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SPECIAL MEETING

2017 JUN 23 PM 5 02

Agenda Item: ID#17-945 (3-A)

Date: 6/26/17

CITY CLERK, FRESNO CA

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Item(s) – ID#17-945 (3-A)

Contents of Supplement: 3rd Amendment to Amended and Restated Stadium Sublease Agreement

Item(s)

Approve Third Amendment to Amended and Restated Stadium Sublease Agreement between the City of Fresno and Fresno Baseball Club, LLC.

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

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**THIRD AMENDMENT TO
AMENDED AND RESTATED
STADIUM SUBLEASE AGREEMENT**

~~CITY THIRD AMENDMENT~~
THIS ~~THIRD AMENDMENT~~ (this "**Third Amendment**"), effective as of the Closing Date (hereinafter defined) (the "**Effective Date**"), to the Amended and Restated Stadium Sublease Agreement, effective January 1, 2010 (the "**Agreement**"), as amended by that certain First Amendment to Amended and Restated Stadium Sublease Agreement, effective November 1, 2014 (the "**First Amendment**"), and as amended by that certain Second Amendment to Amended and Restated Stadium Sublease Agreement, effective December 17, 2015 (the "**Second Amendment**"), is by and between the City of Fresno, a California municipal corporation ("**City**"), and Fresno Baseball Club, LLC, a Delaware limited liability company ("**Tenant**" or "**Seller**").

Recitals

- A. Tenant is currently attempting to sell the Grizzlies to Fresno Sports and Events, LLC, a Delaware limited liability company ("Buyer"), which will be owned and controlled by JC Sports and Entertainment, LLC, a Delaware limited liability company, and Fresno Home Field, LLC, a Delaware limited liability company (together, the "Owners").
- B. City believes that the sale of the Grizzlies to Buyer ("Sale") is in the best interests of City and, accordingly, City is willing to accommodate Tenant's requests by amending the Agreement as provided herein to protect its investment in the Stadium and to preserve Minor League Baseball in Fresno.
- C. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Controlling Agreements (as defined in paragraph 2 below).

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto (the "Parties") hereby agree that, as of the Effective Date, the Controlling Agreements are hereby amended as follows:

Amendment

- 1. Conditional Upon Closing of Sale. This Third Amendment shall only become effective if the closing of the Sale ("Closing") occurs on or before _____, 20__, and the Seller has paid all amounts at Closing owed to the City at such time. The parties will cooperate with regard to prorations or adjustments necessary after Closing, if any. The Effective Date of this Third Amendment shall be the date of the Closing ("Closing Date"). For purposes of clarity and the avoidance of doubt, the attached Schedule 1, incorporated herein by this reference, sets forth a summary of timing for certain obligations under this Third Amendment for the calendar year in which the Closing occurs and thereafter. Seller and Buyer shall provide written notice of the Closing Date to the City, which shall serve as the automatic trigger for the Effective Date. Upon approval of this Third Amendment by the City Council of City, the First Amendment and Second Amendment, as amended by this Third Amendment, shall be deemed to

have been automatically approved and effective; provided, however, that in the event a conflict or inconsistency arises between this Third Amendment and the terms and conditions of the Agreement, First Amendment, or Second Amendment, the terms and conditions of this Third Amendment shall control.

2. Community Engagement Commitment. Notwithstanding any other provision of this Third Amendment, the First Amendment, the Second Amendment, or the Agreement (collectively, the "Controlling Agreements") to the contrary, a new Section 3.1(b) will be added to the Agreement to read as follows:

"(b) Buyer and City have a shared goal of taking positive action designed to revitalize downtown Fresno and benefit the citizens and non-profit organizations of the City and surrounding areas. To further this shared goal, Buyer will arrange for community events at the Stadium on an annual basis that will (a) total at least 100 events, (b) draw at least 10,000 attendees, or (c) cost at least \$100,000 in Donated Costs (defined below) ("Community Events"), and Buyer shall pay a penalty ("Penalty") to City if Buyer fails to reach at least one of the foregoing thresholds in any given year during the Term. The amount of the Penalty, if any, shall be: (i) \$100,000 if Buyer holds fewer than 20 events, draws fewer than 2,000 attendees and contributes less than \$20,000 in Donated Costs during any year of the Term; (ii) \$80,000 if Buyer holds fewer than 40 events, draws fewer than 4,000 attendees and contributes less than \$40,000 in Donated Costs during any year of the Term; (iii) \$60,000 if Buyer holds fewer than 60 events, draws fewer than 6,000 attendees and contributes less than \$60,000 in Donated Costs during any year of the Term; (iv) \$40,000 if Buyer holds fewer than 80 events, draws fewer than 8,000 attendees and contributes less than \$80,000 in Donated Costs during any year of the Term; and (v) \$20,000 if Buyer holds fewer than 100 events, draws fewer than 10,000 attendees and contributes less than \$100,000 in Donated Costs during any year of the Term. These Community Events will include, but not be limited to: (i) high school baseball and softball games; (ii) youth baseball and softball games; (iii) games involving or benefitting physically and/or mentally challenged individuals; (iv) non-profit board and/or staff meetings; and (v) non-profit fundraising events. The youth sports teams and non-profit entities, as described above in (i) through (v), that utilize the Stadium for the Community Events will do so at no charge for renting or staffing of the Stadium for the Community Events ("Donated Costs"), and Buyer will be responsible for the payment of these Donated Costs. Buyer will be solely responsible for programming, contracting for and scheduling of all Community Events, but will seek and reasonably consider the input from City from time to time regarding this Community Events program. Buyer will provide to City, on a bi-annual basis, a report that details the

Community Events held at the Stadium. Buyer will retain the revenue generated, if any, from all Community Events."

3. Fixed Rental. Section 2.3, as amended by the First Amendment and further amended by the Second Amendment, will be amended and restated in its entirety to provide for a Fixed Rental of \$500,000 per year during the Term, to be paid in advance on the first day of each month of April, May, June, July and August during the Term in equal monthly installments of \$100,000.

4. APES Fees. Section 2.4, as amended by the First Amendment, will be further amended by the addition of the following sentence:

"So long as Tenant is not in default on its obligations hereunder, all APES Fees paid to City by Tenant shall be contributed to the Capital Reserve Fund-APES Fees Sub-Account ("APES Account") during the Term, but amounts not used during the year contributed, will remain in the APES Account for use in succeeding years during the Term for the repair and replacement of non-Structural Elements as mutually determined by City and Tenant in accordance with the terms and conditions of Section 4.5(a) below. APES Fees shall escalate by \$0.05 per ticket per year during the Term; provided, however, that City and Tenant may mutually agree to increase APES Fees by a different amount at any time during the Term."

5. Profit Sharing. Notwithstanding any other provision of the Controlling Agreements to the contrary, the following shall apply:

- a) Section 2.5 will be amended in its entirety to read as follows:

"(a) Tenant shall pay to the City an amount equal to Twenty (20%) percent of Tenant's Net Cash Flow (defined below) over \$500,000 ("Profit Sharing Base Amount") for any given calendar year during the Term ("Annual City Share Amount"), but the Annual City Share Amount shall not exceed \$300,000. "Net Cash Flow" shall mean EBITDA less Tenant's capital expenses, interest expenses from working capital and capital improvements debt (but not acquisition or recapitalization debt), and real estate or possessory interest taxes. This Section 2.5 will automatically expire at the end of the Term.

(b) All payments required by this Section 2.5 shall be paid by Tenant to the City no later than ten (10) days after the completion of Tenant's annual audit conducted in accordance with Section 2.6 below.

(c) The amounts in this Section 2.5 above shall be determined by Tenant's independent certified public accountant, consistent with GAAP. The benchmark figures above shall be validated through an annual audit conducted in accordance with Section 2.6 below or through such other sources as may be reasonably requested by the City, which sources may include, without limitation, Tenant's PCL reports or Tickets.com reports."

6. Audit. Notwithstanding any other provision of the Controlling Agreements to the contrary, the following shall apply:

a) A new Section 2.6(d) will be added to the Agreement to read as follows:

“(d) Under this Section 2.6, Tenant shall be required to provide the City with: (i) a written copy of the cover page, auditor’s letter, balance sheet, income statement, and cash flow statement of its audit each year of the Term; and (ii) a right to review all other parts of its audit and back-up materials (“Review Materials”) without retaining a written copy. Subject to applicable laws governing public records, City agrees to use commercially reasonable efforts to keep confidential any Review Materials disclosed to City pursuant to this Section 2.6.”

7. Use of Stadium. Notwithstanding any other provision of the Controlling Agreements to the contrary, the following shall apply:

a) Section 3.1, as amended by the First Amendment, and as further amended in its entirety by this Third Amendment to include the new Section 3.1(b) addressed above, will be further amended to read as follows:

“3.1 Tenant Sponsored Events.

(a) Tenant shall be entitled to use of the Stadium for home games of the Grizzlies, same day pre-home game and post-home game activities, practices of the Grizzlies, home games of the Fresno Fuego soccer team, for load-in and load-out requirements, scheduled field rest or maintenance according to industry practices, general Stadium maintenance, up to five (5) special events per calendar year for CEDA, and the Community Events described below in Section 3.1(b) (collectively, the “Tenant Sponsored Events”). Further, Tenant shall be entitled to block out and reserve a period of time during each Baseball Season for potential Playoff Games and to use the Stadium for any such Playoff Games, which Playoff Games, if held, shall each constitute a Tenant Sponsored Event. In addition, Tenant shall have the right to use the Stadium on any Available Date (“Other Tenant Events”). All events and use under this Section 3.1(a) shall be scheduled pursuant to Section 3.2 below.”

b) Section 3.2(a) will be amended by the addition of the following sentence:

“The Parties further acknowledge that: (i) City shall reasonably cooperate with Tenant with respect to scheduling of Community Events pursuant to Section 3.1(b) and avoidance of any penalties set forth in Section 3.1(b); (ii) the Grizzlies’ home baseball games shall have absolute priority over any other Stadium event, except to the extent that an Exclusive City Sponsored Event or Other City Sponsored Event has already been previously scheduled and

cannot be reasonably rescheduled; and (iii) Tenant shall have the exclusive right to enter an agreement with the Fresno Fuego, which will not be owned or controlled by Tenant, for use of the Stadium."

- c) Section 3.4(a) will be amended in its entirety to read as follows:

"Except as otherwise provided in the Controlling Documents, Tenant shall be entitled to receive all revenues generated at or related to the Stadium as a result of any Tenant Sponsored Event, including, without limitation, all revenues from ticket sales (except APES Fees), suite rental, sponsorships, Stadium signage and other advertising, sales of Concessions, Novelties, and clothing, sales of broadcast and telecast rights, league expansion fees and team fundraising, and net parking from surface lots and garages designated as City Spaces from baseball events as outlined in Section 3.4 (b) (see Schedule 2 for current map of City Spaces)."

- d) Section 3.4(c) will be eliminated.

8. Capital Improvements. Notwithstanding any other provision of the Controlling Agreements to the contrary, the following shall apply:

- a) The definition of "Capital Improvement" in ARTICLE I will be amended to read as follows:

"Capital Improvement" means any repairs, replacements or improvements to the Stadium or associated improvements that are necessary or appropriate, as reasonably determined by City, and that, under GAAP, would normally be capitalized, or as may be otherwise mutually agreed to by Tenant and City."

- b) Section 4.5 will be amended in its entirety to read as follows:

"(a) Annual Plan. Tenant and City will meet following the completion of each Season during the Term to review necessary or desirable capital repairs and improvements to be made to the Stadium, based on then current needs. Specifically, Tenant and City will in good faith agree on a capital repair and improvement plan for both non-Structural Elements and Structural Elements for the succeeding 12-month period (each, an "Annual Stadium Capital Expense Plan").

(b) Capital Reserve Fund. A new Capital Reserve Fund shall be created and maintained jointly by City and Tenant and the balance of all funds in the existing Capital Reserve Fund shall be transferred to such new Capital Reserve Fund. City and Tenant shall each own a percentage interest in the new Capital Reserve Fund, pro rata based on contributions made by City and Tenant, and such new Capital Reserve Fund shall include the following sub-accounts (collectively, the "Sub-Accounts"):

(i) APES Fees. APES Fees shall be paid into the APES Account, and any unused balances shall be carried forward.

(ii) City/Tenant Contributions. City and Tenant shall each contribute the following amounts into this Sub-Account ("City/Tenant Contributions Account"), and any unused balances shall be carried forward:

a. Annual Contributions. \$300,000 annually by each of City and Tenant commencing in 2020 (collectively, the "Annual Contributions"). The Annual Contributions shall escalate at 2% annually.

b. Initial Deposits. \$5.25 million concurrent with the Closing (collectively, the "Initial Deposits"), with City depositing \$3 million, Seller depositing \$1.25 million (City deposit and Seller deposit, collectively, the "City Initial Deposit"), and Buyer depositing \$1 million ("Buyer Initial Deposit"). Of the City Initial Deposit, \$1.25 million may be used only for Non-Structural Capital Expenses, with the \$3 million balance available for Non-Structural Capital Expenses or Structural Capital Expenses at the City's discretion. The Buyer Initial Deposit may be used only for Non-Structural Capital Expenses.

(c) Waterfall. Approved Capital Expenses shall be funded as follows:

(i) First, from the Capital Reserve Fund, from the Seller's \$1.25 million deposit described in Section 4.5(b)(ii)(b) above.

(ii) Thereafter, from the Capital Reserve Fund, from each Sub-Account in the following priority: first, the APES Account, then the City/Tenant Contributions Sub-Account.

a. Non-Structural. All Sub-Accounts may be used for Non-Structural Capital Expenses.

b. Structural. The only Sub-Account that may be used for Structural Elements or Non-Structural Capital Expenses is the City/Tenant Contributions Account. The maximum amount that can be used for Structural Elements shall be \$3 million.

(iii) Once all Sub-Accounts have reached zero, all Structural Elements shall be paid 100% by City and all Non-Structural Elements shall be paid 100% by Tenant, each subject to reimbursement from the Sub-Accounts when there is a subsequent positive balance, but subject to the \$3 million maximum amount that can be used for Structural Elements.

(d) Collaboration. City and Tenant shall collaborate closely on Capital Improvements, the Capital Reserve Fund, Waterfall and related matters, including changes as may be mutually agreed to by the parties. A refund of any monies from the Capital Reserve Fund or forbearance of any contributions by the City and Tenant shall only occur if there is a written mutual agreement between the City and Tenant. In the event there is such an agreement, the benefits shall be split between the City and Tenant in the following proportions: (i) to the City: the sum of 81% [\$4.25 million ÷ \$5.25 million] of the then balance in the Initial Deposit Sub-Account PLUS 50% of the then balance of the amount in the Annual Contributions Sub-Account, and (ii) to the Tenant: the sum of 19% [\$1 million ÷ \$5.25 million] of the then balance in the Initial Deposit Sub-Account PLUS 50% of the then balance of the amount in the Annual Contributions Sub-Account. If the balance of the Capital Reserve Fund reaches \$3 million or more at any time during the Term, City and Tenant may mutually agree in writing to pro rata distributions of funds in the City/Tenant Contributions Account based on the same proportions outlined in the above sentence. At the end of the Term or upon the future sale of the Tenant, any amounts in the Capital Reserve Fund shall remain in the Capital Reserve Fund unless expressly otherwise mutually agreed to by the City and Tenant in writing."

c) Section 4.7 will be eliminated.

9. Security for Tenant's Performance. Notwithstanding any other provision of the Controlling Agreements to the contrary, the following shall apply:

a) Section 9.1 will be amended in its entirety to read as follows:

"Non-Relocation Agreement. Concurrent with the Closing, Buyer and City shall execute and deliver a Non-Relocation Agreement ("NRA") in the form attached as Schedule 3."

b) Section 9.2 will be amended in its entirety to read as follows:

"Concurrent with the Closing, Buyer shall obtain an irrevocable standby Letter of Credit ("LOC") in the aggregate amount of \$1 million listing City as beneficiary; provided, however, that the LOC shall expire five (5) years after the Effective Date of this Agreement as long as Buyer is not then in default under the Controlling Agreements."

10. City Advertising Rights; Broadcasting Rights. Notwithstanding any other provision of the Controlling Agreements to the contrary, the following shall apply:

a) Section 12.3(b) will be amended to delete reference to Fresno Fuego.

b) Section 12.4 will be amended to delete references to Fresno Fuego, United Soccer Leagues Premier Development League and Major League Soccer.

11. Capital Transactions. Notwithstanding any other provision of the Controlling Agreements to the contrary, the following shall apply:

a) Section 10.3 will be amended in its entirety to read as follows:

“(a) Upon the sale or transfer by: (i) Buyer or any Owner of its membership interests or assets (including, without limitation, any of such entities’ ownership interests in the Grizzlies); and/or (ii) any member in Buyer or in any Owner (in either case, an “Interest Owner”) of its ownership interest in Buyer or Owner (any such sale or transfer pursuant to (i) or (ii) above to be defined as a “Capital Transaction”), the City shall be entitled to receive a share of the Net Surplus as set forth below in this Section 10.3.

(b) “Net Surplus” shall mean Net Sales Proceeds LESS Total Net Investment. “Net Sales Proceeds” shall mean an amount equal to total distributions made to Interest Owners following the Capital Transaction, after the payment of all liabilities. “Total Net Investment” shall mean (i) the initial investment made by Interest Owners PLUS (ii) additional investment amounts made by Interest Owners following the acquisition of the Grizzlies LESS (iii) an amount equal to distributions made to Interest Owners before the Capital Transaction.

(c) In the event of a Capital Transaction involving less than 100% of an Interest Owner’s membership interests or assets, the above calculation of Total Net Surplus shall be calculated and apportioned to the selling Interest Owners. The Total Net Investment shall be determined and agreed upon annually by City and Buyer based on Tenant’s annual audit conducted in accordance with Section 2.6 and/or based on such other sources as may be reasonably requested by City, which sources may include, without limitation, Tenant’s PCL reports. Total Net Investment shall not include interest costs associated with acquisition or recapitalization debt, but shall include interest costs associated with working capital and capital improvement debt.

(d) The amounts of Net Surplus, Net Sales Proceeds and Total Net Investment for a particular Capital Transaction shall be calculated and paid to the City by the Interest Owner or Owners as applied only to that particular Capital Transaction, which would be the proportion of total ownership of the Interest Owners as represented to be transferred in that Capital Transaction, and which may be less than 100% of the total ownership interests of Buyer.

(e) After payment to the City of the Net Surplus amount due upon a Capital Transaction, there will be no more payments due on any future Capital Transactions related to the actual percentage ownership interest transferred in that Capital Transaction.

(f) For example only, if there are two Interest Owners A and B, and A sells his 49% interest in 2027, and B sells his 51% interest in 2030:

(1) City would be entitled to payment of the proportional Net Surplus related to Owner A's sale in 2027. Thereafter, that 49% would no longer be subject to any obligations for any future Capital Transactions under this Third Amendment, but Owner B's 51% would still be subject to the obligation.

(2) City would be entitled to payment of the proportional Net Surplus related to Owner B's sale in 2030. Thereafter, neither that 51% nor the other 49% would be subject to any obligations for future Capital Transactions under this Third Amendment.

For additional clarification, in the event Owner B were to sell 25% of his ownership interest in 2030 and the remaining 26% in 2035, both amounts would be subject to the obligation.

(g) The City shall receive the following amounts upon consummation of any Capital Transaction, based on the time period in which such transaction occurs:

(i) Fifty percent (50%) of any Net Surplus within one (1) year after the Effective Date;

(ii) Forty percent (40%) of any Net Surplus more than one (1) year but less than two (2) years after the Effective Date;

(iii) Thirty percent (30%) of any Net Surplus more than two (2) years but less than three (3) years after the Effective Date; and

(iv) Ten percent (10%) of any Net Surplus more than three years after the Effective Date."

12. Tenant Covenants. Notwithstanding any other provision of the Controlling Agreements to the contrary, the following shall apply:

b) Section 14.2 will be amended in its entirety to read as follows:

"If Tenant or any of its owners or representatives approach any City employee or official other than the City Manager in an attempt to renegotiate any term or condition of the Controlling Agreements at any time during the Term, City shall have the right to purchase the Grizzlies, or identify a potential buyer of the Grizzlies, at fair market value. City must exercise such right, if at all, within one hundred twenty (120) days after such attempt to renegotiate the Controlling Agreements, with the closing to occur no later than one hundred eighty (180) days after such right is exercised. Fair market value

shall be determined by an independent valuation expert that possesses substantial experience valuing sports franchises/assets as selected by City subject to the approval of Tenant, which approval shall not be unreasonably withheld.”

13. Prior Agreement Confirmed. Except as otherwise expressly modified by the terms of this Third Amendment and the First Amendment and the Second Amendment, all remaining terms of the Agreement remain in effect and are hereby ratified and affirmed; provided, however, that the Related Letter Agreement referenced in the First Amendment shall be of no force or effect; and, provided further, that any term or condition of any agreement (other than the Controlling Agreements, including without limitation any agreements referenced by the Controlling Agreements) that conflicts with any term or condition of this Third Amendment, the First Amendment, the Second Amendment, or the Agreement, shall have no force or effect; and, provided further, that the definition of Ancillary Agreements referenced in the Agreement is revised as follows:

“Ancillary Agreements” means (a) the Management Agreement by and between Fresno Baseball Club, LLC, as Owner and Professional Sports Catering, LLC, as Manager dated January 31, 2017, and (b) that certain Sponsorship Marketing Rights and Stadium Naming Rights Agreement, dated August 19, 2006, by and between CEDA and Tenant, all as the same may be amended from time to time.

The Parties agree to prepare, execute and deliver a Second Amended and Restated Stadium Sublease Agreement between City and Buyer prior to or concurrent with the Closing. The Parties further agree to prepare, execute and deliver on or before December 31, 2017, an Operating Agreement between City and Buyer to address use of the Stadium.

14. Partial Invalidity. If any section of this Third Amendment or its application to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Third Amendment or the application of such section to persons or circumstances, other than those as to which it is so determined invalid or enforceable to any extent, shall not be affected thereby, and each section hereof shall be valid and enforceable to the fullest extent permitted by law.
15. Time of the Essence. Time is of the essence with respect to all sections of this Third Amendment.
16. Successors and Assigns. This Third Amendment and all terms and conditions contained herein shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties.
17. Counterparts. This Third Amendment may be executed in counterparts, each of which when executed and delivered will be deemed and original, and all of which together will constitute one instrument.
18. Governing Law. This Third Amendment and the actions of the Parties shall in all respects be governed by, and construed in accordance with, the Laws of the State of California notwithstanding any choice-of-law or conflict-of-law principle

that might dictate a different governing law. In the event of any proceedings regarding this Third Amendment, the Parties agree that the venue shall be the state courts of California located in Fresno County or any Federal court whose jurisdiction includes Fresno County, California.

IN WITNESS WHEREOF, the Parties have executed this Third Amendment to Amended and Restated Stadium Sublease Agreement effective as of the Effective Date.

CITY OF FRESNO,
a municipal corporation

FRESNO BASEBALL CLUB, LLC

By: _____

By: _____

Its: _____

Name: Christopher P. Cummings

Title: President

Date: _____

Dated: _____, 2017

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Laurie Avedisian-Favini, Assistant

Dated: _____, 2017

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

Dated: _____, 2017

Schedule 1
Summary of Timing for Certain Obligations under Third Amendment

This Schedule 1 to this Third Amendment summarizes for the Parties the timing for performance of certain of their obligations at the time of the Closing and thereafter under the Amended and Restated Stadium Sublease Agreement, as amended ("Lease"), but the terms of this Third Amendment shall govern in the event of any conflict with this Schedule 1:

1. On the Closing Date:
 - a. Seller and Buyer shall provide a notice of the Closing to the City (Section 1 of this Third Amendment).
 - b. This Third Amendment shall become effective according to its terms (Section 1).
 - c. Seller shall pay all outstanding and unpaid amounts due and owing by Tenant to the City at the time of the Closing, and City shall sign a payoff statement acknowledging that all such sums have been paid in full.
 - d. Buyer shall sign and deliver to the City an acknowledgment that Buyer is assuming the Tenant's obligations under the Lease, but Buyer shall have no responsibility for amounts due and owing to the City prior to the Closing (Section 1 of this Third Amendment).
 - e. The following parties shall make the Initial Deposits in the City/Tenant Contributions Account of the Capital Reserve Fund (Section 8(b)(ii)b. of this Third Amendment):
 - i. City: \$3 million
 - ii. Seller: \$1.25 million
 - iii. Buyer: \$1 million
 - f. Buyer shall provide the City with a \$1 million irrevocable letter of credit (Section 9(b) of this Third Amendment).
 - g. City and Buyer shall execute and deliver the Non-Relocation Agreement.
2. On the Closing Date and thereafter:
 - a. Buyer shall pay the Fixed Rental obligations which become due and payable after the Closing Date (Section 3 of this Third Amendment).
 - b. APES Fees collected from events occurring on and after the Closing Date shall be deposited in the APES Account of the Capital Reserve Fund (Section 4 of this Third Amendment).
 - c. Buyer shall provide the City with the audit, but only for the period from and after the Closing Date to December 31, 2017 (Section 6 of this Third Amendment).

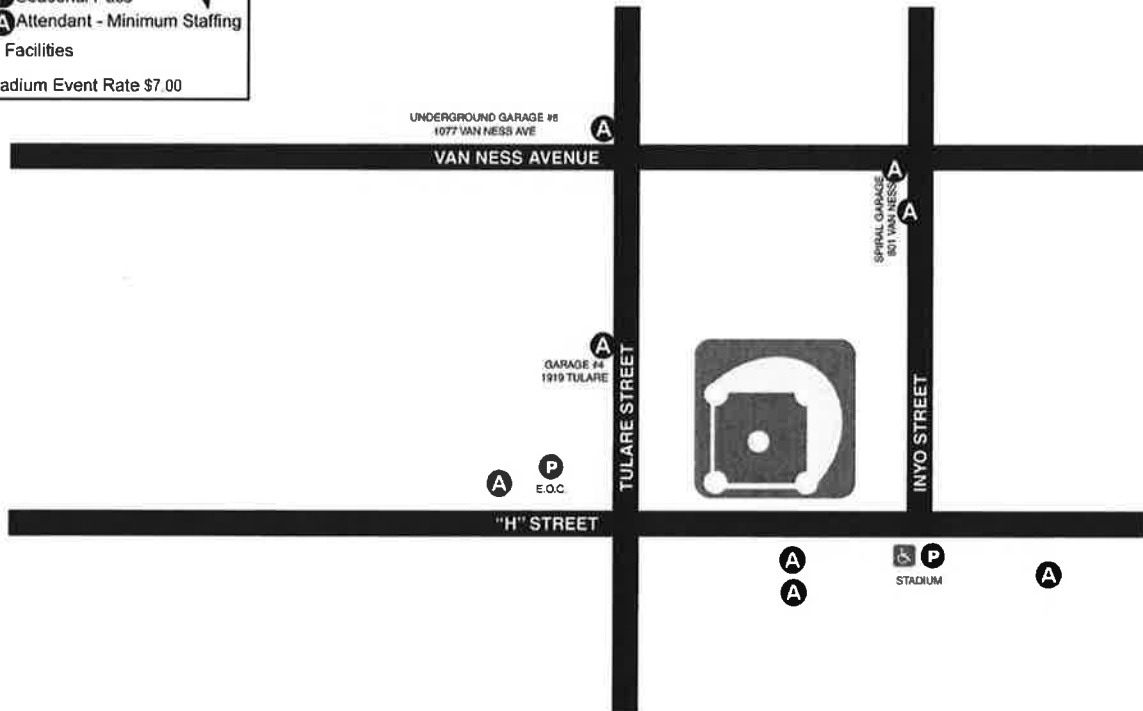
- d. The Use of the Stadium provisions shall apply (Section 7 of this Third Amendment).
 - e. The City and Tenant shall agree to an Annual Stadium Capital Expense Plan for 2018 (Section 8(b) of this Third Amendment).
3. On January 1, 2018, and thereafter:
- a. Tenant's Community Engagement Commitment shall commence (Section 2 of this Third Amendment).
4. On January 1, 2020, and thereafter:
- a. The Annual Contributions of the City and Tenant into the City/Tenant Contributions Account of the Capital Reserve Fund shall commence, starting at \$300,000 from each party and escalating at 2% annually thereafter (Section 8(b)(ii)a. of this Third Amendment).

Schedule 2
Map of City Spaces

Downtown
FRESNO

 Handicap
 Seasonal Pass
 Attendant - Minimum Staffing
Facilities

Stadium Event Rate \$7.00



Schedule 3
NON-RELOCATION AGREEMENT

This Non-Relocation Agreement (Agreement) is entered into this ____ day of _____ 2017, by _____ (Club) and the City of Fresno, a municipal corporation (City) and shall remain in effect until December 31, 2036, (Term) to coincide with expiration of the Amended and Restated Stadium Sublease Agreement dated January 1, 2010, as amended (Sublease). All capitalized terms not defined herein shall have the meaning set forth in the Sublease.

1. During the Term, Club shall cause all home games of its AAA professional baseball team (Team) to be played at the City-owned stadium located at 1800 Tulare St, Fresno, CA (Stadium), except as follows (Permitted Exceptions): (a) loss of Facilities under Article VII of the Sublease; (b) written consent of the City; (c) Force Majeure Event; (d) material breach of the Sublease by the City which remains uncured after thirty (30) days written notice; or (e) requirements, decisions or actions by Pacific Coast League, Minor League Baseball, or Major League Baseball (the "Baseball Authorities"), provided Club has maintained its membership in the PCL in good standing, made all reasonable good faith efforts to comply with this Agreement, caused its home games to be played only at the Stadium, and not voted in favor of or volunteer the Team for contraction. The foregoing restrictive covenant is absolute, unconditional and irrevocable.

2. Club shall not apply for or seek approval from the Baseball Authorities for the relocation of the Team, or engage in negotiations or enter into any agreements with any third parties regarding the relocation of the Team earlier than January 1, 2032, but may do so only during the final five years of the Sublease term with any such relocation to take effect after expiration of the Sublease term. The Permitted Exceptions shall be applicable to this Section 2.

3. The occurrence of the following during the Term shall be deemed an Event of Default: (a) Club materially breaches this Agreement or (b) Club materially breaches this Agreement and Club admits in writing its inability to pay debts generally as they become due, makes an assignment for the benefit of creditors, applies for or consents to the appointment of a receiver, trustee or liquidator of Club or substantially all of Club's assets, files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization under any bankruptcy or insolvency law.

4. The parties acknowledge and agree the City has and will incur significant obligations to make the Stadium available for home games and there exists no adequate remedy at law to enforce this Agreement against Club, and equitable relief by way of a decree of specific performance or an injunction (such as a prohibitory injunction barring the Team from relocating or playing its home games at any location other than the Stadium in violation of this Agreement or a mandatory injunction requiring the Team to play its home games at the Stadium in accordance with this Agreement) is the only appropriate remedy for the enforcement of this Agreement, notwithstanding the provisions for liquidated damages set forth below. The rights of the City to equitable relief (including specific performance and injunctive relief) as a result of an Event of Default 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, reorganization or insolvency proceeding involving Club. The parties agree this Agreement is a stand-alone agreement and is not an "executory contract" as contemplated by Section 365 of the United States Bankruptcy Code.

5. Upon an Event of Default for which the City is denied the equitable relief set forth in Section 4, the payment of liquidated damages therefore by Club is the next most appropriate remedy. Therefore, if Club has committed an Event of Default and the equitable relief described in Section 4 will not be granted, or is otherwise unavailable, to the City, the parties agree actual compensatory damages to the City would be difficult to determine, and the parties therefore agree Club shall pay liquidated damages to the City in the amount set forth on Schedule 1, with one-half of the amount due within 90 days after an Event of Default, and the remaining balance due within 180 days after the Event of Default; provided, however, that: (i) Club is entitled to a refund of that portion of liquidated damages in the amount of any revenues received by City generated by the Stadium or related parking LESS any unreimbursed expenses incurred by the City which are directly related to such revenues, up to the amount of the City's debt service for the 2001 B and 2017A Bonds for the applicable year during the Term in the amount set forth in Schedule 1 (as subject to audit by the Club), such payments to be made by the City to the Club on or before April 30th each year for the prior calendar year; and (ii) upon payment of liquidated damages, City waives any right to collect, seek or claim any additional damages under the Sublease or otherwise, including, without limitation, lost or prospective profits, or for any other special, indirect, incidental, consequential, exemplary or punitive damages.

CITY OF FRESNO,
a municipal corporation

By: _____

Its: _____

Dated: _____, 2017

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

Dated: _____, 2017

CLUB

By: _____

Its: _____

Dated: _____, 2017

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Deputy

Dated: _____, 2017

LAF:ns [75301ns/laf]

Schedule 1
To Non-Relocation Agreement

<u>Liquidated Damages and Annual Debt Service</u>		
<u>Date of Event of Default</u>	<u>Liquidated Damages</u>	<u>Annual Debt Service</u>
01.01.17 – 12.31.17	\$44,481,383	820,232.83
01.01.18 - 12.31.18	\$41,412,738	3,101,145.75
01.01.19 - 12.31.19	\$38,344,093	3,150,931.75
01.01.20 - 12.31.20	\$35,275,448	3,144,252.75
01.01.21 - 12.31.21	\$32,206,803	3,142,012.25
01.01.22 - 12.31.22	\$29,138,158	3,138,738.75
01.01.23 - 12.31.23	\$26,069,513	3,129,307.25
01.01.24 - 12.31.24	\$23,000,868	3,122,843.75
01.01.25 - 12.31.25	\$19,932,223	3,118,666.00
01.01.26 - 12.31.26	\$16,863,578	3,116,665.00
01.01.27 - 12.31.27	\$13,794,933	3,106,489.25
01.01.28 - 12.31.28	\$10,726,288	3,107,537.25
01.01.29 - 12.31.29	\$7,657,643	3,099,207.50
01.01.30 - 12.31.30	\$4,588,998	3,091,097.75
01.01.31 - 12.31.31	\$1,520,353	3,092,255.00