

Gunn, Mike T.

From: Mack, Sarah
Sent: Thursday, May 27, 2021 12:33 PM
To: 'Pat Filippone'; Gunn, Mike T.
Subject: RE: MLB PDL NDA

Importance: High

Thank you, Pat.

There are a few provisions of this non-disclosure agreement that we won't typically sign:

- We don't sign indemnification clauses;
- We don't typically agree to arbitration to resolve disputes over an agreement;
- We would want the governing law and jurisdiction to be the State of Washington;
- We don't typically agree to attorney's fees clauses.

Moreover, I am again concerned that they are writing language into a contract that is between the District and the Club, to which they are not a party, but still want the benefit of the contract. This makes you subject to all of their clauses as well.

Finally, we are subject to the Public Records Act in the State of Washington, which makes records in our possession public records. We can notify them of any third party request for a document, but we don't act on behalf of a third party in trying to get court orders for a third party, so they need to be aware of that in disclosing the PDL Rules to us.

Thanks,
Sarah



Sarah Mack
General Counsel
Superintendent's Office
smack@everettsd.org
425-385-4123 | 425-385-4102 Fax

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From: Pat Filippone <PFilippone@stocktonports.com>
Sent: Thursday, May 27, 2021 11:09 AM
To: Gunn, Mike T. <MGunn@everettsd.org>; Mack, Sarah <SMack@everettsd.org>
Subject: MLB PDL NDA

Sarah/Mike – attached is the NDA I received from MLB. Let me know if this works for you guys – thanks.

Pat Filippone
President
Stockton Ports/Delmarva Shorebirds/Everett AquaSox
209-644-1900

**CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT
(MLB PDL Facility Standards)**

This Confidentiality & Non-Disclosure Agreement (this "Agreement") is entered into as of **November 9, 2021** (the "Effective Date") by and between **7th Inning Stretch LLC dba the Everett AquaSox** with its principal place of business located at **3802 Broadway, Everett, WA 98201** (the "Club") and **the Everett School District #2** with its principal place of business located at **3900 Broadway, Everett, WA 98201** (the "Recipient").

WHEREAS, the Club owns and operates a professional development league club (a "PDL Club") currently known as the "[INSERT CLUB NAME]" pursuant to a player development license agreement between MLB Professional Development Leagues, LLC ("MLB PDL") and the Club (the "PDL License Agreement");

WHEREAS, the PDL License Agreement sets forth the required standards for the condition, design, maintenance, operation and upkeep of the Club's physical facilities (the "Facility Standards");

WHEREAS, pursuant to the PDL License Agreement, the Club is obligated to maintain compliance with the Facility Standards;

WHEREAS, the Recipient desires to explore the provision of financial and/or other assistance to the Club with respect to assisting the Club with maintaining compliance with the Facility Standards (the "Purpose") and has requested that the Club provide it with certain Confidential Information (as defined below) for its review; and

WHEREAS, the Club wishes to provide the terms and conditions upon which such Confidential Information will be disclosed to the Recipient hereunder.

NOW, THEREFORE, in consideration of the premises, mutual agreements, covenants, representations and warranties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Club and the Recipient agree as follows:

1. "Confidential Information" means any information in whatever form disclosed to the Recipient by the Club or its designees, employees or any person or entity prior to, on or after the Effective Date, which relates to the Facility Standards or other rules and regulations applicable to PDL Clubs including, without limitation, the PDL License Agreement, the Facility Standards and any reports issued concerning the Club's compliance with the Facility Standards. The existence of this Agreement shall constitute Confidential Information hereunder.

2. "Representatives" means, with respect to any individual, entity or person, any of such individual's, entity's or person's affiliates and such entity's and its affiliates' respective employees, agents, attorneys, accountants, advisors and contractors.

ESTD NOT agree

prior?

3. The Recipient shall use the Confidential Information solely in connection with the Purpose. Except as set forth herein, the Recipient shall protect and preserve the secrecy and confidentiality of the Confidential Information from access by and disclosure to third parties, using at least the same degree of care used by the Recipient to protect its own proprietary information but, in any case, using no less than a reasonable degree of care. The Recipient may disclose the Confidential Information to its Representatives, in each case only if such Representatives have a need to know the Confidential Information with respect to the Purpose and such Representatives are bound to protect any Confidential Information that they receive from unauthorized use or disclosure. Prior to the release or disclosure of any Confidential Information by the Recipient to any of its Representatives, the Recipient shall advise such Representative, in writing, as to the existence of this Agreement, the terms and conditions hereof and obtain the Representative's express undertaking to comply with the terms and conditions of this Agreement as if such Representative were an original party hereto. The Recipient shall be responsible for any breach of this Agreement by any of its Representatives.

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City/County

4. Unless compelled by court order or other provision of applicable law, or as otherwise provided in the immediately preceding paragraph of this Agreement, the Recipient shall not, at any time, directly or indirectly disclose or use any Confidential Information, except as expressly authorized or directed in writing by the Club or MLB PDL, each in its sole and absolute discretion. In the event that the Recipient is required pursuant to a valid and binding subpoena, court order, or other legal process to disclose Confidential Information, the Recipient shall immediately notify the Club and MLB PDL and provide the Club and MLB PDL with copies of all documentation thereof. In addition, the Recipient shall give the Club and MLB PDL an adequate opportunity to interpose an objection, take action to assure confidential handling of such information and/or cooperate and assist the Club and MLB PDL in seeking a protective order or other remedy that the Club and/or MLB PDL, each in its sole and absolute discretion, deems appropriate. If such protective order or other appropriate remedy is not obtained, the Recipient will furnish only that portion of the Confidential Information which is legally required to be furnished.

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Club man
OK this
unilaterally

5. Any Confidential Information disclosed pursuant to this Agreement (including information in computer software or held in electronic storage media), and all copies thereof, shall remain at all times the property of the Club or MLB PDL, as the case may be. The Recipient shall keep a record of the location of all tangible Confidential Information in the Recipient's possession or under its control, and, upon the written request of the Club or MLB PDL at any time, shall promptly return or destroy, at the Recipient's cost and at the Club's or MLB PDL's direction, all such tangible Confidential Information, including, without limitation, all documents, materials and other information (together with all copies thereof and regardless of form of media) that pertain to or contain Confidential Information in the Recipient's possession or under its control, and no such Confidential Information shall thereafter be retained in any form by the Recipient.

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Retention
reqmts

6. The Recipient shall immediately notify the Club and MLB PDL in the event of any loss, misplacement or unauthorized disclosure of any Confidential Information (regardless of form).

7. The Recipient agrees to indemnify, defend and hold harmless the Club and MLB PDL and their respective affiliates and the directors, officers, employees, representatives, agents, successors and assigns of each of the foregoing (each an "Indemnitee") from any complaint, proceeding, suit, damage, liability, loss, cost, charge, and/or expense of any kind or description (including reasonable attorneys' fees and disbursements) incurred or assessed against each and every Indemnitee arising out of the performance of (or failure to perform) any obligation of the Recipient contained in, or arising out of or related to this Agreement.

Indemnity

8. This Agreement (i) is the complete agreement of the parties hereto concerning the subject matter hereof and supersedes any and all prior agreements, understandings or discussions with respect to the subject matter hereof and (ii) may not be amended or in any manner modified except in writing signed by the parties hereto and approved by MLB PDL.

9. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible, and the unenforceable provisions shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the parties as expressed herein. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or electronic mail transmission shall be effective as delivery of a manually executed counterpart hereof.

10. This Agreement shall be governed by and construed according to the laws of the State of New York, without regard to conflict of laws principles thereof. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by JAMS in accordance with its Comprehensive Rules and Procedures ("JAMS Rules") and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be New York County, New York State. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. The arbitration shall be conducted by one (1) arbitrator in accordance with JAMS Rules, which arbitrator shall be selected in accordance with JAMS Rules, and which arbitrator shall have had at least twenty (20) years' experience in general commercial transactions and contract disputes. In connection with any arbitration proceeding: (a) no arbitrator shall have been employed by either party hereto and its consultants within the previous five (5) year period; (b) the arbitrator shall be neutral and independent of the parties to this Agreement; (c) no arbitrator shall be affiliated with any party's auditors; and (d) no arbitrator shall have a conflict of interest with (including, without limitation, any bias towards or against) either party hereto. The award of the arbitrator shall be accompanied by a reasoned opinion. Either party also may, without waiving any remedy under this Agreement, seek from any court of competent jurisdiction located in New York County, New York State, any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal.

New York

11. The Recipient agrees that (i) any breach of this Agreement will cause the Club and/or MLB PDL irreparable harm and (ii) without prejudice to whatever rights and recourse the

irreparable harm
must prove this
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Club and/or MLB PDL may have against the Recipient, the Club and MLB PDL may enforce their rights under this Agreement by way of injunction and may obtain an injunction in order to enjoin or restrain any breach or threat of breach of any of the provisions of this Agreement in addition to any other remedies it may have at law or in equity.

12. Nothing in this Agreement is intended to or shall grant any interests or rights, by license or otherwise under any patent, copyright, trademark, service mark, trade name, trade secret or other intellectual property right of the Club or MLB PDL or any affiliate of the Club or MLB PDL, nor shall this Agreement grant the Recipient any rights in or to the Confidential Information, except the limited right to use such Confidential Information in connection with the Purpose.

13. No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

14. If the Club or MLB PDL institutes a legal action against the Recipient to enforce or interpret this Agreement and prevails in that action, the Club and/or MLB PDL, as the case may be, shall be entitled to reimbursement from the Recipient for all costs and reasonable attorneys' fees incurred in connection with such action.

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Two-way

15. This Agreement is not assignable or transferable by either party hereto without the prior express written consent of the other party. Any attempt by either party hereto to assign or transfer this Agreement without such prior written consent shall immediately be deemed null and void ab initio. MLB PDL is an intended third-party beneficiary of this Agreement.

16. Any notices required by this Agreement shall be in writing and shall be given by hand or sent by overnight courier to the applicable address noted in the initial paragraph of this Agreement or by electronic mail (with successful transmission receipt) to **dannyt@aquasox.com** (for the Club), **mgunn@everettsd.org** (for the Recipient) and **pdllegalnotices@mlb.com** (for MLB PDL).

[The Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

[CLUB]

By: _____
Name:
Title:

[THE RECIPIENT]

By: _____
Name:
Title: