



# CITY ATTORNEY DENNIS HERRERA

# NEWS RELEASE

FOR IMMEDIATE RELEASE  
THURSDAY, DECEMBER 17, 2009

CONTACT: MATT DORSEY  
(415) 554-4662

## Herrera Fires Brushback Pitch at MLB's Selig Over Giants' Territorial Rights

***San Francisco's elected chief litigator voices 'grave concern' about tampering, outlines City's interest in possible A's move to San Jose***

SAN FRANCISCO (Dec. 17, 2009)—City Attorney Dennis Herrera today sent a sternly-worded letter to Baseball Commissioner Allan H. “Bud” Selig expressing his “grave concern” at recent news reports about the possible development of a new baseball stadium for the Oakland A’s in San Jose—well within exclusive territory that the league has long granted to the San Francisco Giants.

Herrera, who as San Francisco’s elected chief lawyer is empowered to pursue litigation on the City’s behalf, detailed the City’s substantial financial interests in the success of the Giants’ franchise, including millions of dollars in rent and tax revenues. The 6-page letter additionally outlined a brief history of the extensive involvement of San Francisco leaders and voters throughout much of the 1990s to facilitate what is now AT&T Park, and to prevent the team from relocating to Florida under its previous ownership.

In accomplishing that objective, Herrera wrote, San Francisco made numerous commitments that relied on Major League Baseball’s acknowledgments that it would take no action to undermine the financial viability of the Giants franchise, or the team’s ability to meet its contractual obligations with the City.

“Yet, tampering with the Giants’ established territorial rights would be just the sort of action that the City believed Major League Baseball was in effect promising it would not do,” Herrera’s letter contends. “As the City Attorney for the City and County of San Francisco, I am entrusted under the San Francisco Charter with the obligation to protect the City’s legal interests and to represent the City when a cause of action exists in its favor. I write to you now to make clear up front the legal concerns I have on behalf of the City should Major League Baseball tamper with the Giant’s territorial rights.”

In March of this year, Selig announced the appointment of a committee to “thoroughly analyze all of the ballpark proposals that have been made to date, the current situation in Oakland, and the prospects of obtaining a ballpark in any of the communities located in Oakland’s territory.” Oakland A’s owner Lew Wolff has voiced his wish to move the team to San Jose, saying he has exhausted his options in Oakland. Selig’s committee has met with San Jose officials at least once, according to a recent report in the *San Jose Mercury News*.

A copy of the City Attorney Herrera’s letter is available online at <http://www.sfcityattorney.org/>.

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DENNIS J. HERRERA  
City Attorney

DIRECT DIAL: (415) 554-4748  
E-MAIL: tara.collins@sfgov.org

December 17, 2009

Allan H. (Bud) Selig, Commissioner  
The Office of the Commissioner of Baseball  
245 Park Avenue, 31st Floor  
New York, NY 10167

**Re: Concerns over Potential Tampering with San Francisco Giants'  
Territorial Rights**

Dear Commissioner Selig:

I have read with grave concern recent media reports about the possible development of a new baseball stadium for the Oakland A's in San Jose, which is within the long-established exclusive territory that Major League Baseball granted to the San Francisco Giants. As described further below, the City and County of San Francisco (the "City") has made a significant investment in the financial well-being of the Giants franchise. The City has entered into binding legal agreements with the Giants and its affiliates to assemble and secure the necessary real estate and to facilitate the construction of the ballpark. These agreements include a long-term ground lease and non-relocation agreement with the Giants and its affiliates. The City also has incurred significant financial obligations and expenses, including the development of public areas surrounding the ballpark, and issuance of tax allocation bonds based on property tax increment generated by development of the ballpark.

The City made its commitments in reliance on Major League Baseball's express written acknowledgment that it had no objection to the obligations that the Giants assumed under its legal agreements relating to the development of the ballpark. The City justifiably understood that acknowledgment to mean Major League Baseball would not take any action to undermine the financial viability of the Giants franchise or the Giants' ability to perform its obligations. Yet, tampering with the Giants' established territorial rights would be just the sort of action that the City believed Major League Baseball was in effect promising it would not do.

As the City Attorney for the City and County of San Francisco, I am entrusted under the San Francisco Charter with the obligation to protect the City's legal interests and to represent the City when a cause of action exists in its favor. I write to you now to make clear up front the legal concerns I have on behalf of the City should Major League Baseball tamper with the Giant's territorial rights.

**History of the San Francisco Ballpark Project**

A brief history of the San Francisco ballpark project demonstrates the vital interest that the City has in the continued sanctity of the Giants' territorial rights, as well as the legitimate

Letter to Commissioner Selig  
Page 2  
December 17, 2009

expectations the City had when it approved development of the ballpark that Major League Baseball would continue to respect those rights:

In 1993, Robert Lurie, the then owner of the San Francisco Giants, entered into an agreement to sell the team to a group who sought approval of Major League Baseball to relocate the team to St. Petersburg, Florida. In cooperation with then San Francisco Mayor Frank Jordan, local investors led by Safeway chairperson Peter Magowan proposed to buy the Giants. To induce the local buyers to make their offer, the City entered in binding agreements to indemnify the buyers against lawsuits by the Florida investors for interference with contract. The Florida group sued the San Francisco investors and the City, and the Florida group eventually lost in court. The San Francisco local investors purchased the team from Lurie, in part based on the City's promise that it would commit to work with them to examine development of a new state-of-the-art ballpark. The City was well aware that Major League Baseball had granted the Giants exclusive rights to San Francisco as well as the South Bay in connection with earlier proposals to build a new ballpark for the Giants in Santa Clara and in San Jose.

In March 1996, San Francisco voters approved – by a 66%-34% margin – Proposition B, an initiative ordinance that changed City laws to allow the Giants to construct privately a new ballpark on a waterfront site at China Basin. The City owned most of the site. The City's Port operated its maintenance facility there. The State of California also owned a portion of the site that it leased out to private tenants.

In 1997, in furtherance of the voter-approved measure Proposition B, the City, its Redevelopment Agency and various other State agencies granted numerous land use entitlements and approved various binding real estate transactional and financing agreements required to develop the ballpark project. The five principal transaction documents that the City and its Redevelopment Agency approved were: (1) a Lease Disposition and Development Agreement ("LDDA"), (2) a Ground Lease, (3) a Non-Relocation Agreement and related Guaranty, (4) a Purchase and Sale Agreement for the State-owned parcel located within the ballpark site, and (5) an Owner Participation Agreement ("OPA"). Those agreements may be summarized as follows:

LDDA: An agreement between the City and the Giants' affiliate, China Basin Ballpark Company LLC ("CBBC"), which has two main parts: (1) an agreement to lease and (2) an agreement by CBBC to build and privately pay for the ballpark improvements.

Ground Lease: An agreement between the City and CBBC that is the principal document governing the use and occupancy of the site. Under the Ground Lease, the City leases the land comprising the site, and CBBC builds, owns and operates the ballpark and related improvements during the term. The initial lease term is 25 years; the maximum term is 66 years with options to renew. CBBC is required to pay the City fair market rent for use of the land – a fixed sum, initially \$1,200,000 per year and adjusted upwards by certain increases in the consumers price index. The Ground Lease specifically provides for the payment of possessory interest taxes, a form of property taxes that are necessary to support issuance of the tax allocation bonds. It also obligates CBBC to assume responsibility for the condition, maintenance, repair and operation of the ballpark project, all at no cost to the City.

Letter to Commissioner Selig  
Page 3  
December 17, 2009

The Non-Relocation Agreement and Guaranty: As an essential inducement for the City to lease the site to CBBC and for the City to approve the overall ballpark transaction, including the issuance of the property tax allocation bonds to finance certain public infrastructure supporting the ballpark, the Giants entered into two main agreements for the City's benefit: a Non-Relocation Agreement and a Guaranty. Under the Non-Relocation Agreement, the team owner agrees to cause the Giants to play its home baseball games at the ballpark from completion of the ballpark through the end of the initial term of the Ground Lease. The team owner's agreement not to relocate is subject to a baseball lease and use agreement between CBBC and the team owner (the "Baseball Sublease") for the playing of San Francisco Giants baseball games in the new ballpark. Under the Guaranty, the team owner agrees to guarantee certain obligations of CBBC to the City and the Redevelopment Agency if the team owner defaults under the Non-Relocation Agreement. The guaranteed obligations include CBBC's obligation under the Ground Lease to pay rent to the Port and demolish the improvements at the end of the term at the City's option. The guaranty also includes CBBC's obligation to pay debt service on the tax allocation bonds to the Redevelopment Agency under the OPA.

The Purchase and Sale Agreement: Under this agreement with the State, the City agreed to acquire the parcel, comprising about one quarter of the total ballpark site, for \$3,600,000. The City also assumed responsibility for relocating the tenants.

The Owner Participation Agreement (OPA): The City and the Redevelopment Agency approved an amendment to the Rincon Point-South Redevelopment Plan, which allowed for the use of tax increment financing to help develop the ballpark. In furtherance of the redevelopment plan amendment, the Redevelopment Agency entered into an OPA with CBBC. The OPA sets forth the terms and conditions for the property tax increment financing, including construction of the Waterfront Promenade along the China Basin Channel and other public infrastructure improvements. The Redevelopment Agency committed, with the City's approval, to issue property tax allocation bonds in a principal amount sufficient to produce net proceeds of \$15,000,000, based on the estimated portion of property tax increment revenues from the ballpark that will be available to pay debt service on the bonds. Under the OPA, CBBC agrees to pay any shortfall in tax increment revenues from the site needed to pay debt service on the bonds, including shortfalls due to any reassessment of the ballpark.

The real estate and financing transactions closed in November 1997 and the Giants ballpark entity, China Basin Ballpark Company ("CBBC"), then began construction. In connection with the closing, the Redevelopment Agency issued \$16,575,000 in CCSF Redevelopment Financing Authority 1997 Series A Tax Allocation Revenue Bonds to finance public infrastructure for the ballpark.

The ballpark opened in April 2000 and has been a tremendous civic asset ever since, enhancing the life of its residents and visitors and providing substantial financial benefits to the City. The ballpark has achieved the City's goals, including attracting millions of Giants fans and other people to the San Francisco waterfront and promoting opportunities for restaurants, entertainment and commercial recreational activities in the neighboring area before, during and after home Major League Baseball games.

Letter to Commissioner Selig  
Page 4  
December 17, 2009

### **Binding Legal Agreements Acknowledged by Major League Baseball**

As mentioned above, in 1997 the City entered into a number of binding agreements required to develop the ballpark. Chief among those agreements was the LDDA. The LDDA set forth the terms and conditions under which the City, through its Port, was willing to enter into the long-term Ground Lease with CBBC and commit at the City's expense to make the site ready for development. These commitments by the City included: completing street vacations, acquiring the State-owned parcel, obtaining possession from existing tenants, and relocating the Port maintenance facility, and completion of actions necessary to assemble and deliver the site. Conditions that CBBC had to satisfy before the Ground Lease transaction closed included: providing evidence to the City that it had adequate financing to build the ballpark and obtaining all required regulatory approvals for development of the ballpark project. In addition, the Redevelopment Agency was required to issue the tax allocation bonds. Most importantly here, a critical express condition for the benefit of the City was that:

The Office of the Commissioner and any other Major League Baseball authorities whose approval is required under Baseball Rules and Regulations shall have approved the Lease [the Ground Lease], Baseball Sublease [lease between CBBC and the Giants franchise], Non-Relocation Agreement, Guaranty, and the transactions contemplated by such agreements. The Developer [CBBC] shall provide the Port with written evidence of such approvals in form and substance reasonably satisfactory to the Port. (LDDA §3.03(a) (xv).)

CBBC satisfied that condition by providing a letter dated November 26, 1997, from the National League of Professional Baseball Clubs and addressed to then Mayor Willie L. Brown, Jr. That letter states in pertinent part:

Our counsel has reviewed executed versions or drafts of the City/Ballpark Operations Documents and the Financing Documents listed on Schedule 2 annexed hereto with execution dates as noted on that Schedule (collectively, the "Transaction Documents") [that schedule includes the LDDA, the Ground Lease, the Non-Relocation Agreement, the Guaranty and other agreements] . . . The National League has no objection to the execution and delivery of the Transaction Documents.

The City relied on that letter in closing the Ground Lease transaction and approving the issuance of the tax allocation bonds. That letter presents an implicit recognition by Major League Baseball of the substantial financial and legal commitments that the City, together with the Giants, were making in developing a new ballpark in San Francisco. And the City made its commitments with the implied understanding that Major League Baseball would continue to respect the Giants' territorial rights. The City also relied in significant part on the determination that CBBC's private construction lenders made, based on their review of CBBC's business plans and other financial documents, and presumably also with the understanding that Major League Baseball would protect that the Giants' territorial rights, that CBBC could perform all of its legal and financial obligations relating to the Ground Lease and development of the ballpark.

Letter to Commissioner Selig  
Page 5  
December 17, 2009

### Substantial Financial Interests of the City

San Francisco has a number of substantial on-going financial interests in the continued viability of the Giants in their waterfront ballpark. Those direct interests include, by way of example only, and without limitation:

- The interest of the City's Port in receiving on-going annual rent from its Ground Lease with CBBC. That annual rent is currently \$1,577,439, and is subject to increase based on inflation as provided in the Ground Lease.
- The interest of the City's Port in receiving rent from the lease of land to CBBC for ballpark-related parking (called Parking Lot A). Currently, annual base rent and percentage rent that the City collects from that lease is about \$2,000,000.
- The interest of the Redevelopment Agency and the City in the payment by CBBC of possessory interest taxes to support repayment of principal and interest on the \$16,575,000 of tax allocation bonds that the Redevelopment Agency issued to finance certain public improvements associated with the Giants' waterfront ballpark.
- The City's interest in receiving stadium admissions tax, parking tax, sales tax and other tax revenue as a result of Giants' home baseball games. The City expends that tax revenue, among other uses, to pay for public services that the City provides, such as traffic control and public transit, that are necessary to the successful functioning of the games.

I have serious concerns that if Major League Baseball were to tamper with the Giants' established territorial rights, such action could disrupt CBBC's and the team owner's performance of their contractual obligations to the City, including its Port, and to the Redevelopment Agency, ultimately resulting in significant harm to the City's financial interests.

Thank you for your consideration of this letter. I am aware of quotes in the press that you have made about the importance of respecting territorial rights. I trust that you will continue to adhere to those rights and take the concerns I have set forth in this letter into account in deciding how to proceed with a proposed new ballpark for the Oakland A's. We will watch this matter closely in light of the City's interests.

Very truly yours,



DENNIS J. HERRERA  
City Attorney

cc: Thomas J. Ostertag, Senior Vice President and General Counsel, Office of the  
Commissioner of Baseball  
Mayor Gavin Newsom  
David Chiu, President, Board of Supervisors  
Monique Moyer, Port Director  
Fred Blackwell, Executive Director, San Francisco Redevelopment Agency

Letter to Commissioner Selig

Page 6

December 17, 2009

James Morales, General Counsel, San Francisco Redevelopment Agency  
Ben Rosenfield, San Francisco Controller

The National League of Professional Baseball Clubs

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November 26, 1997

City and County of San Francisco  
City Hall  
San Francisco, CA 94102  
Attn: Mayor Willie L. Brown, Jr.

Ladies and Gentlemen:

In connection with the proposed financing and contractual arrangements related to the development of Pacific Bell Park, a new stadium for the San Francisco Giants, the San Francisco Baseball Associates L.P. (the "SFBA") and its subsidiary, the China Basin Ballpark Company LLC (the "CBBC") have inquired of the National League of Professional Baseball Clubs whether any League approval of these arrangements was necessary.

Our counsel has reviewed executed versions or drafts of the City/Ballpark Operations Documents and the Financing Documents listed on Schedule 2 annexed hereto with draft or execution dates as noted on that Schedule (collectively, the "Transaction Documents"). In addition, our counsel has received the Sponsorship Documents noted on Schedule 2, but we have not reviewed them as those documents are within the jurisdiction of the Office of the Commissioner for review. As to the drafts reviewed by us we assume, with your permission, that the executed versions have no material changes from the last draft reviewed by us.

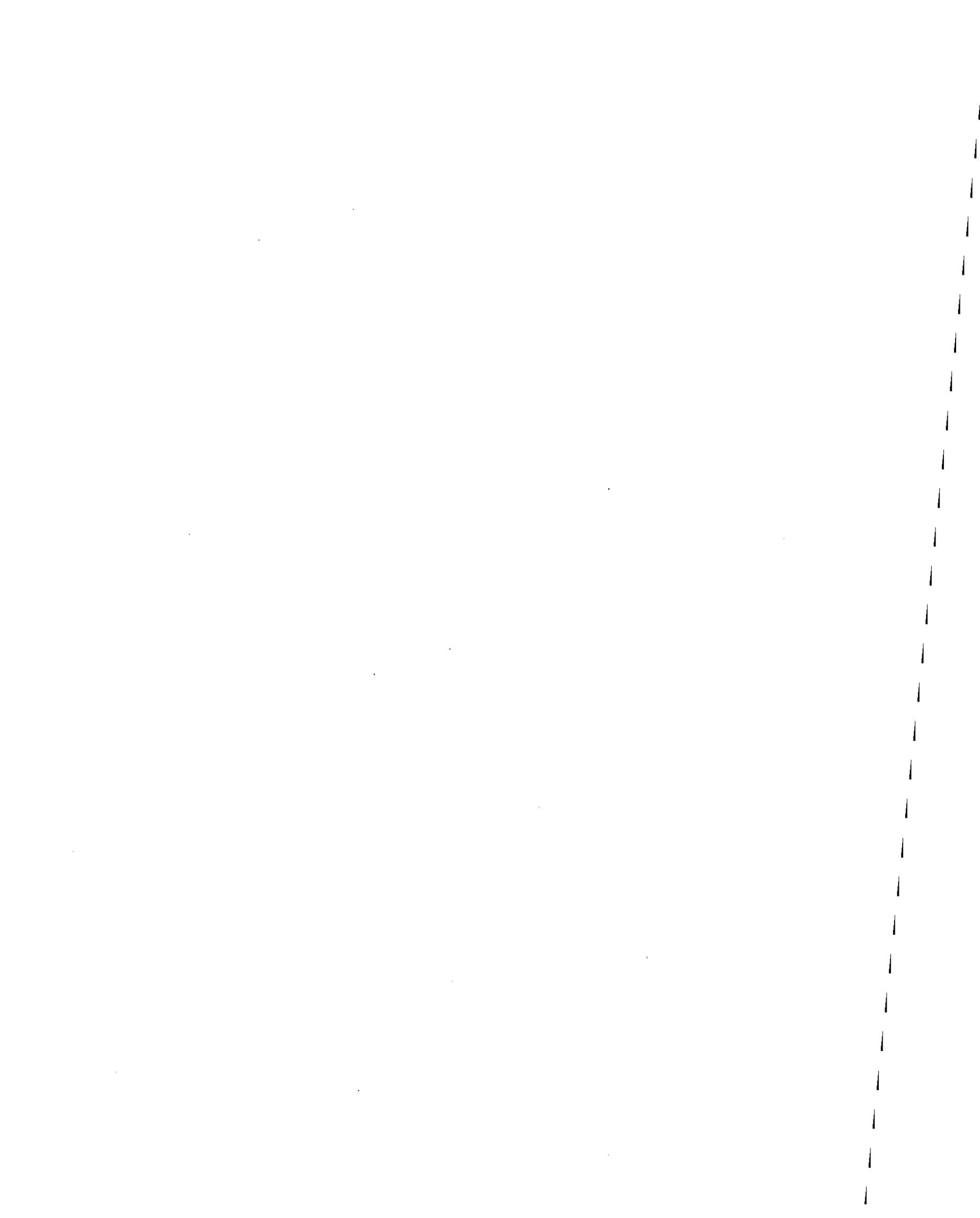
The National League has no objection to the execution and delivery of the Transaction Documents. This conclusion is expressly conditioned on each of the final Transaction Documents being executed in a form that contains no material change from the draft last reviewed by our counsel.

Sincerely,

NATIONAL LEAGUE OF PROFESSIONAL  
BASEBALL CLUBS

By: 





## SCHEDULE 1

## LIST OF NOTE PURCHASERS

Teachers Insurance and Annuity Association of America  
New York Life Insurance Company  
New York Life Insurance and Annuity Corporation  
The Lincoln National Life Insurance Company  
First Penn-Pacific Life Insurance Company  
Lincoln Life & Annuity Company of New York  
Connecticut General Life Insurance Company  
Connecticut General Life Insurance Company, on behalf of  
one or more separate accounts  
Phoenix Home Life Mutual Insurance Company  
Phoenix American Life Insurance Company  
The Minnesota Mutual Life Insurance Company  
Mutual Trust Life Insurance Company  
Pacific Life Insurance Company  
Allstate Life Insurance Company  
Keyport Life Insurance Company  
National Life Insurance Company



## SCHEDULE 2

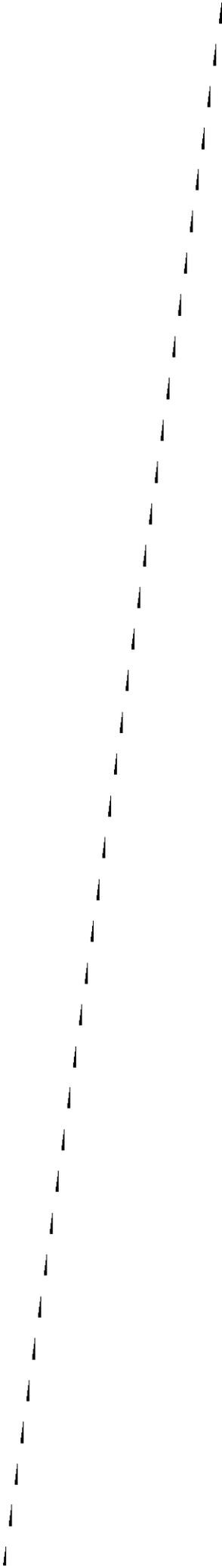
Pacific Bell Park Transaction Documents  
[Draft dates indicated in brackets after each document]

## I. City/Ballpark Operations Documents

1. Lease Disposition and Development Agreement dated as of August 15, 1997, between CBBC and the City and County of San Francisco (the "City"). [Executed]
2. Ground Lease between the City and CBBC. [8/15/97]
3. Non-Relocation Agreement between the City and SFBA. [8/15/97]
4. Guaranty Agreement among the City, SFBA, the Redevelopment Agency of the City ("RDA"). [8/15/97]
5. Intercreditor Agreement among the City, RDA, SFBA, CBBC and the Lenders to SFBA and CBBC. [8/15/97]
6. Owner Participation Agreement between RDA and CBBC. [8/15/97]
7. Concession Agreement dated as of April 30, 1997 between CBBC and Volume Services, Inc. as amended by the First Amendment thereto. [Executed]

## II. Sponsorship Documents

1. Sponsorship and Entitlement Agreement dated as of July 1, 1996 among CBBC, SFBA and The Pacific Telesis Group. [Executed]
2. Sponsorship Agreement among Chevron, CBBC and SFBA dated as of September 29, 1997. [Executed]
3. Sponsorship Agreement among VISA U.S.A. Inc., SFBA and CBBC. [11/20/97]
4. Sponsorship Agreement and Agreement for "Coca-Cola Maritime Fields" among subsidiaries or affiliates of The Coca-Cola Company SFBA and CBBC, together with the related Loan Agreement and SFBA Guaranty. [11/23/97 (Sponsorship Agreement); 11/20/97 Loan Agreement and Guaranty]
5. Sign Agreement, Broadcast Agreement, Loan Agreement and Master Agreement among Anheuser Busch, Inc., SFBA and CBBC. [11/20/97]



6. Sponsorship Agreement among MBNA America, N.A., SFBA and CBBC. [11/22/97]

### III. Financing Documents

1. Note Purchase Agreement dated as of \_\_\_\_\_, 1997. [11/17/97]

2. Appendix 1 to Note Agreements, Trust Agreement, Deed of Trust and Disbursement Agreement dated . [11/17/97]

3. Trust and Security Agreement dated as of \_\_\_\_\_, 1997 between CBBC and The Bank of New York. [11/17/97]

4. Leasehold Construction Deed of Trust, Assignment, Security Agreement and Financing Statement dated as of \_\_\_\_\_, 1997, CBBC Grantor to Stewart Title of California, Inc., Trustee F/B/O The Bank of New York, Beneficiary. [11/17/97]

5. Team Non-Relocation Agreement dated as of \_\_\_\_\_, 1997 between SFBA and The Bank of New York, as Trustee. [11/17/97]

6. Team Owner Undertaking and Baseball Sublease Amendment Agreement dated as of \_\_\_\_\_, 1997 between SFBA and The Bank of New York, as Trustee. [11/17/97]

7. All other Financing Documents as defined in Appendix 1 to the Note Purchase Agreements, included in the package delivered to Robert Kheel and Thomas Ostertag from Jun S. Cho of Coudert Brothers by letter dated 11/17/97.

