

1 1-6-82

2 INTRODUCED BY: Paul Barden  
3 Bill Reams

4 PROPOSED NO.: 81-889

5  
6 ORDINANCE NO. 5842

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8  
9 AN ORDINANCE relating to settlement of  
10 a lawsuit between King County and the  
11 Seattle Mariners, granting the Council's  
12 consent to certain amendments of the Use  
13 Agreement between King County and the  
14 Seattle Mariners, creating certain excep-  
15 tions to King County Code chapter 4.56,  
16 and declaring an emergency.

17 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

18 SECTION 1. The King County Executive is authorized to  
19 execute such amendments to the Use Agreement between King County  
20 and the Seattle Mariners, dated 2 March 1976, as are required by  
21 the terms and conditions of the Proposed Settlement Agreement,  
22 dated 24 December 1981, and the Memorandum of Understanding  
23 between the King County Executive and the Seattle Mariners, dated  
24 24 December 1981.

25 SECTION 2. Notwithstanding any provision to the contrary  
26 in King County Code chapter 4.56 or any other provision of the  
27 King County Code, the King County Executive is authorized to enter  
28 into the lease described in Section 10 of the Proposed Settlement  
29 Agreement, dated 24 December 1981.

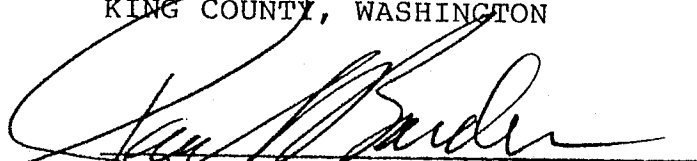
30 SECTION 3. The King County Council finds as a fact and  
31 declares that an emergency exists and that this ordinance is  
32 necessary for the immediate preservation of public peace, health  
33

1 or safety or for the support of county government and its existing  
2 public institutions.

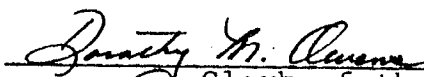
3 INTRODUCED AND READ for the first time this 4th day of  
4 January, 1982.

5 PASSED this 6th day of January, 1982.

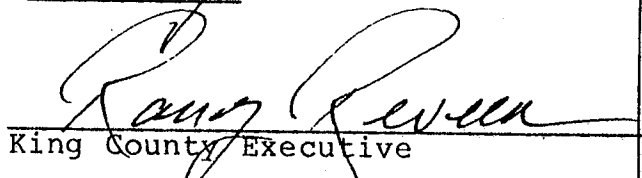
6 KING COUNTY COUNCIL  
7 KING COUNTY, WASHINGTON

8   
9 Chairman

10 ATTEST:

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12   
13 Clerk of the Council

14 APPROVED this 6th day of January, 1982.

15  
16   
17 King County Executive

## SETTLEMENT AGREEMENT

King County, Washington, and Seattle Mariners, a limited partnership, successor to the Seattle Baseball Club, parties to a pending lawsuit entitled Seattle Baseball Club v. King County, King County Cause No. 80-2-04223-8, have agreed to settle on the following terms:

1. Definitions. Unless otherwise indicated, the Agreement referred to in this settlement is the Agreement between King County, Washington, and Seattle Baseball Club dated March 2, 1976 and the definitions of terms in Article 1 of that Agreement apply here. The parties are referred to as the "County" and the "Club." Seattle Mariners, a limited partnership, is the successor to the Seattle Baseball Club.

2. Scheduling. With respect to Article 4.5 of the Agreement and specifically the provisions of that Article referred to as the "30-Hour Rule," the County recognizes and confirms its obligation not to schedule any events within the 30-hour period and will, before exercising its right to obtain a waiver of strict compliance as provided in this paragraph, attempt to avoid scheduling a particular event within the 30-hour period where another date is available for such event. The Club will grant the following waivers of strict compliance with the 30-hour rule:

a. With respect to the Seattle franchise of the National Football League (Seattle Professional Football), for the remainder of the Term of the Agreement including the optional extensions, the County may schedule during each Baseball Season three preseason games within the 30-hour period but no more than two may be scheduled on consecutive weekends; further with respect to Seattle Professional Football, for the remainder of the Agreement Term including optional extensions, the County may schedule a maximum of two regular season professional football games within the 30-hour period during a single Baseball Season; provided, however, that if the National Football League Schedule requires additional waiver(s), such waiver(s) but not more than two will be granted by the Club and shall be purchased at the rate specified by the Club and forth in paragraph 2(d) of this Settlement Agreement. In the event that the Club's participation in playoff or World Series games requires additional waiver(s) for regular season professional football games, the Club shall grant the County such waivers at the rate specified in paragraph 2(d) of this Settlement Agreement, and the purchase of such waiver(s) shall be in addition to the number of waiver(s) otherwise allowable to the County by this paragraph 2(a).

b. With respect to the Seattle franchise of the North American Soccer League (Seattle Sounders), the County may

schedule during the 1982 and 1983 Baseball Seasons one soccer game in each Season within the 30-hour period.

c. With respect to the Seattle franchise of the National Basketball Association (Seattle SuperSonics), the County may schedule during each Baseball Season for the remainder of the Term of the Agreement including optional extensions a maximum of three basketball playoff games within the 30-hour period, conditioned upon payment to the Club of 20% of the gross revenues derived from the sale of tickets for each such game played less any and all taxes (admission taxes, excise taxes, or gross receipts taxes) levied on the gross ticket price of admissions to basketball home games. The gross revenues shall include complimentary tickets which are exchanged for goods or services.

d. During the remainder of the Term of the Agreement including optional extensions, the County may schedule during each Baseball Season a maximum of three nonsports and amateur sporting events within the 30-hour period upon payment to the Club of \$25,000 for each of said events scheduled during the 1982 Baseball Season. The payment to be made for each such event during the balance of the Agreement Term including the optional extensions shall be adjusted every five years from a base of \$25,000 per event to the extent of the percentage change in the Consumer Price Index (applicable to urban wage earners and clerical workers published by the United States Department of Labor, Bureau of Labor Statistics, for the Seattle Region for October of the year in which the adjustment is to be made). For example, if during the first five year period the pertinent Consumer Price Index has increased 35%, the 1987 event payment will be set at 35% above \$25,000 and that figure will be used as the base for the 1992 adjustment.

e. With respect to the period March 15 to 48 hours prior to the start of the Club's first Regular Home Game (hereinafter referred to as "the Baseball Exhibition Season") the following procedure shall apply. The County may schedule each year for the remainder of the Term of the Agreement including optional extensions a maximum of four other events within the 30-hour period prior to baseball exhibition Home Games conditional upon payment to the Club for each such event of the greater of the amounts specified in paragraphs 2(c) and 2(d) of this Settlement Agreement. With the exception of the 1982 Season, the County shall schedule no events within 48 hours of the first Regular Home Game. By January 15 of each year the Club shall notify the County of its scheduling needs for the Baseball Exhibition Season. After January 15 the County shall be entitled to finalize its scheduling for the period of the Baseball Exhibition Season. With respect to the dates within the Baseball Exhibition Season which have not been reserved by the Club prior to January 15, the Club waives its priority scheduling right under Article 5.2 of the Agreement. Should the Club make a request after January 15 for any open dates within the

Subject Period, the County shall grant the request with respect to such dates as the County has not already contractually committed to other users. Should the Club schedule a Home Game on an open date which the County has not previously so committed, then the Club waives strict compliance with the 30-hour rule for such Home Game. The parties recognize that the Club gave bargained-for consideration in negotiating its scheduling rights under the Agreement and this Settlement Agreement and, except as so agreed, should not be required to give up such rights. To this end, when scheduling tentative dates for other users of the Domed Stadium during the Baseball Season, the County will inform such users of the Club's scheduling priority rights during the Season; if such tentative schedules must be altered to make way for Home Games subsequently scheduled by the Club, the County will take all reasonable steps to recognize and protect the Club's contractually established scheduling priority and 30-hour rule rights. The Club reconfirms its assent without compensation to the current scheduling in the Domed Stadium of the 1984 NCAA National Basketball Championship Tournament, and any waivers of strict compliance with the 30-hour rule which are necessitated by this event shall be in addition to the number of waivers otherwise allowable to the County by this paragraph 2(e).

f. Any requests by the County to schedule events within the 30-hour period other than those specifically set forth above will be considered by the Club on an individual basis and will be granted or withheld at the Club's sole discretion.

g. With respect to any and all waivers of strict compliance with the 30-hour rule, including those specified by this Settlement Agreement, the County shall give the Club advance notice of not less than 30 days except for playoff games and advance notice for playoff games of not less than seven days. Further, the County shall make available to the Club, not less than eight hours prior to the scheduled starting time of the next baseball Home Game, the complete baseball playing field ready for baseball practice in first class condition.

h. Should the County schedule any event within 30 hours before the start of any baseball Home Game, other than those for which waivers are specifically granted as set forth in this Section 2, then for each such event which occurs within the 30-hour period the County shall pay the Club as agreed liquidated damages but not as a penalty the sum of \$100,000, subject to the same adjustment every five years as set forth in paragraph 2(d) of this Settlement Agreement.

3. Pay Television. Under Section 10.4 of the Agreement, the County consents without qualification or restriction to the Club authorizing or otherwise participating in Pay Television Broadcasts (as that term is defined in Section 1.23 of the Agreement) of any of its Home Games; provided that starting

with the 1987 Baseball Season the Club shall pay the County 5% of the annual net proceeds received by the Club for each year through the 1991 season and thereafter 10% of the annual net proceeds received by the Club through the Term of the Agreement and any optional extensions. The term "net proceeds" shall mean the gross proceeds from pay television less amounts to be paid out of such proceeds required pursuant to law or American or Major League Rules to be paid to visiting teams and less excise taxes levied thereon.

4. Concession Revenues. Effective with the 1982 Season, with respect to Section 4.14(b) of the Agreement, Concession Revenues, the Agreement shall be modified as follows. The Club shall be entitled to 25% of Gross Concession Revenues derived during baseball Home Game Days for any Season in which total in-house attendance (turnstile count) is less than 1,300,000 persons. For any Season in which total in-house attendance equals or exceeds 1,300,000, the Club will be entitled to 30% of Gross Concession Revenues derived during Home Game Days, figured on a per capita basis, for any increment of attendance above 1,300,000 persons. Upon the termination on March 13, 1985, of the existing concession agreement between King County and Alpine Food Products, Inc./Burtco, Inc. Corporation the percentage figures will be increased to 27.5% for any Season in which total in-house attendance is less than 1,300,000 and 32.5% of the incremental amount of Gross Concession Revenues for any Season in which such total attendance equals or exceeds 1,300,000. As presently provided by the Agreement, the Club shall continue to be entitled to \$372,000 per annum minimum should its percentage of Gross Concession Revenues derived during Home Game Days be less than \$372,000.

5. Right Field Fence. Prior to the start of the 1982 Season or at any time during the remainder of the Agreement Term including any optional extensions, the Club may elect to require the County at the County's expense to erect as soon thereafter as is feasible and maintain a removable fence or fences which will serve as an upward extension of the existing fence in right and right center field. Such fence or fences shall be constructed so as to allow balls to be played against the fences and remain "in play" after hitting the fences. Final design and engineering of the modification shall be subject to the mutual agreement of the parties.

6. Center Field Fence. Prior to the start of the 1982 baseball season or at any time during the remainder of the Agreement term including optional extensions the Club and the County shall jointly investigate the feasibility of moving back at the County's expense the center field fence to enlarge the playing field area.

7. Advance Ticket Sellers. The County will reimburse the Club for its actual costs incurred to date of providing advance ticket sellers at the Kingdome advance ticket sales

windows located at the Stadium Administration Building, subject to audit and verification of such costs by County personnel. The County will assume future responsibility for providing and paying for adequate advance ticket sellers during the Season throughout the remainder of the Agreement Term including optional extensions.

8. Office and Storage Space Reimbursements. The County will pay to the Club (or the Club may offset against use payments otherwise due under Section 4.11 of the Agreement) an amount which is 50% of the total amount paid by the Club for rent, maintenance services and utilities from 1977 to date for its office and storage space.

9. Future Office and Storage Space. The county will pay (or the Club may offset against use payments otherwise due under Section 4.11 of the Agreement) 50% of all future costs for office and storage space including rent, maintenance services and utilities attributable to a maximum of 7,500 square feet for the remainder of the Term of the Agreement including optional extensions unless and until the office building described in Section 10 of this Settlement Agreement is constructed and available for occupancy by the Club or unless and until the County makes available to the Club other suitable space, mutually agreed upon by the parties for the construction by the Club of permanent office facilities; provided, however, that for the purpose of calculating the County's payments as described above, rent shall be limited during 1982 to the lesser amount of \$14.00 per square foot per year or the Club's actual rent cost and during subsequent years to the lesser amount of the Club's actual rent cost or an adjusted rent computed by adjusting \$14.00 per square foot each year beginning in 1983 to the extent of the percentage change in the Consumer Price Index (applicable to urban wage earners and clerical workers published by the United States Department of Labor, Bureau of Labor Statistics, for the Seattle Region for October of the year in which the adjustment is to be made). For example, should the Club lease 7,500 square feet of office space in 1982 the County would be responsible for rent at the lesser of the Club's actual cost or \$14.00 per square foot per year, maintenance services and utilities attributable to 3,750 square feet of space. The parties agree that in the event the right of the Club and/or the Owner/Developer to lease premises from the County expires under the terms of paragraph 10(e) of this Settlement Agreement, or in the event that the Owner/ Developer notifies the County of his intention not to proceed with construction of the office building described in Section 10 of this Settlement Agreement, then upon the occurrence of either event the County shall, for a period of five years beginning from such occurrence, have the right to terminate its obligation to make payments under this Section 9 by making available to the Club at least 7,500 square feet of first-class space within the Kingdome Annex (formerly Johnson Plumbing Building) located at 589 Occidental South, Seattle, Washington 98104,

suitable for the construction therein by the Club at its expense of permanent office facilities. Such space, if provided by the County, shall include exterior and demising walls, smooth sub-floor ready to receive finished floor material, toilets at a core location, and basic mechanical and utilities systems. The Club shall provide its own tenant improvements such as, for example, interior walls, lighting fixtures, convenience outlet distribution, convenience plumbing, secondary duct distribution, diffusers, finished floor material and any suspended ceiling. The County will throughout the remainder of the Agreement Term including optional extensions provide for the Club's use at least 3,800 square feet of adequate, convenient, safe and secure storage space in County-operated facilities subject to the Approval of the Club which shall not, in any case, be unreasonably withheld.

10. Office Building.

(a) In the event that George Argyros ("Argyros") or an entity controlled by him is able to obtain satisfactory financing and all necessary governmental authorizations, the County will lease to the Club a portion of the real property (the "Premises") at the northwest corner of the parcel on which the Domed Stadium is located, which Premises shall be of sufficient size to construct thereon an office building (the "Building") not more than six (6) stories in height, each story being not more than 20,000 square feet in total area. The Owner/Developer (as defined below) shall bear all expenses associated with financing for the Building, and shall be solely responsible for obtaining all necessary permits and authorizations required for the construction of the Building, and the County makes no warranty of the availability of any such permits or authorizations from any third party. The lease shall be for an original term of forty (40) years, with one (1) option period for fifteen (15) years. All improvements or alterations made or erected upon the Premises shall, upon expiration of the lease term or sooner termination of the lease as a result of default, become the sole and exclusive property of the County without compensation or payment to any party, except as provided in paragraph (c) below. The lease agreement shall be in a form and content mutually acceptable to the County and the Club and shall provide to the Owner/Developer's lender a reasonable opportunity to cure the default, if any, of the Owner/Developer. The lease agreement shall comply with all applicable laws and ordinances, including a valid legal description for the Premises, and shall include among other terms and conditions, normal provisions relating to antidiscrimination, public liability insurance, indemnity, force majeure, and damage or destruction of the Building.

(b) The Club may not assign, hypothecate, transfer or alienate the lease except to Argyros or an entity controlled by him for the purpose of developing the Building (such entity which develops the Building shall be referred to herein as the



"Owner/Developer"), or to any organization which is the successor-in-interest to the Club's rights under the Use Agreement. The execution of a leasehold mortgage for purposes of financing the construction of the Building shall not be deemed to be a prohibited assignment; provided, however, any such leasehold mortgage or similar financing arrangement shall likewise restrict the right of the mortgagee or purchaser at a foreclosure sale to assign the Lease in the event of foreclosure or an assignment of the leasehold estate in lieu thereof and shall contain provisions consistent with paragraph (c) below. The rent payable during the original term of the Lease shall be equal to five percent (5%) of the gross rents (before deduction for taxes, depreciation, operating expenses and debt service) paid with respect to all portions of the Building in excess of 15,000 square feet. All ad valorem, use and excise taxes, and utility charges associated with the Premises and the Building will be paid as additional rent. Rent for the option period shall be negotiated, and should the parties be unable to agree upon a rental rate, the rent shall be adjusted and fixed by the arbitration procedure set forth in King County Code (K.C.C.) Section 4.56.180(c) as presently codified to an amount equal to the fair market ground rate for the Premises.

(c) In the event of any one of the following occurrences:

(1) The Club ceases to maintain its permanent offices in the Building; or

(2) The controlling interest in the Club and the controlling interest in the Owner/Developer are no longer the same; or

(3) The Club ceases to conduct major league baseball in the Domed Stadium (other than as a result of a temporary force majeure as specified in paragraph 15.6(b) of the Use Agreement);

Then, in any such event, the County may, at its sole option, either (1) terminate the Lease and purchase the Building at its then fair market value; or (2) continue the ground lease, and the rental payable to the County thereunder shall be adjusted to an amount equal to the then fair market ground lease rate for the Premises based upon its then-existing use. In the event the parties cannot agree to the fair market value or the fair market value ground lease rate, then and in such event such value or rate shall be determined through the arbitration procedures established pursuant to K.C.C. 4.56.180(c), as presently codified.

(d) The Owner/Developer shall bear all costs and expenses relating to the development of the Building. The County shall make available on a nonexclusive basis for use in conjunction with the Building and in a manner which does not

interfere with parking for public events in the Domed Stadium, a maximum of 270 parking spaces adjacent to the Building in the Domed Stadium north parking lot. The County shall receive its prevailing rental rate for these spaces.

(e) The design and construction of the Building shall be in accordance with all applicable laws, ordinances and regulations, and the design shall further be subject to approval by the King County Design Commission, which approval shall not be unreasonably withheld. In the event construction of the Building has not been commenced within three (3) years from the date of this Settlement Agreement, then in such event all obligation of the County and right of the Club and/or the Owner/Developer to lease the Premises shall expire.

11. Advertising. The County will pay to the Club (or the Club may offset against use payments otherwise due under Section 4.11 of the Agreement) the sum due and owing to the Club under Section 4.14(e) of the Agreement for stadium advertising.

12. Facilities Items.

(a) The County will replace at its expense the present Astroturf surface in its entirety prior to the beginning of the 1984 Baseball Season. The only exception to the Club's continued, exclusive use of the infield portion of the Astroturf shall be for playoff events involving other professional sports tenants when time constraints do not permit conversion to the overlay. At all times during the Baseball Season the County will maintain the Astroturf in clean and first class condition including the cleaning of the surface by removal and thorough washing prior to the start of each Baseball Season and during the Season as often as is necessary to maintain it in first class and clean condition.

(b) The County shall retain at its expense a qualified and recognized consultant for the purpose of studying the present sound system and making recommendations thereon. Should the consultant determine that a noticeable improvement in frequency range and quality could be achieved through modification of the existing system at a cost to the County not to exceed \$100,000, the County shall implement the recommendation of the consultant at the option of the Club.

(c) The County shall consult with the Club on expansion of the auxiliary scoreboard at the south end of the Domed Stadium. The County will expand the information presented on the auxiliary scoreboard, for the benefit of fans sitting under the main scoreboard, if and when the County replaces or expands the present scoring system computer in a manner which permits such expanded information.

(d) The County and the Club shall consult on replacement of the bench seats with theatre seats in the 100 level below the aisle walkway in the reserved seating area.

(e) The County shall at its expense before March 15, 1982, accomplish such modifications or replacements as are necessary to provide a high speed elevator on the west side to facilitate better crowd movement in and out of the Domed Stadium.

(f) The County shall install before March 15, 1982 a windscreen at the west elevator location.

(g) The County shall install at its expense four (4) additional temporary ticket seller booths in the northwest ticket sellers area. Placement shall take into account public safety and operational requirements of the County and shall be subject to the approval of the Seattle Fire Department.

(h) The County shall investigate and consult with the Club on replacing at County expense the present backstop screen with one which improves the viewing.

(i) The County shall insure that the movable basketball seats will not be stored in the Existing Stadium Parking Area during Home Games.

13. Stadium Maintenance. The County confirms and recognizes its obligation under the Agreement and particularly Article 3.4 to maintain the stadium and premises in first class condition during each and every game including the last game of the Season and any playoff or world series games.

14. Stadium Modifications. In accordance with the intent and purpose of the Agreement, the County will make no material modifications or alterations to the Stadium Premises which could materially affect the Club without the prior written Approval of the Club.

15. Utilization of Seats. The County confirms the Club's right under the Agreement to sell or otherwise utilize all Seats in the Domed Stadium for baseball (other than the Seahawks owners' box and such space as is reasonably necessary for use by Stadium staff in administering the Domed Stadium and events therein) including but not limited to the VIP Lounge.

16. Parking. Article 4.2 of the Agreement will be modified to increase the number of parking spaces allocated to the Club for the purpose of making special parking available in preferred locations closest to the stadium to season ticket holders and others but not to exceed 500 additional parking places in the north parking lot and 500 additional parking places in the south parking lot. The County shall have the

right to share in the revenues from such preferred parking area on the basis of the greater of:

(a) 50% of such revenues received by the Club; or

(b) The amount the County would have received if it had such parking spaces available at the general nonpreferred parking rates prevailing from time to time.

17. Payments. With respect to the payments required to be made by the County to the Club in accordance with this Agreement which are past due or which become due upon execution of the Agreement, such payments shall be made so as to be received by the Club within thirty (30) days after execution of this Settlement Agreement.

18. Release. By this Settlement Agreement the parties settle and release each other, their heirs, successors and assigns, officers, agents and employees from any and all claims made in the above entitled lawsuit including but not limited to those set forth in the complaint and the counterclaim.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed this 6th day of January, 1982.

KING COUNTY, WASHINGTON

SEATTLE MARINERS

By Randy Revelle  
Randy Revelle  
King County Executive

By Seattle Mariners Management Corporation

George L. Argyros  
George L. Argyros, President  
General Partner

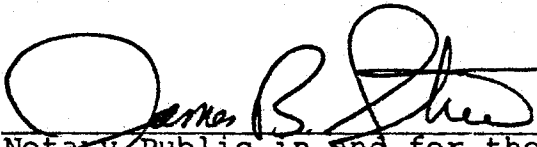
Approved as to Form:

Richard H. Holmquist  
Richard H. Holmquist,  
Chief Civil Deputy Prosecuting  
Attorney for King County

STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF KING )

On this 6<sup>th</sup> day of January, 1982, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared George L. Argyros to me known to be the President of Seattle Mariners Management Corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

  
 \_\_\_\_\_  
 Notary Public in and for the  
 State of Washington, residing  
 at Seattle