section 2.1 of this Agreement and (iv) the Authority does not have an adequate remedy at law for the breach by the Cardinals of Section 2.1 of this Agreement. The Parties acknowledge and agree that the economic, financial, civic and social benefits to the Authority and the City from the presence of the Cardinals and the Team and the playing by the Team of its Home Games in the City are great, but that the precise value of those benefits is difficult to quantify due to the number of citizens and businesses that rely upon and benefit from the presence of the Cardinals and the Team in the City. Accordingly, the magnitude of the damages that would result from the loss of those benefits due to a violation by the Cardinals of Section 2.1 of this Agreement would be significant in size but difficult to quantify.

The parties agree that in the event of a material default, violation or breach, or threatened material default, violation or breach, by the Cardinals of any provision of Section 2.1, the sole and exclusive remedy of the Authority shall be any one, but not both, of the remedies specified in (a) and (b) below:

(a) the Authority may, without the necessity of posting any bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or inadequacy of money damages, be entitled
to seek and obtain an injunction, specific performance or any other preliminary or permanent equitable relief from any court of competent jurisdiction to prevent such violation or breach, and the Cardinals agree and stipulate that the rights of the Authority to equitable relief pursuant to this Section 5.3 shall not constitute a "claim" pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving the Cardinals; or

(b) the Authority shall be entitled to terminate this Agreement and the Redevelopment Agreement and receive, and the Cardinals shall pay, liquidated damages in the applicable amount ("Liquidated Damages Amount"), determined as follows based upon the date on which the violation or breach of Section 2.1 occurs: for the period commencing on the Effective Date and ending on the last day of the calendar year in which Substantial Completion of the Ballpark occurs, the Liquidated Damages Amount shall be $145,000,000 ("Initial Liquidated Damages Amount"), thereafter, the Liquidated Damages Amount shall be reduced by 1/29 of the Initial Liquidated Damages Amount on the last day of each calendar year during the remaining Term of this Agreement. The Parties acknowledge that they have negotiated the above amounts in an attempt to make a good faith effort to quantify the amount of damages that would result from a violation of Section 2.1 despite the difficulty in making such determination. Accordingly, in the event the Authority or any other Person shall collect the above-described liquidated damages, then the Authority and any such other Person shall not have, and hereby waive, the right to collect additional monetary or any other damages for breach of Section 2.1, whether for lost or prospective profits, or for special, indirect, incidental, consequential, exemplary or punitive damages, or for any other loss or consequence.400

C. Houston Astros

Section 4.4 Liquidated Damages. The Parties also recognize,

400. Cardinals Agreement, supra note 345, at 10-11.
agree, and stipulate that the financial, civic, and social benefits to the Sports Authority, the City and the Country from the presence of the Astros and the playing of its Baseball Home Games in the City and County are great, but that the precise value of those benefits is difficult to quantify due to the number of citizens and businesses that rely upon and benefit from the presence of the Astros in the City and County. Accordingly, the magnitude of the damages that would result from a violation of Section 3.1 hereof would be very significant in size but difficult to quantify including, without limitation, damages to the reputation and finances of the Sports Authority, the City, and the County. Therefore, the Parties agree that in the event of a violation of Section 3.1 hereof including, without limitation, any such breach arising pursuant to the provisions of section 365(g) of the United States Bankruptcy Code or similar provision of any successor thereto, the Sports Authority will be entitled to recover from Houston McLane the following sums, which are stipulated to be reasonable estimated damages in the event of a violation of Section 3.1 hereof, as reasonable liquidated damages and not as a penalty:

<table>
<thead>
<tr>
<th>Date of Breach</th>
<th>Liquidated Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/1/98 – 6/30/2003</td>
<td>$250,000,000</td>
</tr>
<tr>
<td>7/1/03 – 6/30/2008</td>
<td>$200,000,000</td>
</tr>
<tr>
<td>7/1/08 – 6/30/2013</td>
<td>$150,000,000</td>
</tr>
<tr>
<td>7/1/13 – 6/30/2018</td>
<td>$125,000,000</td>
</tr>
<tr>
<td>7/1/18 – 6/30/2023</td>
<td>$100,000,000</td>
</tr>
<tr>
<td>After 7/1/2023</td>
<td>$ 75,000,000</td>
</tr>
</tbody>
</table>

The Parties hereby acknowledge that they have negotiated the above amounts in an attempt to make a good faith effort in quantifying the amount of damages due to a violation of Section 3.1 hereof despite the difficulty in making such determination. Accordingly, in the event the Sports Authority collects the above referenced liquidated damages then the Sports Authority hereby waives any right to collect additional monetary damages (other than as provided pursuant to Section 6.18 hereof) including lost or prospective profits, or for any other special, indirect, incidental, consequential, exemplary,
or punitive damages.\textsuperscript{401}

\textit{D. New York Yankees}

Section 3.3.2 \textbf{Liquidated Damages}. Solely with respect to an Event of Default under Section 3.1.1, if the City, the ESDC and/or the NYCIDA is unable to obtain an equitable remedy in accordance with Section 3.3.1, then the City and/or the ESDC, as the case may be, (but not, for the avoidance of doubt, the NYCIDA) shall have the right to recover from the Partnership, and the Partnership agrees to pay within thirty (30) days following demand therefor, in immediately available funds and in lieu of any and all other damages payable, and other remedies available, under this Agreement and applicable law, the applicable amount set forth on Appendix C attached hereto and made a part hereof, to be paid to the City, which amounts are stipulated to be reasonable estimated damages for loss of a bargain in the event of an Event of Default under Section 3.1.1. for a Prohibited Relocation, as reasonable liquidated damages and not as a penalty (and because the parties hereto agree that damages for breach of Section 3.1.1 would be difficult or impossible to determine, but that they intend to provide for damages, and the amounts set forth on Appendix C are a reasonable estimate of such damages). Notwithstanding anything herein to the contrary, nothing in this Section 3.3.2 is intended to limit any remedies available to the City and/or ESDC under applicable law to enable them to collect liquidated damages payable under this Agreement.

\textbf{Appendix C:}

\begin{center}
\begin{tabular}{|c|c|}
  \hline
  Year & Liquidated Damages \\
  \hline
  1 & $1,496,928,205 \\
  2 & $1,496,928,205 \\
  3 & $1,496,928,205 \\
  4 & $1,487,418,205 \\
  5 & $1,476,408,205 \\
  6 & $1,464,863,205 \\
  7 & $1,452,738,205 \\
  \hline
\end{tabular}
\end{center}

\textsuperscript{401}. Astros Agreement, \textit{supra} note 357, at 6–7.
Finally, some of the agreements provide that, in the event the governmental unit is unable to obtain equitable relief and stipulated damages, they are entitled, in the event of non-relocation default, to actual damages caused by the team's breach of the non-relocation covenant. These damages could include, but are not limited to, the amount required to pay the outstanding principal and interest on the stadium bonds, loss of revenues arising out of or created by the operation and use of the facility, and any other costs and expenses incurred by the government unit seeking to enforce its remedies.

A. Florida Marlins

5.4 Actual Damages

In the event of any breach of or misrepresentation in this Agreement by the Team (other than a Non-Relocation Default subject to the remedies set forth in Section 5.2 or, if applicable, Section 5.3), or in the event of a Non-Relocation Default for which, notwithstanding the intent of the Parties, the County and the City are unable to obtain the relief set forth in Section 5.2 or, if applicable, Section 5.3 the County and City shall have the right (i) to institute any and all proceedings or claims permitted by law or equity to recover any and all amounts necessary to compensate the County and the City for all damages proximately caused by the Team's breach under this Agreement, and (ii) to institute any and all proceedings or claims permitted by law or equity to compel

402. Yankees Agreement, supra note 377, at 10, Appendix C.
specific performance with respect to the Team's obligations under this Agreement and one or more actions to seek and obtain a temporary restraining order, together with such other temporary, preliminary and permanent injunctive or other equitable relief, from any court of competent jurisdiction capable of issuing or granting such relief, to compel the Team to comply with or refrain or cease from breaching or violating the terms, covenants and conditions of this Agreement.\textsuperscript{403}

\textit{B. Washington Nationals}

4.2 Commission Special Remedies

Nothing in this Agreement shall be construed as prohibiting the Commission from pursuing any other remedies at law or in equity available to it for such breach or violation or threatened breach or violation. In addition, in the event of any breach or violation of any of the provisions of Article 2, the Subordinate Lien described in Section 2.2 shall secure, and the Commission shall be entitled as a matter of right to terminate this Agreement and recover from the Team, as damages and not as a penalty, any and all damages incurred or suffered by the Commission, including, without limitation, all costs and expenses incurred by the District Government, the Commission or any other affected party claiming through the District Government or the Commission, including (A) all costs and expenses incurred by the District Government and the Commission to construct the Baseball Stadium, including, without limitation, the amount required to repay principal of and interest on (and premium, if any, on) the Stadium Revenue Bonds, (B) any lost net revenue arising out of or created by the operation and use of the Baseball Stadium that the Commission would have received if the Team had complied with the Team Non-Relocation Obligations, and (C) all costs and expenses incurred by the Commission, including attorneys' fees and disbursements (other than as provided in Section 6.17), in seeking to enforce its remedies hereunder.\textsuperscript{404}

\textsuperscript{403} Marlins Agreement, \textit{supra} note 234, at 6.

\textsuperscript{404} Nationals Agreement, \textit{supra} note 372, at art. 4.2.
A. Payment Upon Sale of Team

6. Payment Upon Sale of Team. Upon either a sale to a third party of a “control interest” (defined as the sale of more than 50% of the voting, actual or beneficial interest in the franchise, occurring within the period commencing with the approval of the Stadium Agreements by the City Commission and the Board of County Commissioners and ending thirty six (36) months following Substantial Completion, whether through a sale of equity shares or partnership interests, to the extent proceeds are paid to the owners of the Team and not contributed to Team Affiliates involved in baseball related businesses) (other than following the death of the controlling owner), the Team shall or shall cause the seller to pay to the County and the City, to be split on a pro-rata basis (including the value of the City’s contribution of the Baseball Stadium Site, the amount of the City’s and the County’s expenditures as required by the Construction Agreement, and the value of the City and the County’s respective expenditures associated with the Public Infrastructure) determined by each respective parties’ contribution to the Baseball Stadium, an amount equal to the following percentage of the Net Proceeds of the sale that are attributable to any increase in value of the franchise (pro-rated in the case of a sale of the control interest) (the “County/City Equity Payment”):

<table>
<thead>
<tr>
<th>Phase of Project</th>
<th>Year</th>
<th>Description of Time-Frame</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>Year 1</td>
<td>If sale occurs within 12 months of approval date of Stadium Agreements</td>
<td>18.0%</td>
</tr>
<tr>
<td>Construction</td>
<td>Year 2</td>
<td>Sale occurs within 24 months of approval date of Stadium Agreements</td>
<td>16.2%</td>
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<tr>
<td>Construction</td>
<td>Year 3</td>
<td>Sale occurs within 36 months of approval date of Stadium Agreements</td>
<td>14.4%</td>
</tr>
<tr>
<td>Construction</td>
<td>Year 4</td>
<td>Sale occurs within 48 months of approval date of Stadium Agreements, or, prior to Substantial Completion of Stadium, whichever occurs first</td>
<td>12.6%</td>
</tr>
<tr>
<td>Operational</td>
<td>Year 1</td>
<td>Sale occurs within 12 months of Substantial</td>
<td>10.0%</td>
</tr>
</tbody>
</table>
The increase in value shall be based on an assumed value of the franchise of $250,000,000 as of the date of the BSA, which assumed value shall be increased to give effect to any additional debt incurred by, or equity capital contributions made to the Team, Stadium Developer or Operator, including the capital contributions made to, or the debt incurred by, the Stadium Developer or the Team pursuant to the Construction Administration Agreement (net of distributions to any such Team owners) and an imputed increase in value of 8% per annum from the date of the BSA. “Net Proceeds” shall mean the fair market value of all proceeds received from the sale plus any indebtedness for borrowed money of the Team or any Team Affiliate assumed by the buyer in the sale, less (x) the assumed value of the franchise determined under the preceding sentence, (y) all transaction-related expenses and taxes payable by the Team Affiliates and/or their direct and indirect owners to unaffiliated third parties solely as a result of the sale, and (z) any liabilities or obligations retained by the Team (in the case of a sale of the franchise) and/or its direct or indirect owners relating to the Marlins or its affiliated businesses.

The Team shall cause its independent accountants to provide the County and City a reasonably detailed calculation of the County/City Equity Payment (on a combined basis) under this Section 6, including a detailed calculation showing the assumed value, Net Proceeds and any other calculations the Team used to determine the amount payable, as promptly as practicable following any applicable sale. If the County or City do not provide a notice of objection within thirty (30) days after receiving the accountant’s calculation, such calculation shall be final and binding and payment of any amount due shall be made not later than thirty (30) days after the expiration of such period. If the County or City does provide a notice of objection, it shall specify in reasonable detail the basis for its objections. The objecting Government
Party and the Team shall then seek to resolve any disagreements between them within the succeeding period of sixty (60) days. If the objecting Government Party and the Team are unable to resolve the dispute within such sixty (60) day period, each of them shall have the right to commence arbitration in accordance with the Operating Agreement. If the arbitrator shall enter a final, non-appealable order requiring payment from the Team under this Section 6, the Team shall pay such amount within thirty (30) days thereafter.  

2. St. Louis Cardinals

3.1 Sale of Team. Subject to the provisions of this Article, the Cardinals shall have the right to sell or transfer ownership in whole or in part of the Team during the Term to the extent permitted by Major League Baseball without the Authority’s consent; provided that (a) in connection with such sale, the new Team owner must concurrently agree in writing, in form and substance reasonably acceptable to the Authority, to assume the Cardinals’ obligations under this Agreement for the remainder of the Term (unless waived by the Authority) and (b) the provisions of Section 3.2 shall not apply to the new Team owner. In addition, the Cardinals covenant and agree that the Cardinals shall not transfer, sell or assign the Team in any manner unless such transfer of the Team is approved in accordance with applicable Major League Baseball Rules and Regulations.

3.2 Ballpark-Related Profits from Sale.

(a) In the event that there is a Sale in whole or in part of any ownership interest in the Cardinals Ownership Entities, the Cardinals shall cause the Selling Owner(s) to pay to the Authority the Ballpark-Related Profits, and the Authority shall be responsible for paying to the County that portion of such amount agreed upon by the Authority and the County. By way only of example and without limitation, the Ballpark-Related Profits from the Sale of the total ownership interests in the Cardinals Ownership Entities are set forth in Exhibit A.

405. Marlins Agreement, supra note 234, at 7–9.
(b) Not later than 30 days after the consummation of a Sale, the Cardinals shall furnish to the Authority a notice setting forth their determination of the amount, if any, due pursuant to this Section 3.2. If Authority fails to object to such determination within 30 days following receipt of such notice, the Cardinals’ determination shall be final and binding, and payment of the amount, if any, due shall be made not later than 15 days after the expiration of the latter 30-day period. If Authority objects to such determination, the notice of objection shall specify in reasonable detail the basis for such objection. The Authority and the Cardinals shall thereupon seek to resolve such disagreement and, if they are unable to resolve the disagreement with 30 days following the Cardinals’ receipt of notice of such objection, then their disagreement shall be settled by arbitration in accordance with Section 6.3 of this Agreement.406

## EXHIBIT A – Ballpark-Related Profits from Sale*

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<td>5.34</td>
</tr>
</tbody>
</table>

* All amounts in millions.

### 3. Colorado Rockies

Article XIV Sale of Franchise. Upon sale of the Franchise or 80% of the beneficial interests in the Partnership during the Term, or Grace Term, the Partnership shall pay to the District an amount equal to 2% of the net profit realized by the Partnership or the selling partners or beneficial owners of the Partnership, as the case may be, not to exceed $2 million. Net profit shall be the gross proceeds of the sale less capital contributions (or capital contributions of partners selling their beneficial interests) to the Partnership, plus a five percent (5%) imputed annual return on such capital contribution(s), and less Partnership debt if such debt is not assumed or paid by the purchasing entity. The sale of the Franchise or 80% beneficial interests in the Partnership to any person or entity (or any affiliate thereof), who is a partner or a stockholder of a partner on the date of this Agreement and who has been a partner or a stockholder of a partner in the Partnership for at least three (3) years prior to the subject sale will not trigger this profit sharing provision. Individual sales of the Partnership interests in the Partnership and sales of stock of the general partner of the Partnership will not trigger this profit-sharing provision, provided such sales do not result in the sale of 80% or more of the beneficial interests in the Partnership to a person or entity or related persons or entities that have not been a partner or partners in the Partnership for
at least three (3) years prior to the initial sale, subsequent to the Commencement Date, of any beneficial interest to such person(s) or entity(ies). Nothing in this Article XIV shall be interpreted as limiting the Partnership’s obligations or the District’s rights set forth in Article XIII.  

4. Minnesota Twins

2.4 Sale of Team (a) In the event there is a Sale during the period beginning on May 27, 2006 and ending on the tenth anniversary of the Construction Start Date, the Team shall be obligated to pay to the Authority an amount equal to a certain percentage, as specified below, of the gross sales price resulting from the Sale (the “Team’s Sale Percentage”), which amount shall be deposited in the CapEx Reserve Fund and credited against any future funding obligations of either the Authority or the County to such CapEx Reserve Fund. During the twelve (12)-month period immediately following the Construction Start Date, the Team’s Sale Percentage shall be equal to eighteen percent (18%), reduced by one and eight-tenths (1.8) upon each anniversary of the Construction Start Date, until the amount of the Team’s Sale Percentage is reduced to zero. After the tenth anniversary of Construction Start Date the Team shall no longer have any payment obligation to the Authority under this Section following any Sale; provided, however, that this sentence shall not release the Team from any other obligation arising prior to or upon any Sale.

(b) Except as otherwise required herein (e.g., in the event a Sale is subject to the Right of First Refusal set forth in Section 2.5 hereof), the Team shall use commercially reasonable efforts to give the Authority written notice of any Sale within thirty (30) days prior to the Sale and shall, in all events, give the Authority written notice of any Sale within ten (10) days thereafter.

(c) In the event of any Sale or Exempt Transfer, the successor in interest shall become bound to the terms and conditions of

this Agreement, the Ballpark Lease Agreement, and any other Related Agreements pursuant to the provisions of Article 3, below.408

B. Bankruptcy

1. Florida Marlins

5.2 Declaratory Relief... The parties hereby agree and irrevocably stipulate that (x) the rights of each of the County and the City to injunctive relief pursuant to this Non-Relocation Agreement shall not constitute a "claim" pursuant to section 101(5) of the United States Bankruptcy Code (the "Bankruptcy Code") and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving the Team, (y) this Agreement is not an "executory contract" as contemplated by section 365 of the Bankruptcy Code, and (z) action(s) taken by each of the County and the City pursuant to this Section 5.2 shall not in any way prejudice any other rights or remedies that the County and the City may have under Section 5.3 or Section 5.4 of this Agreement or under the other Stadium Agreements if a court of competent jurisdiction fails to provide injunctive or other equitable relief prohibiting the Team's violation of the Non-Relocation Covenants or, in the case of the remedies set forth in Section 5.4, fails to award liquidated damages under Section 5.3.409

2. New York Mets

(3.2.4) That (a) the rights of the City, ESDC, NYCIDA and/or Taxable Bond Insurer to injunctive relief pursuant to Section 3.3.1 shall not constitute a "claim" pursuant to Section 101(5) of the United States Bankruptcy Code (the "Bankruptcy Code") and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving the Partnership, and (b) this Agreement is not an "executory contract" as contemplated by Section 365 of the Bankruptcy

408. Twins Agreement, supra note 376, at 7.
409. Marlins Agreement, supra note 234, at 5.
C. Collateral Pledge

1. Transfer of Team’s Franchise to a Secured Creditor (Loan Default)

   a. Milwaukee Brewers

2. g. Notwithstanding anything to the contrary set forth in clauses (i), (ii) or (iii) above, it is expressly understood and agreed that the Team shall have the right to grant a mortgage, pledge, assignment and/or other security interest in any of the Team’s trade fixtures, equipment, personal property, receivables, accounts, contract rights, general intangibles, tangible and intangible assets, any of the Team’s revenue streams derived from any source whatsoever, and/or the Team’s Franchise to obtain financing and/or secure a loan or loans from one or more lenders. It is further expressly understood and agreed that such lender(s) or their successors and assigns shall not be bound by the terms of this Agreement and that such lender(s)’ mortgage, pledge, assignment or security interest shall not be subject to nor limited or restricted, in any way, by the terms of this Agreement.411

   b. New York Yankees

2.4.3 Covered Pledge. (a) Any pledge, lien, security interest, hypothecation, or similar conditional assignment of the Team or of a controlling interest therein given to secure indebtedness for borrowed money or a guarantee of indebtedness for borrowed money is referred to as a “Covered Pledge.” In the absence of a specific intent to use a Covered Pledge to effect a Prohibited Relocation, the making of a Covered Pledge is not deemed to be a Transfer for purposes of this Section 2.4

   (b) The Partnership shall not grant or permit to exist any Covered Pledge, unless the documents and other instruments

implementing the Covered Pledge expressly provide, and the pledgee agrees in writing for the intended third-party benefit of the City, ESDC, NYCIDA, and their respective successors and assigns that (i) such Covered Pledge is subject to this Agreement, and (ii) any Transfer of the Team upon foreclosure or other enforcement of the Covered Pledge shall be on the condition that (x) the pledgee/transferor comply with Section 2.4.2 in lieu of the Partnership and (y) that the Transferee comply with Section 2.4.2.

(c) Concurrent with execution thereof or on the Effective Date (prior to execution of this Agreement) if such Covered Pledge exists at such date, the Partnership shall provide to the City, ESDC and NYCIDA, a copy of any documents and other instruments implementing such Covered Pledge certified as true and complete by an officer of the Partnership and including the express agreement of the pledgee required by Section 2.4.3(b) and thirty party beneficiary language in favor of the City, ESDC and NYCIDA which permits any of them to enforce such agreement. Nothing in this Agreement shall restrict the Partnership’s ability to redact the financial or other material terms (other than the express agreement and third party beneficiary language referenced in the preceding sentence, any language which would undermine the operation or effectiveness thereof, the notice of Transfer required by Section 2.4.2(a), and the Assumption and Agreement to be Bound) which it may deliver to the City, the ESDC or the NYCIDA in connection with any Covered Pledge.412

2. Right of First Refusal

   a. Minnesota Twins

Section 2.5 Right of First Refusal

(a) Grant of Right of First Refusal. If, during the Initial Term, the Team or the Team’s owners (as used in this Section, the “Selling Party”) receives a bona fide written offer for a Sale from a Person who is credit-worthy and has been approved by

MLB as an MLB franchise holder or who, though not then approved, meets all of the criteria established by MLB for its franchise holders, that the Selling party desires to accept, the Selling Party shall furnish to the Authority, the Metropolitan Sports Facilities Commission and the then Governor of the State (collectively, the “Other Party”) a written notice (an “Offer Notice”) setting forth (i) the identity of the offeror, (ii) the material terms and conditions of the proposed Sale, including the purchase price therefor and the terms of payment of such price, and (iii) such other material terms as are applicable to such proposed Sale. The Other Party, acting on behalf of a to-be-formed Acquisition Corp. (defined below), or Acquisition Corp. (when formed) shall have the exclusive right and option, but not the obligation, during the period ending sixty (60) days following the date of the Offer Notice (the “Option Exercise Period”), to elect that Acquisition Corp. purchase the Team or the Franchise, as the case may be, upon the terms and conditions set forth in the Offer Notice (the “Right of First Refusal”). To the fullest extent permitted by any applicable Laws or MLB Rules and Regulations, the Other Party and Acquisition Corp. shall keep confidential the Offer Notice and the terms set forth therein and shall not disclose the same to any Persons other than its officers, attorneys or other consultants of the Other Party or Acquisition Corp. assisting with the evaluation of the Offer Notice, who shall also agree to abide by the foregoing confidentiality provisions.

(b) Exercise of Right of First Refusal. To exercise the Right of First Refusal, the Other Party, acting on behalf of Acquisition Corp., or Acquisition Corp. (when formed), shall (i) deliver a written notice of exercise of the Right of First Refusal to the Selling Party during the Option Exercise Period (the “Exercise Notice”) and (ii) deliver, during the period ending ninety (90) days following the date of the Offer Notice, evidence in form and substance reasonably acceptable to the Selling Party that a corporation, the capital structure of which is in compliance with the provisions of Section 473.763 of the Minnesota Statutes (“Acquisition Corp.”) has been formed and that Acquisition Corp. has available to it fully committed financing in an amount necessary to consummate
the proposed purchase. The Right of First Refusal shall immediately terminate, without any further action by the Parties, on the earliest to occur of the following: (A) the Other Party, on behalf of Acquisition Corp., or Acquisition Corp. fails to exercise the Right of First Refusal during the Option Exercise Period, (B) the Other Party, on behalf of Acquisition Corp. or Acquisition Corp. fails to provide, within ninety (90) days of the Offer Notice, evidence of fully committed financing in an amount necessary to consummate the proposed Sale or evidence of formation of Acquisition Corp., (C) the Other Party, on behalf of Acquisition Corp., or Acquisition Corp. exercises the Right of First Refusal and the proposed Sale to Acquisition Corp. is not consummated during the period ending one hundred eighty (180) days following the date of the Offer Notice (the “Outside Date”), (D) if the agreement resulting from the exercise of the Right of First Refusal is terminated other than due to the default of the Selling Party, or (E) MLB provides the Team and Acquisition Corp., prior to the Outside Date, with written notice that the sale to Acquisition Corp. is not approved by MLB. If the Right of First Refusal is terminated pursuant to (A)-(E) above, then, subject to Article 3, the Selling Party shall have the right, during the period ending one (1) year following the expiration of the Option Period, if the Right of First Refusal is not exercised, or one (1) year following the Outside Date (the “Unrestricted Sale Period”) if the Right of First Refusal is exercised, to consummate a Sale on substantially the same financial terms and conditions set forth in the Offer Notice. If any material financial terms of the Sale are modified or revised from the terms set forth in the Offer Notice, such modified or revised material financial terms shall be subject to the right of first refusal provisions set forth above as if the Selling Party had not yet given an Offer Notice. If the Sale is not consummated prior to the expiration of the Unrestricted Sale Period on the terms and conditions set forth in the Offer Notice, then the Sale shall again become subject to the restrictions set forth in this Section. If the Sale is consummated prior to the expiration of the Unrestricted Sale Period on the terms and conditions set forth in the Offer
Notice, then the Right of First Refusal shall be deemed null and void and shall not apply to any subsequent Sale.\textsuperscript{413}

3. Assumption/Assignment

\textit{a. Florida Marlins}

13.1 Successors and Assigns; Third Party Beneficiaries

(a) This Agreement shall bind the Team and its assigns and successors, provided that the Team shall not be entitled to transfer or assign its obligations hereunder without the prior written consent of the Government Parties, which consent shall be in their sole discretion; provided, further, however, that the Team may, without the prior written consent of the Government Parties, transfer and assign its obligations hereunder to any Person (or Affiliate of any Person) that acquires the Team's MLB franchise with the required approval of Major League Baseball, provided that (i) such transferee assumes unconditionally, in a writing reasonably satisfactory to the Government Parties, all of the obligations of the Team under this Agreement, and (ii) such transferee or its Affiliates assume all of the other obligations of the Stadium Operator and its Affiliates under the Stadium Agreements.

(b) This Agreement shall bind the Government Parties and their respective assigns and successors; provided that neither of the Government Parties may transfer or assign this Agreement or any of their respective rights and obligations hereunder without the prior written consent of the Team, which consent shall be in the Team's sole discretion.

(c) Nothing in this Agreement, express or implied, is intended to (a) confer upon any Person other than the parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon

\textsuperscript{413} Twins Agreement, \textit{supra} note 376, at 7–9.
b. St. Louis Cardinals

6.4 Assignment. Except as provided herein and in Section 3.1, none of the Parties shall assign or transfer their rights or obligations under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Cardinals may, without the necessary of obtaining the consent of the other Parties, assign any or all of its rights under this Agreement to a person, firm, corporation or entity which acquires the Team pursuant to a sale and in accordance with applicable Major League Baseball Rules and Regulations, provided that the assignee assumes all of the obligations of the Cardinals pursuant to this Agreement and to be bound by all of the terms, conditions and provisions thereof pursuant to an instrument of assignment in form and substance reasonably acceptable to the Authority. The Cardinals may, without the necessary of obtaining the consent of the other Parties, assign any or all of their rights under this Agreement to (a) an Affiliate or (b) a third party entity for the sole purpose of the Cardinals (or an Affiliate of the Cardinals) entering into a lease or similar financing arrangements with such third party entity, provided that the Cardinals remain liable for the obligations of the Cardinals hereunder, and any such assignee shall agree to be bound by the provisions of this Agreement, jointly and severally with the Cardinals, in a written instrument executed by such assignee and delivered to the Parties. 415

c. Houston Astros

Article 6 Assignment;

6.1 Sale of Franchise. Houston McLane shall have the right and power to sell, transfer, and assign (but not mortgage, encumber, or pledge) the Franchise without the consent of the

414. Marlins Agreement, supra note 234, at 11.
415. Cardinals Agreement, supra 345, at 14,
Sports Authority. Houston McLane agrees, however, that an essential part of the consideration to the Sports Authority under this Non-Relocation Agreement is the obligation to cause the Astros to pay in the Astrodome Complex, as provided in Section 2.1, the obligation to cause the Astros to play in the Stadium, as provided in Section 2.2, the prohibition of relocating the Astros, as provided in Section 3.1(a), and the requirement that the Person who from time to time holds the Franchise comply, in all other respects, with the applicable terms and provisions of this Non-Relocation Agreement. Accordingly, Houston McLane covenants and agrees that Houston McLane shall not transfer, sell, or assign the Franchise in any manner except upon compliance with each of the following conditions precedent:

(a) The transfer of the Franchise is approved in accordance with the applicable Major League Baseball Rules and Regulations;

(b) Such assignee of the Franchise executes and delivers to the Sports Authority an instrument whereby such assignee assumes full responsibility for the performance of all of the obligations of Houston McLane under this Non-Relocation Agreement arising on and after the date of such assignment. The form of the instrument of assumption shall be subject to the prior written approval of the Sports Authority, which approval shall not be unreasonably withheld, delayed or conditioned, and shall be limited to the question of whether such instrument, when duly executed, will accomplish its intended purpose under this Non-Relocation Agreement; and

(c) In all instances the assignee of the Franchise must also be the successor tenant under the Stadium Lease and the successor licensee under the License Agreement.

The provisions of this Non-Relocation Agreement shall be deemed to be a restrictive covenant that attaches to and is binding upon the Franchise.416

416. Astros Agreement, supra note 357, at 10–11.
“Article XX No Relocation.
The Orioles shall not permit any sale, assignment or other transfer of the Baltimore Orioles unless the assignee is required to assume all of the obligations of the Orioles under this Agreement.”

4. Attorneys’ Fees

a. New York Yankees

3.3.5 Attorney’s Fees. The City, the ESDC and the NYCIDA shall be entitled to recover from the Partnership their reasonable out-of-pocket legal fees and expenses incurred in prosecuting or pursuing a claim under this Agreement in which the City, the ESDC or the NYCIDA prevails (including reasonable out-of-pocket legal fees and expenses incurred in an action to enforce this Agreement). In addition to the foregoing, the City, the ESDC or the NYCIDA shall be entitled to its reasonable out-of-pocket attorneys’ fees and expenses incurred in any post-judgment proceedings to collect or enforce any judgment. Notwithstanding the foregoing, to the extent the City, the ESDC and the NYCIDA are entitled to recover from the Partnership any attorneys’ fees and expenses, such fees and expenses shall be limited to the reasonable out-of-pocket legal fees and expenses of one firm of legal counsel. This provision is separate and several and shall survive the merger of this Agreement into any judgment on such instrument.

5. No Personal Liability

a. St. Louis Cardinals

6.14 Representatives Not Personally Liable. No official agent, employee, representative or consultant of any party to this Agreement shall be personally liable to any other party to this Agreement in the event of any default or breach by any

417. Agreement Regarding Oriole Park at Camden Yards between the Maryland Stadium Authority and The Orioles, Inc., at 140 [hereinafter Orioles Agreement].
418. Yankees Agreement, supra note 377, § 3.3.5.
party under this Agreement or for any amount which may become due to any party or on any obligations under the terms of this Agreement.\textsuperscript{419}

\textit{b. New York Yankees}

5.9 Limitation on Liability. None of the members, directors, officers, partners, joint venturers, principals, shareholders, employees, agent or servant of the Partnership shall have any liability hereunder (personal or otherwise, other than their respective interests in the assets of the Partnership) or be subject to levy, execution or other enforcement procedure for the satisfaction of any remedies of the City, the NYCIDA or the ESDC available hereunder. The provisions of this Section 5.9 shall govern every other provision of this Agreement. The absence of explicit reference to this Section 5.9 in any particular provision of this Agreement shall not be construed to diminish the application of this Section 5.9 to such provision. This Section 5.9 shall survive the termination of this Agreement. Nothing in this Section 5.9, however, is intended to be a waiver of the provisions of Section 1782.37 of the Ohio Revised Code, as the same may be amended or replaced from time to time, or any similar provisions applicable to any Transferee under the laws governing its formation and operation, refer to distributions made in violation of such provisions or of provisions referenced therein which relate to distributions or dividends.\textsuperscript{420}

\textit{c. Florida Marlins}

15 Nonrecourse Liability of Team Personnel. Notwithstanding and prevailing over any contrary provision or implication in this Agreement and except for their criminal acts with respect to this Agreement (i.e., acts which would constitute crimes were they prosecuted for and convicted of such acts), the officers, directors, partners, shareholders, members, employees and agents of the Team and their Affiliates (the "Team Personnel") shall not in any way be

\textsuperscript{419} Cardinals Agreement, \textit{supra} note 345, at 16.

\textsuperscript{420} Yankees Agreement, \textit{supra} note 377, at 16.
liable under or with respect to this Agreement; no deficiency or other monetary or personal judgment of any kind shall be sought or entered against any of the Team Personnel with respect to liability under or with respect to this Agreement; no judgment with respect to liability under or with respect to this Agreement shall give rise to any right of execution or levy against the assets of any of the Team Personnel; and the liability of the Team under this Agreement shall be limited to the assets of the Team. 421

6. Arbitration

a. St. Louis Cardinals

6.3 Arbitrations. All disputes, disagreements, controversies or claims which under the specific terms of this Agreement the parties have agreed to submit to arbitration shall be exclusively and finally settled by binding arbitration conducted before three arbitrators in accordance with the commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In any arbitration, the parties shall be entitled to conduct discovery in accordance with the applicable rules of the Federal Rules of Civil Procedure, with such modifications thereto as may be mutually agreeable to the parties unless the arbitrators appointed to hear the case rule that discovery should be limited in light of the particular dispute. In the event the parties are unable to agree on the three arbitrators, the parties shall select the three arbitrators by striking alternatively (the first to strike being chosen by lot) from a list of 13 arbitrators designated by the American Arbitration Association. Each of the parties to the arbitration shall bear the cost of the arbitration (including reasonable attorneys' fees) on such basis as the arbitrators of the matter shall determine. The arbitrators shall be further authorized to take whatever interim or temporary measures deemed necessary, including injunctive relief and measures for the protection or conservation of property. Such interim relief may take the

421. Marlins Agreement, supra note 234, at 12.
form of an interim award, and the arbitrators may require
security for the costs of such measures.422

b. Washington Nationals

4.3 Arbitration. Except for Litigable Matters, all disputes and
claims for damages between the Team and the Commission
arising out of this Agreement shall be resolved not by
litigation but rather by binding arbitration ("Arbitration") in
the District of Columbia before a panel of three (3)
independent arbitrators under the auspices and pursuant to the
rules of the American Arbitration Association. Any such
dispute shall be governed by the Commercial Arbitration
Rules then in effect. The Arbitration hearing will be
scheduled so that it is concluded within six months from the
date of the filing of the Arbitration and the panel shall render
its decision within one month after the closing of the hearing.
Arbitrators will be chosen under the usual procedures and
from the usual panels of the American Arbitration Association
except that none of the arbitrators shall have performed,
directly or indirectly, a material amount of work for the Team,
the Commission or the District Government within the five
year period immediately preceding the date of their selection
or intend or desire to perform work for the Team, the
Commission or the District Government within one year
following the date of their selection. Issues determined
by Arbitration pursuant to this provision shall be given preclusive
or collateral estoppel effect. Each Party shall bear its own
costs relating to the Arbitration except that the Arbitration
panel shall have the authority to award attorney’s fees. The
costs and fees of the panel and the fees to the American
Arbitration Association shall be borne equally by the Team
and the Commission.423

c. Houston Astros

5.1 Settlement by Mutual Agreement. In the event any
dispute, controversy or claim between or among the Parties

423. Nationals Agreement, supra note 372, at art. 4.3.
arises under this Non-Relocation Agreement or is connected with or related in any way to this Non-Relocation Agreement or an right, duty or obligation arising therefrom or the relationship of the Parties thereunder (a "Dispute or Controversy"), including, but not limited to, a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Non-Relocation Agreement, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the terms of this Section 5.1. In the event a Dispute or Controversy arises, either Party shall have the right to notify the other that it has elected to implement the procedures set forth in this Section 5.1. Within fifteen (15) days after delivery of any such notice by one Party to the other regarding a Dispute or Controversy, the Sports Authority Representative and Houston McLane Representative shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained at the meeting the Sports Authority Representative and Houston McLane Representative for such purpose or should no such meeting take place within such fifteen (15) day period, then either Party may by notice to the other Party submit the Dispute or Controversy to arbitration in accordance with the provisions of Section 5.2 and Appendix C. Upon the receipt of notice of referral to arbitration hereunder, the receiving Party shall be compelled to arbitrate the dispute or Controversy in accordance with the terms of this Article 5 and Appendix C without regard to the justiciable character or executory nature of such Dispute or Controversy.

5.2. Arbitration. Each Party hereby agrees that any Dispute or Controversy which is not resolved pursuant to the provisions of Section 5.1 may be submitted to binding arbitration hereunder and if submitted shall be resolved exclusively and finally through such binding arbitration. This Article 5 and Appendix C constitute a written agreement by the Parties to submit to arbitration any Dispute or Controversy arising after the Effective Date within the meaning of Section
7. Consent of Major League Baseball

a. Houston Astros

Section 7.3 Consent of Major League Baseball. Any amendment to this Non-Relocation Agreement shall be subject to and made in accordance with Major League Baseball Rules and Regulations, to the extent applicable, all as the same now exist or may be amended or adopted in the future. Any such amendment to this Non-Relocation Agreement that requires the consent of the Office of the Commissioner of Baseball, the Commissioner, the National League, the National League President, the Ownership Committee or the Member Team is prohibited and shall be null and void unless all applicable consents are obtained in advance, and any such consent may be withheld at the sole and absolute discretion of the Office of the Commissioner of Baseball, the Commissioner, the National League, the National League President, the Ownership Committee or the Member Team, as applicable.\(^\text{425}\)

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425. Id. at 20.