

RESOLUTION NO. 1949

A RESOLUTION OF THE GOLDEN CITY COUNCIL
APPROVING LEASE OF WATER TO BALL FOUR, INC.

WHEREAS, the City of Golden has excess water rights during certain periods of the year; and

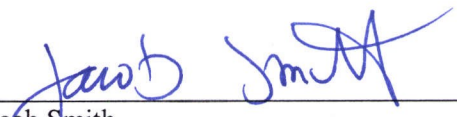
WHEREAS, Ball Four, Inc. has requested to lease up to 12 acre feet of Golden water.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF GOLDEN, COLORADO:

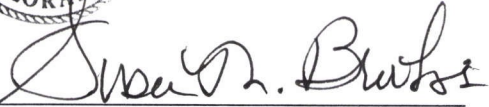
City Council hereby approves the lease with Ball Four, Inc. in essentially the same form as the
copy of such lease accompanying this resolution.

Adopted this 12th day of February, 2009.



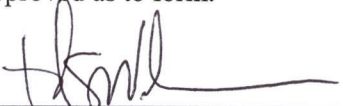


Jacob Smith
Mayor



Susan M. Brooks, MMC
City Clerk

Approved as to form:

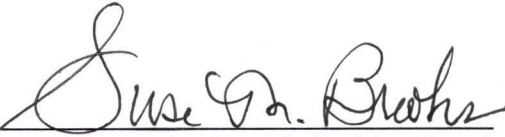


David S. Williamson
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a rescheduled regular business meeting thereof held on the 12th day of February, A.D., 2009.



ATTEST:



Susan M. Brooks, City Clerk of the City of
Golden, Colorado

WATER LEASE AGREEMENT

This Water Lease Agreement, dated _____, 2009, is between the City of Golden, Colorado, a municipal corporation, 911 Tenth Street, Golden, Colorado 80401, as Lessor ("Golden") and Ball Four, Inc., a corporation, c/o Larry Gentry, President, 11338 West 74th Place, Arvada, Colorado 80005, as Lessee ("Ball Four").

RECITALS

A. Golden is the owner of the Golden Reservoirs Nos. 1, 2 and 3, located adjacent to the West Fork of Clear Creek in Sections 29 and 30, Township 3 South, Range 74 West of the 6th P.M., portions of which have now been consolidated and constructed as one reservoir ("Guanella Reservoir");

B. Guanella Reservoir was decreed by the District Court in and for Water Division No. 1 ("Water Court") in Case No. 82CW469 for a total capacity of 2600 acre-feet with a direct flow component of 60 cfs and an appropriation date of June 8, 1977, as augmented by the decrees of the Water Court in Case Nos. 83CW361, 87CW298 and 02CW379 ("Guanella Reservoir Water Supply");

C. Ball Four operates 4.05 acres of softball fields in the Southwest Quarter of the Southwest Quarter of Section 4, Township 3 South, Range 68 West of the 6th P.M., Adams County, Colorado ("Ball Fields");

D. The irrigation of the Ball Fields requires the use of one on-site sump pump in Little Dry Creek, a tributary of Clear Creek. Ball Four desires to develop an augmentation plan for the above irrigation to exchange for depletions from Little Dry Creek and to replace depletions to Clear Creek;

E. Ball Four desires to lease from Golden, and Golden desires to lease to Ball Four, up to 13 acre feet of the Guanella Reservoir Water Supply decreed for augmentation uses in order to replace out of priority depletions resulting from the irrigation of the Ball Fields, subject to the terms and conditions set forth herein.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants agreements set forth herein, the parties agree as follows:

1. Lease. Golden hereby leases to Ball Four, and Ball Four hereby leases from Golden, the right to the release from storage of up to 13 acre-feet per year of Guanella Reservoir Water Supply decreed for or otherwise available for augmentation use, unless said amount is adjusted downward pursuant to section 2(d), below ("Lease Water"). The use of the Lease Water shall be limited to augmentation of out-of-priority diversions by Ball Four for the irrigation of the Ball Fields, and no other use shall be allowed without the written consent of Golden.

(a) Lease Term. This Agreement shall be for a term of 20 years ("Lease Term"). The Lease Term shall begin on January 1, 2009, and terminate on December 31, 2028, with renewable options thereafter.

(b) Lease Price. The annual price for the lease shall be \$800.00 per acre-foot for the Lease Water or a total of \$10,400 for the first year of this Agreement (the "Lease Price"). Beginning in 2010, the Lease Price shall be adjusted every year by the change in the Consumer Price Index for All Urban Consumers in the Denver Metropolitan Area – All Items ("CPI") starting in calendar year 2009, or a substitute index mutually acceptable to the parties if the CPI is discontinued. The CPI adjustment shall be determined each year for the Lease Price by the percentage change in the annual average CPI from 2008 to the previous year (e.g., in 2012 the CPI adjustment would be the difference in annual CPI between 2011 and 2008, then divided by the 2008 CPI, and then multiplied by 100 to determine the percentage change to be applied). The CPI adjustment shall not, however, decrease the Lease Price in any given year.

(c) Lease Payment. The Lease Price, adjusted by CPI, shall be payable in full by Ball Four to Golden on or before March 15 of every year during the Lease Term. Failure to make such timely payment shall give Golden the right to terminate this Agreement; provided, however, that such termination may not occur until Golden gives Ball Four written notice of Ball Four's failure to make such timely payment, and Ball Four has failed to make the required payment within 10 days after receiving such notice. This Agreement is on a take-or-pay basis, meaning Ball Four is required to pay the entire Lease Price regardless of the amount of Lease Water Ball Four is able to utilize in a given year.

(d) Sublease. Ball Four may not sublease any portion of the Guanella Reservoir Water Supply obtained under this Agreement.

2. Approvals. It shall be Ball Four's exclusive responsibility to obtain approval from the Water Court and/or State Engineer's Office for the use of the Lease Water for replacement of out-of-priority depletions associated with irrigation of the Ball Fields as part of Ball Four's operations, by augmentation plan and exchange, but subject to the following:

(a) Amended Application. Ball Four shall amend its existing Water Court application in Case No. 08CW239 to be consistent with this Agreement and shall reference, as its augmentation supply, the definition of Guanella Reservoir Water Supply set forth above. Ball Four shall allow Golden's counsel to review the amendment before filing.

(b) Opposition. Golden may oppose Ball Four's Water Court application and/or substitute water supply plans to ensure they are consistent with this Agreement and to monitor such proceedings so as to protect its interests in the Guanella Reservoir Water Supply. Ball Four shall pay all costs and fees incurred by Golden as a result of its opposition. Ball Four shall not be responsible for costs incurred by Golden in negotiating or performing its operations under this Agreement. The parties to this Agreement anticipate little opposition so that Golden's monitoring of Ball Four's Water Court and substitute water supply plan applications should not cost more than roughly \$4,000.00 and be limited to legal review of the applications and related pleadings, including any proposed decrees, and substitute water supply plan comments and approvals. Golden shall promptly notify Ball Four if Golden determines that the costs pursuant to this paragraph are expected to exceed \$4,000.00.

(c) Withdrawal and Termination. In the event that Golden, in its sole discretion, determines that Ball Four's Water Court application or substitute water supply application for the use of the Lease Water jeopardizes any of Golden's water rights, Golden shall have the right to terminate this Agreement. In the event that Ball Four, in its sole discretion, determines that it cannot cost effectively obtain the necessary Water Court approval or approval from the State Engineer's Office to use the

augmentation water released from Guanella Reservoir as contemplated hereunder, Ball Four shall have the right to terminate this Agreement. In either event, if the Agreement is terminated under this paragraph 2(c), Ball Four shall withdraw the application, as amended.

(d) Lease Water Adjustment. If for any reason Ball Four determines that it needs less than 13 acre-feet of Lease Water for the Ball Fields on a permanent basis, it may notify Golden in writing of its reduced need for Lease Water. Thereafter, the amount of Lease Water made available by Golden under this Agreement and the Lease Price shall be based upon that reduced requirement. Any such notice given after March 1 of a given year shall be applied beginning in the following year. In no event, however, shall this provision be construed as allowing Ball Four to increase the amount of Lease Water made available under this Agreement.

3. Reservoir Operations:

(a) Water Quality: Golden makes no representations as to the quality of the Lease Water made available to Ball Four by Golden. Golden shall not be obligated to maintain or modify the quality of water made available for the benefit of Ball Four.

(b) Water Delivery: Golden agrees to make the Lease Water available to Ball Four under the following terms:

(i) Timing and Amount: The amount and timing of Lease Water deliveries shall be limited by the terms of this Agreement, and any relevant decrees of the Water Court or orders of the State Engineer's Office, including the Water Commissioner. The requested Lease Water deliveries shall be no greater than 5 acre-feet per month unless approved by Golden in its discretion. Releases shall be limited to the period of March 1 through November 15. Ball Four shall be responsible for administration or delivery of the water downstream to the point of exchange and/or to the Ball Fields, and shall bear all transit losses associated therewith. There shall be no carry over credit of Lease Water from one year to the next if the full amount of Lease Water is not needed in a given year to augment irrigation of the Ball Fields.

(ii) Lease Water Deliveries: Golden shall advise Ball Four, from time to time, as to when it reasonably needs information regarding the timing and amount of Lease Water deliveries required by Ball Four for replacement of out-of-priority depletions, on a weekly and/or monthly basis, and Ball Four shall provide such requested information on a timely basis. Subject to paragraph 3.(c) of this Agreement and the other provisions hereof, Golden shall coordinate with Ball Four to meet the deliveries of Lease Water required by Ball Four. Golden may request that Ball Four put all requests in writing. Golden shall measure and record Lease Water releases to Ball Four under this Agreement and shall provide Ball Four monthly accounting for months when such releases were made.

(c) Interruption of Lease Water Service: Circumstances may arise that require Golden to shut down and/or to conduct maintenance or other related operations on Guanella Reservoir or its appurtenant facilities. Similarly, drought conditions or failures in other aspects of Golden's water supply system could impact the amount of water Golden has available to lease while allowing it to meet its own municipal obligations. Accordingly, Golden reserves the right to interrupt the Lease Water deliveries under this Agreement under such circumstances, in which event Golden is not liable for the failure to make the required deliveries. Water quantities lost to such failure shall not carry-over to subsequent years. However, in the event that Golden is unable to release any water requested by Ball

Four due to emergency circumstances, the Lease Price for that year shall be proportionately reduced or reimbursed.

(d) Maintenance Costs: Golden shall be solely responsible for the costs of operating and maintaining Guanella Reservoir and appurtenant facilities.

(e) Accounting: Each party shall be responsible for providing the other party, the Division Engineer, and the Water Commissioner with all necessary accounting information relating to the water released under this Agreement.

4. Posted Sign: Ball Four shall post a sign at the Ball Fields that states: "Water for the fields is provided by the City of Golden."

5. Assignment: Ball Four may assign its rights and obligations under this Agreement only to successors-in-interest of Ball Four for the uses allowed hereunder.

6. Lease Renewal: Upon mutual agreement of the parties, this Agreement may be renewed perpetually for one or more 20-year periods. Such renewal shall only be for the purpose described in Paragraph 1 above. Neither party is obligated by the provisions of this Agreement to enter into such renewal. If either party desires to renew this Agreement it shall give written notice to the other party no later than six months prior to the end of the Lease Term. In the event that the parties do agree to renew this Agreement, all terms and conditions may be renegotiated by the parties.

7. Indemnification: Ball Four agrees to indemnify, defend and hold harmless Golden and its agents from and against all assignee claims, causes of action, costs, expenses (including reasonable attorneys fees and court costs), judgments, damages and any other liabilities of any kind arising out of Ball Four's use of water released by Golden.

8. Force Majeure: Neither party shall be liable for any failure to perform any of its obligations hereunder due to causes beyond its control, including, without limitation, acts of God, acts or omissions of the other party or civil or military authorities, fire, strikes, epidemics, quarantine restrictions, floods, earthquakes, riots, wars, or inability to secure means of storage because of the foregoing.

9. Notice: Any required written notice, demand, or conveyance of information shall be sent via U.S. mail or fax, to:

Golden:
Utilities Director
City of Golden
911 Tenth Street
Golden, CO 80401
Fax: 303-384-8161

with copy to:
Steven J. Bushong
Porzak Browning & Bushong LLP
929 Pearl Street, Suite 300
Boulder, CO
Fax: 303-443-6864

Ball Four, Inc:
Larry Gentry, President
11338 West 74th Place
Arvada, CO 80005
303-426-6784 Fax: 303-403-0814

with copy to:
Douglas M. Sinor
Trout, Raley, Montano, Witwer &
Freeman
1120 Lincoln Street, Suite 1600
Denver, CO 80232
Fax: 303-832-4465

The parties may at any time modify the above information on where and to whom notice is sent by given written notice of the change.

10. Miscellaneous:

(a) This Agreement constitutes the full agreement between the parties and may not be amended, nor any rights or obligations hereunder waived, except by an instrument in writing signed by the parties sought to be charged with such amendment or waiver.

(b) This Agreement shall be interpreted in accordance with the laws of the State of Colorado.

(c) The paragraph headings herein are inserted for convenience of reference only and do not define, limit or prescribe the scope of this Agreement.

(d) The parties agree to execute such additional documents as may be reasonably required to implement the terms of this Agreement.

(e) This Agreement may be executed in counterparts.

(f) The parties represent that they have all authorizations and approvals to enter into this Agreement.

Executed as of the date set forth above.

CITY OF GOLDEN, a Colorado municipal
corporation:

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON_)

The foregoing instrument was subscribed and sworn to before me this ___ day of
_____, 2009, by _____.

Witness my hand and official seal

My commission expires: _____

Notary Public

BALL FOUR, INC., a Colorado corporation:

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed and sworn to before me this ___ day of
_____, 2009, by _____.

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My commission expires: _____

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WATER LEASE AGREEMENT

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(c) **Interruption of Lease Water Service:** Circumstances may arise that require Golden to shut down and/or to conduct maintenance or other related operations on Guanella Reservoir or its appurtenant facilities. Similarly, drought conditions or failures in other aspects of Golden's water supply system could impact the amount of water Golden has available to lease while allowing it to meet its own municipal obligations. Accordingly, Golden reserves the right to interrupt the Lease Water deliveries under this Agreement under such circumstances, in which event Golden is not liable for the failure to make the required deliveries. Water quantities lost to such failure shall not carry-over to subsequent years. However, in the event that Golden is unable to release any water requested by Ball Four due to emergency circumstances, the Lease Price for that year shall be proportionately reduced or reimbursed.

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7. **Indemnification:** Ball Four agrees to indemnify, defend and hold harmless Golden and its agents from and against all assignee claims, causes of action, costs, expenses (including reasonable attorneys fees and court costs), judgments, damages and any other liabilities of any kind arising out of Ball Four's use of water released by Golden.

8. **Force Majeure:** Neither party shall be liable for any failure to perform any of its obligations hereunder due to causes beyond its control, including, without limitation, acts of God, acts or omissions of the other party or civil or military authorities, fire, strikes, epidemics, quarantine restrictions, floods, earthquakes, riots, wars, or inability to secure means of storage because of the foregoing.

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Golden:
Utilities Director
City of Golden
911 Tenth Street
Golden, CO 80401
Fax: 303-384-8161

with copy to:
Steven J. Bushong
Porzak Browning & Bushong
LLP
929 Pearl Street, Suite 300
Boulder, CO
Fax: 303-443-6864

Ball Four, Inc:
Larry Gentry, President
11338 West 74th Place
Arvada, CO 80005
303-426-6784 Fax: 303-403-0814

with copy to:
Douglas M. Sinor
Trout, Raley, Montaño, Witwer &
Freeman
1120 Lincoln Street, Suite 1600
Denver, CO 80232
Fax: 303-832-4465

The parties may at any time modify the above information on where and to whom notice is sent by given written notice of the change.

10. Miscellaneous:

(a) This Agreement constitutes the full agreement between the parties and may not be amended, nor any rights or obligations hereunder waived, except by an instrument in writing signed by the parties sought to be charged with such amendment or waiver.

(b) This Agreement shall be interpreted in accordance with the laws of the State of Colorado.

(c) The paragraph headings herein are inserted for convenience of reference only and do not define, limit or prescribe the scope of this Agreement.

(d) The parties agree to execute such additional documents as may be reasonably required to implement the terms of this Agreement.

(e) This Agreement may be executed in counterparts.

(f) The parties represent that they have all authorizations and approvals to enter into this Agreement.

Executed as of the date set forth above.

CITY OF GOLDEN, a Colorado municipal corporation:

By: Jacob Smith

Name: Jacob Smith

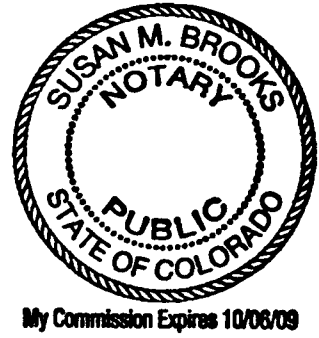
Title: Mayor

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON_)

The foregoing instrument was subscribed and sworn to before me this 24 day of February, 2009, by Jacob Smith.

Witness my hand and official seal
My commission expires: 10/06/09

Susan M. Brooks
Notary Public



BALL FOUR, INC., a Colorado corporation:

By:

[Handwritten signature]

Name:

LARRY GEUTLY

Title:

Pres.

STATE OF COLORADO)

) ss.

COUNTY OF Denver)

The foregoing instrument was subscribed and sworn to before me this 2nd day of February, 2009, by Larry Geutly.

Witness my hand and official seal

My commission expires: 1-30-2011

[Handwritten signature]
Notary Public

