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## FRESNO CITY COUNCIL



### Supplemental Information Packet Agenda Related Item(s) – ID#18-1562 (1-P)

**Contents of Supplement: Amended and Restated Stadium Sublease Agreement**

#### Item(s)

Approve the 2018 Amended and Restated Stadium Sublease Agreement with Fresno Sports & Events, 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.

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**2018**

**AMENDED AND RESTATED**

**STADIUM SUBLEASE AGREEMENT**

**BETWEEN**

**THE CITY OF FRESNO**

**AND**

**FRESNO SPORTS & EVENTS, LLC**

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## EXHIBITS

- Exhibit A Legal Description
- Exhibit B City Spaces
- Exhibit C Capital Improvements
- Exhibit D Non-Relocation Agreement

**2018 AMENDED AND RESTATED**  
**STADIUM SUBLEASE AGREEMENT**

This 2018 AMENDED AND RESTATED STADIUM SUBLEASE AGREEMENT, (this "Agreement") is made to be effective the \_\_\_ day of \_\_\_\_\_, 2018 (the "Effective Date"), notwithstanding the date of execution, by and between the City of Fresno, a California municipal corporation (the "City") and Fresno Sports & Events, LLC, a Delaware limited liability company ("Tenant").

**RECITALS**

WHEREAS, Tenant is the owner of the Triple A Minor League Baseball franchise granted by The National Association of Professional Baseball Leagues, Inc., (the "NAPBL"), currently operating as the Fresno Grizzlies baseball club (the "Grizzlies") and the corresponding interests in the Pacific Coast League of Professional Baseball Clubs, Inc. (the "PCL").

WHEREAS, the City's Joint Powers Financing Authority ("JPFA") is the owner of that certain Minor League Baseball stadium located in Fresno, California on the real property described on Exhibit A attached hereto and incorporated herein, together with all the improvements located thereon (the "Stadium").

WHEREAS, the City leases the Stadium from the JPFA and has the authority to sublease the Stadium. WHEREAS, the City, and Tenant's predecessor in interest are parties to that certain Agreement Between the City of Fresno, Fresno Grizzlies, Inc., and Fresno Diamond Group, LLC Concerning Construction and Sublease of a Multipurpose Stadium, dated January 3, 2001 (the "Original Agreement"), by and among the City, Fresno Grizzlies, Inc., a California corporation ("FG Inc."), and Fresno Diamond Group, LLC, a California limited liability company ("FDG LLC"), as the same was amended by that certain First Amendment To Agreement Concerning Construction and Sublease of a Multi-Purpose Stadium, dated December 26, 2001, by and among the City, FG Inc., and FDG LLC (the "First Amendment"), and as further amended by that certain Stadium Sublease Amendment and Global Assignment and Assumption Agreement with Consent of City and Redevelopment Agency dated as of October 13, 2005 by and among FG Inc., FDG LLC, Fresno Grizzlies Holding, Inc., an Arizona corporation formerly known as the Tucson Toros, Inc. ("TTI"), and Tenant (the "Second Amendment"), and as further amended by that certain Third Amendment to Stadium Sublease, entered into on or about December 29, 2008, by and between the City, Tenant, FG Inc., and TTI (the "Third Amendment"), all of which provide for the sublease and demise of the Stadium and certain other matters. The Original Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment, is referred to herein as the "Original Sublease."

WHEREAS, the City and Tenant's predecessor in interest are parties to that certain Amended and Restated Stadium Sublease Agreement between the City of Fresno and Fresno Baseball Club, LLC, dated January 1, 2010 ("2010 Agreement"), as amended by the First Amendment to Amended and Restated Stadium Sublease dated November 1, 2014 ("First Amendment to 2010 Agreement"), the Second Amendment to

Amended and Restated Stadium Sublease Agreement dated December 17, 2015 ("Second Amendment to 2010 Agreement"), and the Third Amendment to Amended and Restated Stadium Sublease Agreement dated effective as of the Closing Date of the sale of the Grizzlies from Fresno Baseball Club, LLC, to Fresno Sports & Events, LLC ("Third Amendment to 2010 Agreement"). The 2010 Agreement, as amended by the First Amendment to 2010 Agreement, Second Amendment to 2010 Agreement, and Third Amendment to 2010 Agreement, is referred to herein as the "2010 Sublease."

WHEREAS, the City, the former Redevelopment Agency of the City of Fresno (the "Redevelopment Agency"), and the Fresno Joint Powers Financing Authority have made significant investments in the Stadium.

WHEREAS, Tenant is a valued community asset which contributes to the quality of life in Fresno.

NOW THEREFORE, in consideration of the foregoing, the terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree that as of the Effective Date, the Original Sublease shall be amended and restated in its entirety as follows:

## **ARTICLE I DEFINITIONS**

"Accountant" has the meaning given to that term in Section 2.6(a).

"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 Fresno Baseball Club, LLC, all as the same may be amended from time to time.

"APES Fee" has the meaning given to that term in Section 2.4.

"Available Date" has the meaning given to that term in Section 3.3(a).

"Available Luxury Suites" means the Luxury Suites excluding the Tenant's Luxury Suite and the Exclusive Luxury Suites.

"Baseball Season" means each annual baseball season during the Term running from March 31 through September 15 of the applicable calendar year and includes all pre-season games, regular season games and Playoff Games.

"Bond Parties" has the meaning given to that term in Section 17.10(b).

"Bond Transaction" has the meaning given to that term in Section 17.10(a).

"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.

"Capital Reserve Fund" means the capital repair, replacement and improvement reserve fund established, funded and controlled by the City and Tenant to help fund Capital Improvements.

"Capital Transaction" has the meaning given to that term in Section 10.3(a).

"CEDA" means the Chukchansi Economic Development Authority, an unincorporated enterprise of the Picayune Rancheria of the Chukchansi Indians.

"City" means the City of Fresno, a Municipal Corporation.

"City Default" has the meaning given to that term in Section 8.2(a).

"City Spaces" means those parking spaces owned and/or controlled by the City and depicted on Exhibit B attached hereto and incorporated herein.

"City Sponsored Events" has the meaning given to that term in Section 3.3(a).

"Concession" means any and all food and beverage items sold anywhere at the Stadium, except in the Grizzlies Shop, including but not limited to Luxury Suites, by Tenant or in accordance with any Concessions Agreement.

"Concessions Agreement" means the Management Agreement by and between Fresno Baseball Club, LLC, and Professional Sports Catering, LLC, dated January 31, 2017, or any other agreement for the management and operation of Concessions that may be entered into by Tenant from time to time during the term of this Agreement.

"CPI" means the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (1982-84=100), Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the United States Department of Labor. If publication of the CPI is discontinued or published less frequently, then the City and Tenant shall adopt a mutually agreeable substitute index published by a United States governmental body or recognized United States financial institution that reasonably reflects and monitors consumer prices in the United States.

"CPI Adjustment Factor" means a fraction, the numerator of which is the CPI available on January 1 of the calendar year for which the adjustment is being made and the denominator of which is the CPI on January 1 of the immediately preceding year.

"EBITDA" means earnings before interest, taxes, depreciation, and amortization.

"Effective Date" has the meaning given to that term in the introductory paragraph of this Agreement.

"Exclusive Luxury Suites" means those Luxury Suites as to which licensees of Tenant have personally decorated, furnished, or otherwise upgraded the interior of a Luxury Suite.

"Exclusive Team Areas" means that portion of the Stadium consisting of the Tenant's administrative offices, secured storage areas, field maintenance shed, the Grizzlies Shop, Tenant's Luxury Suite and the Exclusive Luxury Suites.

"Fixed Rental" has the meaning given to that term in Section 2.3.

"Force Majeure Event" has the meaning given to that term in Section 17.1.

"GAAP" means generally accepted accounting principles.

"Grizzlies" has the meaning given to that term in the Recitals.

"Grizzlies Shop" means a shop within the Stadium that features, but is not limited to, apparel bearing baseball team logos, baseball souvenirs and baseball memorabilia, and that, in Tenant's sole discretion, may be kept open for business on a year-round basis, even when there are no Stadium events in progress.

"Gross Revenues" means any and all revenues related, directly or indirectly, to the Grizzlies, a Tenant Sponsored Event or the operation of the Stadium that are received by Tenant (and any of Tenant's affiliated entities), including trade/barter, and that have been historically accounted for as revenues (or reported as "total income") in Tenant's or the Grizzlies' financial statements as provided to the City in connection with the negotiation of this Agreement. Gross revenues shall not include investments by the City pursuant to Section 4.4(a).

"Interest Owner" has the meaning given to that term in Section 10.3(a).

"Luxury Suites" means the enclosed spectator suites located on the luxury suite level of the Stadium.

"Major City Sponsored Event" means a City Sponsored Event featuring a national touring act, a major sporting event (excluding baseball games of MiLB or Major League Baseball), or a major political or other convention.

"MiLB" means Minor League Baseball.

"NAPBL" has the meaning given to that term in the Recitals.

"Net Surplus" has the meaning given to that term in Section 10.3(a).

"Novelties" means goods sold by the City or Tenant other than food or beverages.

"Operations Agreement" has the meaning given to that term in Section 3.3(e).

"Party" or "Parties" means a party or the parties, respectively, to this Agreement.

"PCL" has the meaning given to that term in the Recitals.

"Playoff Game" means any professional baseball game scheduled by the PCL or the NAPBL and played by the Grizzlies after the last regular season game during a Baseball Season to determine the ultimate champion of Triple A baseball for the applicable Baseball Season.

"Protected Team Areas" means the Stadium's locker rooms, clubhouses, ticket offices, press box control room, Concession storage and administrative spaces, on-site parking facilities, Scoreboard and Available Luxury Suites.

"Redevelopment Agency" has the meaning given to that term in the Recitals.

"Reimbursable Expenses" has the meaning given to that term in Section 4.4(a).

"Rent" means all Fixed Rental, APES Fees, payments required to be made by Tenant pursuant to Sections 2.3 and 2.4, and any and all other amounts payable by Tenant to the City hereunder.



"Stadium" has the meaning given to that term in the Recitals.

"Soccer Sublease" has the meaning given to that term in Section 3.2(a).

"Structural Elements" has the meaning given to that term in Section 4.2(a).

"Tenant" means Fresno Sports & Events, LLC, a Delaware corporation.

"Tenant Default" has the meaning given to that term in Section 8.1(a).

"Tenant Sponsored Events" has the meaning given to that term in Section 3.1.

"Tenant's Luxury Suite" means one of the Luxury Suites located in the Stadium as may from time to time be designated by Tenant as such.

"Term" has the meaning given to that term in Section 2.1.

"Total Net Investment" has the meaning given to that term in Section 10.3(b).

## **ARTICLE II TERM; CONDITION OF STADIUM; RENT**

2.1 Term. Subject to the terms and conditions hereof, City hereby subleases the Stadium to Tenant for a period commencing on the Effective Date and ending on December 31, 2036 (the "Term"). The Stadium shall be returned to the City at the expiration of the Term in the same condition existing at the Effective Date, approved alterations and additions, reasonable wear and tear, damage from casualty (subject to Section 7.2), and maintenance and repairs that are the responsibility of the City under this Agreement excepted.

2.2 Condition of the Stadium. Tenant acknowledges that Tenant and Tenant's predecessors in interest, have been using and occupying the Stadium since May 1, 2002. Tenant has had the opportunity to inspect the Stadium and has determined the same is in good condition and repair. Tenant further acknowledges that the Stadium is being delivered to Tenant and leased by Tenant "AS IS", "WHERE IS" and "WITH ALL FAULTS," and the City makes no representation or warranty of any kind, expressed or implied, with respect to the condition of the Stadium. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY HEREBY DISCLAIMS, AND TENANT WAIVES THE BENEFIT OF, ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF HABITABILITY, FITNESS OR SUITABILITY FOR PURPOSE. Nothing contained in this Section 2.2 shall be deemed to eliminate or modify the City's obligations to perform maintenance, repair and replacement of the Stadium as required by this Agreement, including those obligations under the Original Sublease arising prior to the Effective Date.

2.3 Fixed Rental. In consideration of the use and occupancy of the Stadium by Tenant, Tenant hereby agrees to pay to the City 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 (the "Fixed Rental").

2.4 APES Fee. In addition to the Fixed Rental, Tenant shall impose and collect an Arts, Parks, Entertainment and Sports Fee (the "APES Fee") of \$1.00 for

each paid ticket (including trade/barter) for all Tenant Sponsored Events and shall remit the same to the City on a quarterly basis throughout the Term, which remittances shall be made no later than fifteen (15) days after the end of each calendar quarter. The APES Fees 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. City has the right to conduct its own independent audit if deemed necessary or prudent by City. Notwithstanding anything to the contrary in this Section 2.4, so long as Tenant is not in default of its obligations hereunder, the City waives its right to collect from Tenant and Tenant shall not impose APES Fees on full season ticket packages or mini-ticket packages that include ten (10) or more regular season games. 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. The APES Fee rate at any given time shall be reflected in the City's Master Fee Schedule.

#### 2.5 Profit-Sharing.

(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.

#### 2.6 Audit.

(a) City Manager may request an annual audit by Tenant for any or all years during the Term, if in City Manager's reasonable discretion an audit is advisable, for example, but not by way of limitation, if Tenant fails to pay Rent when due or fails to meet other obligations under this Agreement. When requested by City Manager,

Tenant shall have an audit of its financial statements completed by an independent, licensed California (i) certified public accountant or (ii) accounting firm (hereinafter "Accountant"). The audit shall be completed no later than ninety (90) days following request by the City Manager. Tenant shall timely provide to the City a copy of the audited annual financial statements, including the Accountant's unqualified opinion letter, within five (5) business days after its receipt by Tenant. In addition, Tenant shall provide the City with (I) any other report, letter or correspondence prepared by the Accountant as a result of the audit, including without limitation management recommendation letters, internal control comments or similar correspondence; and (II) copies of any representation letters submitted to Accountant by Tenant's management or Tenant's legal counsel in connection with the audit. The City, its agents and designees, shall, at its sole discretion, have the right to inspect Accountant's audit and supporting work papers. The City's inspection shall be conducted at Tenant's or Accountant's offices upon fifteen (15) days prior written notification to Tenant. Tenant and/or Accountant shall provide suitable space for the City's inspection and knowledgeable personnel to assist in the inspection. Tenant and Accountant shall respond to any and all reasonable requests for additional information, inquiries and questions that might arise out of the City's inspection. If Tenant fails to comply with the foregoing, the City shall have the right to conduct such audit at Tenant's expense and Tenant shall cooperate with the City in the performance of such audit.

(b) Records of Tenant pertaining to any obligations of Tenant hereunder shall be kept in accordance with GAAP and shall be available to the City or its authorized representatives upon request during regular business hours throughout the Term and for a period of three (3) years thereafter. In addition, all books, documents, papers, and records of Tenant pertaining to any obligation of Tenant pursuant to this Agreement shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If an audit by the City discloses underpayment in excess of one (1%) percent of any monies due the City hereunder, reasonable audit costs shall be reimbursable by Tenant to the City. This Subsection 2.6(b) shall survive expiration or termination of this Agreement.

(c) 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 any audit during 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.

### **ARTICLE III USE OF THE STADIUM; REVENUE**

#### **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, 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, including, without limitation, for professional soccer games ("Other Tenant Events"). All events and use under this Section 3.1(a) shall be scheduled pursuant to Section 3.2 below.

(b) Tenant 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, Tenant 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 Tenant shall pay a penalty ("Penalty") to City if Tenant 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 Tenant 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 Tenant 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 Tenant 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 Tenant 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 Tenant 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 Tenant will be responsible for the payment of these Donated Costs. Tenant 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. Tenant will provide to City, on a bi-annual basis, a report that details the Community Events held at the Stadium. The reports will be due each March 1 for the period of July through December, and each September 1 for the period of January through June. Tenant will retain the revenue generated, if any, from all Community Events.

### 3.2 Scheduling.

(a) The Parties acknowledge that within the framework established by this Section 3.2 and Section 3.3 below, the scheduling of events at the Stadium must be a cooperative endeavor and the City and Tenant each agree to recognize and, in good faith, attempt to accommodate the legitimate interests of the other with respect to the

scheduling of events. 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 has entered into an agreement with Fresno Football Club, LLC, effective October 4, 2017, to allow home professional soccer matches for the United Soccer League and United Soccer League Premier Development League to be played at the Stadium for the 2018 and 2019 season ("Soccer Sublease").

(b) Prior to each calendar year during the Term, Tenant shall provide the City with a schedule of all the dates on which Tenant intends to use the Stadium for a Tenant Sponsored Event during such calendar year and a range of dates to be reserved for potential Playoff Games, which range shall be reasonable in light of the recent playoff schedules for the league in which the Grizzlies then play. If Tenant fails to so schedule a Tenant Sponsored Event or reserve dates for potential Playoff Games, Tenant shall lose scheduling priority for such event and such dates; provided, however, that Tenant may schedule a Tenant Sponsored Event at any time during such calendar year if the date requested by Tenant is not a date on which the City is scheduled to hold, or otherwise intends to hold, a City Sponsored Event.

(c) It is understood by the Parties that the PCL publishes the final baseball schedule for each calendar year during the month of December of the preceding calendar year. Tenant shall distribute to the City copies of all drafts of such schedules and the final versions of the same within five (5) business days after their publication by the PCL. Likewise, Tenant shall distribute schedules for all sports teams using the Stadium, including without limitation, the soccer teams using the Stadium pursuant to the Soccer Sublease, to City within five (5) business days after distribution by the league in which the team plays.

(d) By January 31 of each calendar year during the Term, the City shall provide Tenant with a schedule of all the dates on which the City intends to use the Stadium for an Exclusive City Sponsored Event during such calendar year, but which may not be on a date on which Tenant has scheduled a Tenant Sponsored Event.

(e) Other Tenant Events and Other City Events (subject to Section 3.3 below) shall be scheduled on a first-come first-served basis.

(f) An "Available Date" shall be any date other than a date on which (i) Tenant has scheduled a Tenant Sponsored Event or (ii) the City has scheduled an Exclusive City Sponsored Event.

### 3.3 City Sponsored Events.

(a) The City shall have the right to use the Stadium, excluding the Exclusive Team Areas, for five (5) events per calendar year (which is inclusive of Major City Sponsored Events) on any date other than a date on which Tenant has scheduled a Tenant Sponsored Event (the "Exclusive City Sponsored Events"). In addition, the City shall have the right to use the Stadium, excluding the Exclusive Team Areas, on

any Available Date ("Other City Events"). The Exclusive City Sponsored Events and the Other City Sponsored Events shall constitute "City Sponsored Events" for purposes of this Agreement.

(b) Subject to the terms and conditions of Section 3.2 above and this Section 3.3, the City shall book City Sponsored Events according to policies and procedures established by the City, in its sole discretion; provided, however, that the City shall notify Tenant in writing of the City's intent to hold a City Sponsored Event at the Stadium, which notice shall be given not less than thirty (30) days prior to the proposed City Sponsored Event (or as soon as reasonably possible thereafter) and shall include a full and complete written description of that event. With respect to conflicts and potential conflicts between certain City Sponsored Events and Grizzlies home games, the following provisions shall apply:

(i) If the City desires to schedule a Major City Sponsored Event prior to the PCL's publishing of the final schedule for a given Baseball Season and such Major City Sponsored Event is to be held during such Baseball Season, the City shall use commercially reasonable efforts to avoid scheduling such event on a date that the PCL intends to schedule a Grizzlies home game per the current draft schedule, if any. In the event the City desires to schedule a Major City Sponsored Event on a date that, pursuant to the most current draft schedule provided to the City, is not slated for a Grizzlies home game, then such date shall be deemed an "Available Date" and the City may schedule such event accordingly. On the other hand, if the City, despite its commercially reasonable efforts to schedule a given Major City Sponsored Event on a date not slated for a Grizzlies home game, intends to schedule such event on a date that, pursuant to the most current draft schedule provided to the City, is slated for a Grizzlies home game, then upon Tenant's receipt of written notice of the City's desire to hold such event, Tenant shall, as an accommodation to the City, cooperate and coordinate with the City and the PCL in a timely and good faith manner and use commercially reasonable efforts to make the Stadium available for such Major City Sponsored Event; provided, however, the City acknowledges that, despite Tenant's efforts to so accommodate the City, the relevant game may not be rescheduled, in which case the City shall not have the right to use the Stadium on such date. Notwithstanding the foregoing, the City shall not schedule more than three (3) days' worth of Major City Sponsored Events during any given Baseball Season prior to the release of the final schedule therefor.

(ii) If the City desires to schedule a Major City Sponsored Event (A) during a given Baseball Season and the PCL has already published the final schedule for such Baseball Season, and (B) such Major City Sponsored Event is slated for a date that Tenant has properly scheduled as a Tenant Sponsored Event for a Grizzlies home game, then upon Tenant's receipt of written notice of the City's desire to hold such event, Tenant shall, as an accommodation to the City, cooperate and coordinate with the City and the PCL in a timely and good faith manner and use commercially reasonable efforts to make the Stadium available for such Major City Sponsored Event; provided, however, the City acknowledges that, despite Tenant's efforts to so accommodate the City, the relevant game might not be rescheduled (whether due to the PCL withholding approval or otherwise), in which case the City shall

not have the right to use the Stadium on such date. Notwithstanding the foregoing, the City shall not schedule more than three (3) days' worth of Major City Sponsored Events on days scheduled for a Grizzlies home game pursuant to a final published schedule during any given Baseball Season.

(c) During any City Sponsored Event, as between the City and Tenant, the City shall be entitled to sell food, beverages and Novelties, whether through the use of the Concession facilities and services or otherwise; provided, however, the provision of Concessions at the Stadium is subject to the terms of the Concessions Agreement. In the event the Concessions Agreement expires or is otherwise terminated, the City and Tenant shall work together in good faith to jointly negotiate any and all subsequent Concessions Agreements. Without limiting the generality of the foregoing, Tenant shall not enter into any new Concessions Agreement that purports to affect the provision of Concessions or related services during City Sponsored Events, without the City's prior written consent.

(d) For any City Sponsored Event, Tenant shall deliver the Stadium to the City in the condition required by Sections 4.1(b) and 4.2(b) and upon the completion of such City Sponsored Event, the City shall redeliver the Stadium to Tenant in the same condition, reasonable wear and tear excepted; provided, however, after each City Sponsored Event, the City shall be responsible for the timely restoration of the baseball playing field to the official standards of the PCL and the NAPBL as from time to time existing. In order to facilitate the maximum use of the Stadium by the City, while also protecting the baseball playing field for the use of Tenant, the City and Tenant, shall from time to time as appropriate during the Term, cooperate and confer in good faith to develop and modify procedures and standards to be implemented by the City for City Sponsored Events to ensure that the baseball playing field is adequately protected during the preparation for, and the holding of, City Sponsored Events so that the baseball field meets, or can be timely restored to, the official standards of the PCL and the NAPBL, as from time to time existing, after each City Sponsored Event. Notwithstanding anything to the contrary contained in this Section 3.3, with regard to any given City Sponsored Event, the City shall not be required to return the Stadium to Tenant, including, without limitation, the baseball field, in any better condition than it was originally delivered to the City prior to such event.

(e) The City shall be entitled to the "rent-free" use of the Stadium for City Sponsored Events; provided, however, that for any City Sponsored Event, the City shall be solely responsible for all costs and expenses associated with such event that are over and above the costs to maintain and operate the Stadium had there been no such City Sponsored Event and no Tenant Sponsored Event during that time. Matters relating to (i) the costs and expenses attributable to City Sponsored Events, and (ii) liability for property damage or personal injury during City Sponsored Events, shall be more fully addressed in the operations agreement to be negotiated between, and agreed to by, the Team and the City Manager, with approval as to form by the City Attorney's Office, pertaining to use of the Stadium ("Operations Agreement").

(f) For certain City Sponsored Events, the City may, at the City's option, require Tenant to manage and operate the Stadium during such event (including, without limitation, the management and operation of the Concession

facilities), subject to the obligation of the City to pay the costs related thereto as provided in Section 3.3(f). Matters relating to (i) determining those City Sponsored Events for which the City may require Tenant to manage and operate and the Stadium, (ii) the standards for, and extent of, such management and operation, (iii) notice procedures related to the same, and (iv) liability for property damage or personal injury during Tenant's management and operation, shall be more fully addressed in the Operations Agreement.

(g) During any City Sponsored Event and for a reasonable amount of time prior to and after such event, the City shall have the right to access the Protected Team Areas, which access shall be subject to the terms and conditions of the Operations Agreement.

### 3.4 Revenue.

(a) Except as otherwise provided herein, 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 Exhibit B for current map of City Spaces). City Spaces may be altered from time to time, in City's sole discretion, as parking lots may be sold or new parking lots acquired. Since the parking lot designated as "E.O.C." is not controlled by City, revenues from that lot may not be available for the entire Term. City will endeavor to find replacement parking for any parking spaces that may be lost during the Term.

(b) In addition to the revenues set forth above, Tenant shall be entitled to receive parking revenues, net of any City incurred expenses from utilities, parking controllers and other necessary operating costs, generated from the City Spaces during any given Tenant Sponsored Event ("Tenant Net Parking Revenues"). Tenant shall have the right to establish the parking rates for such spaces during such events. In the event that the City's expenses exceed revenues, Tenant shall be liable to the City for the amount by which expenses exceed revenues, which amount shall be added to, and payable with, Rent. Notwithstanding the foregoing, if Tenant has failed to pay any amounts due under this Agreement, whether owed to the City or a third party, City may elect to either use the Tenant Net Parking Revenues to pay all or a portion of such amounts owed, or hold the Tenant Net Parking Revenues until all amounts owed are paid in full. Throughout the Term the City and Tenant shall cooperate and confer in good faith to maintain the City's parking-related expenses consistent with historical practice and industry standards, subject to the terms and conditions of any existing parking management or operation agreements related to the City Spaces. City shall submit Tenant Net Parking Revenues to Tenant by electronic transfer on a monthly basis, with Tenant Net Parking Revenues received for a particular month payable to Tenant by the end of the following calendar month. By way of example, Tenant Net Parking Revenues collected in April will be paid to Tenant by May 31. The City acknowledges and agrees that Tenant may collect parking revenues from season ticket holders, which parking revenues shall be promptly reported to the City as received and



shall be properly accounted for in any calculations made pursuant to the foregoing sentence. In the event Tenant wishes to hold free parking night promotions during a Tenant Sponsored Event, Tenant shall provide the City with at least ten (10) days prior notice thereof and Tenant and the City shall cooperate and confer in good faith to minimize the City's parking-related expenses during any such promotion.

(c) Subject to Article XII, the City shall be entitled to receive all revenues generated at the Stadium as a result of any City Sponsored Event, including, without limitation, all revenues from ticket sales, parking, Concessions, Novelties, clothing, and game day or temporary advertising. The City shall have the right to establish the parking rates for City Sponsored Events.

#### **ARTICLE IV OPERATION; MAINTENANCE; IMPROVEMENTS**

##### **4.1 Operation of the Stadium.**

(a) Except as otherwise provided in this Agreement, Tenant shall be responsible for all aspects of the operation of the Stadium and shall be responsible for any and all operating expenses, routine maintenance and repairs of the Stadium. Except as otherwise provided in this Agreement, Tenant shall contract and pay for all utilities and services to the Stadium during the Term, including, without limitation:

- (i) Electricity, gas, water, waste disposal and cable television;
- (ii) Cleaning;
- (iii) Grounds keeping;
- (iv) Security;
- (v) Pest control;
- (vi) Ticket operations, ticket sellers and ticket takers;
- (vii) Ushers;
- (viii) Parking attendants and related expenses for parking on site;
- (ix) Operating the scoreboard and the public address system, including announcers;
- (x) Arranging for all communications and broadcasting;
- (xi) Operating all Concession and catering facilities; and
- (xii) Operating all facilities at which Novelties are sold.

(b) Tenant shall operate the Stadium (i) in a safe, clean, attractive, and first class manner comparable to that of other Triple A MiLB facilities of similar design not more than five (5) years older or five (5) years newer than the Stadium, reasonable wear and tear excepted, (ii) in a manner that complies with all applicable requirements imposed by MiLB and all other entities and agencies with jurisdiction over Tenant or Stadium, and (iii) in a manner consistent with the original design and construction program of the Stadium.

(c) Except as otherwise set forth in this Agreement, Tenant shall be responsible for all costs of operating the Stadium.

(d) Tenant may operate the Stadium itself or hire subcontractors to perform all or any portion of the operation of the Stadium in compliance with all applicable laws (including all applicable bonding and licensing requirements).

(e) Tenant agrees to do all things reasonably necessary to conduct its affairs and carry on its business and operations in such a manner as to comply in all material respects with any and all applicable laws of the United States and the State of California and to duly observe and conform to all valid orders, regulations, or requirements of any governmental authority relative to the conduct of its business and the ownership and/or operation of the Stadium. Tenant shall further comply with any and all provisions and conditions of any development entitlements issued by the City.

(f) Tenant, or the concessionaire(s) for the Stadium, as appropriate, shall obtain all necessary licenses and permits for operation of the Stadium, including, but not limited to, licenses and permits to sell food, beverages and alcohol. Tenant shall also be solely responsible for obtaining all necessary permits, licenses or similar authorizations required for the operation of the Grizzlies.

(g) Tenant shall provide and pay for adequate security guards and qualified persons to render first aid at each Tenant Sponsored Event. Notwithstanding the foregoing, the City shall supply police services inside and outside of the Stadium, without charge to Tenant, to the extent determined necessary by the City's Police Chief or authorized representative. It will be within the sole discretion of the City's Police Chief or authorized representative to determine what level of police services, if any, are necessary for any given Tenant Sponsored Event.

#### 4.2 Maintenance, Repair and Replacements.

(a) The City shall be responsible for the timely maintenance, repair and replacement of all Structural Elements of the Stadium during the Term. "Structural Elements" shall mean each of following: (i) the roof; (ii) all bearing walls and members; (iii) the foundation; (iv) all permanently paved surfaces; (v) all pipes, wires and optics located within the bearing walls or under the permanently paved surfaces; and (vi) such other elements of the Stadium that are commonly understood by an architect to be structural elements. In the event there is a disagreement between Tenant and the City as to what constitutes "other elements" coming within the provisions of subpart (vi) above, the determination shall be made by an architect with sports stadium construction experience reasonably acceptable to the City and Tenant and the party whose position is not upheld shall pay the costs of engaging such architect.

(b) Except for maintenance, repairs and replacements that are the obligation of the City under this Agreement, Tenant shall be responsible for the timely maintenance, repair and replacement of all elements of the Stadium that are not Structural Elements, which maintenance, repair and replacement shall be performed (i) in a safe, clean, attractive, and first class manner comparable to that of other Triple A MiLB facilities of similar design not more than five (5) years older or five (5) years newer than the Stadium, ordinary wear and tear excepted, (ii) in a manner that complies with

all applicable requirements imposed by MiLB and all other entities and agencies with jurisdiction over Tenant or the Stadium, and (iii) in a manner consistent with the original design and construction program of the Stadium.

(c) Both parties shall have the right to access and use the Stadium throughout the Term in order to maintain, repair and replace the Stadium as required of them under this Agreement; provided that such activities do not unreasonably interfere with the permitted use of the Stadium by the other party.

#### 4.3 Evaluation of Operation, Maintenance, Repair and Replacement.

(a) Tenant and the City shall meet at least once prior to December 31 of each year during the Term to confer on general operation, maintenance, repair and replacement standards for the Stadium and Tenant's and the City's performance related thereto. At any such meeting the City may require Tenant, or Tenant may require the City, to modify their respective policies and/or approaches to operating, maintaining, repairing and replacing the Stadium in order to meet such standards. 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"). An initial list of capital repairs and improvements projected for the remainder of the Term is attached as Exhibit C ("Projected Capital Improvements"), however, the Parties acknowledge and agree that this list is not exhaustive and additional improvements and repairs may be required as agreed upon by City and Tenant. The Projected Capital Improvements shall be updated at least every five years during the Term. If improvements or repairs become necessary during the season, City and Tenant shall cooperate to complete such improvements or repairs.

(b) The City shall conduct a yearly walk through of the Stadium, including the Exclusive Team Areas and the Protected Team Areas, to be conducted during the month of February in each year of the Term. Tenant will be notified of the time that the City intends to conduct the walk through and will be permitted to attend the City's inspection of the Stadium. In addition to the City's annual February inspection, the City shall be afforded access to the Stadium at all reasonable times throughout the Term for similar inspections. If the City determines that Tenant has not operated, maintained and repaired the Stadium to the standards set forth in this Article IV, the City shall have the right to notify Tenant in writing setting forth specifically the manner in which the City believes Tenant failed to meet such standards and describing the actions to be taken to cure such failure(s).

(c) If Tenant and the City disagree on the operation, maintenance, repair and replacement standards and/or whether Tenant or the City has met the same, and such dispute remains unresolved for fifteen (15) days after notice of such dispute is given to both Parties, either Party may compel arbitration concerning such dispute in accordance with the following:

(i) The Party initiating arbitration shall promptly serve a notice on the other Party, advising of its desire for arbitration and shall request the American Arbitration Association to submit a list of proposed arbitrators who are generally familiar with the subject-matter involved in the dispute and from which an arbitrator shall be

selected by the following method: each Party shall strike any names from the list deemed unacceptable, number the remaining names in order of preference, and return the list to the American Arbitration Association. The American Arbitration Association shall then invite an arbitrator to serve from among those names remaining on the list, in the designated order of mutual preference.

(ii) The arbitrator shall follow the Commercial Arbitration Rules of the American Arbitration Association. The ruling of the arbitrator shall be final and binding upon the Parties. Either Party shall have the right to secure an injunction in any court of competent jurisdiction to enforce any final order of the arbitrator. Costs of the Parties shall be paid as determined by the arbitrator.

(iii) No arbitrator shall have the power to add to, subtract from, or modify any of the terms of this Agreement.

#### 4.4 Capital Improvements.

(a) 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:

i. Annual Contributions. \$300,000 annually, on or before October 1, by each of City and Tenant commencing in 2020 (collectively, the "Annual Contributions"). The Annual Contributions shall escalate at 2% annually.

ii. 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 Tenant depositing \$1 million ("Tenant 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 Tenant Initial Deposit may be used only for Non-Structural Capital Expenses.

(b) 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.

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

ii. 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.

(c) The City Manager, or designee, shall have the authority to approve Capital Improvements to the extent funds are available in the Capital Reserve Fund or will be paid by Tenant. Unless otherwise agreed to by the Parties, Tenant shall contract for agreed-upon Non-Structural Elements and send invoices to the City for reimbursement. Tenant and its contractors shall cause the Non-Structural Elements to be performed as a "public work" in accordance with the California Labor Code, to the extent applicable. City shall contract 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 \$10 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."

4.5 Improvements by Tenant. Tenant shall make no permanent additions or improvements to the Stadium without the prior written approval of the City, which approval shall not be unreasonably withheld.

4.6 Title.

(a) Tenant acknowledges and agrees that the City owns and has title to all improvements that are now or hereafter permanently fixed to the Stadium, notwithstanding the fact that the same may have been, or may be, as appropriate, acquired, financed, installed or placed in the Stadium by Tenant. Without limiting the generality of the foregoing, Tenant shall cause title to the Scoreboard to pass to the City, free from all liens, claims, interests or any other encumbrances, at the time of its installation in the Stadium.

(b) Except as otherwise provided herein, title to all trade fixtures, furnishings, equipment, and other personal property in the Stadium funded or acquired by Tenant, its predecessors, assignees or concessionaires shall remain with Tenant (collectively "Tenant's Personal Property"). Tenant, its assignees or concessionaires will be entitled to remove Tenant's Personal Property from time to time during and upon expiration of the Term. Any damage to the Stadium caused by Tenant's removal of Tenant's Personal Property shall be promptly repaired by Tenant at its sole cost and expense.

## **ARTICLE V TAXES**

### **5.1 Tenant Payment of Taxes.**

(a) Tenant shall be responsible for the payment of any and all applicable ad valorem and possessory interest taxes legally imposed, assessed or levied against Tenant's property and for the payment of all transaction taxes, privilege taxes, sales taxes, food and beverage taxes, and other similar excise taxes legally imposed, assessed or levied against Tenant on account of ticket, Concession and similar sales or transactions related to Tenant's use or occupancy of the Stadium or any Tenant Sponsored Event.

(b) Tenant shall make all tax payments referred to in Section 5.1(a) to the appropriate governmental agencies prior to delinquency. Tenant shall send a copy of each of Tenant's tax returns and proof of payment of all its taxes to the City within five (5) days after filing Tenant's tax return. Tenant shall indemnify the City for any liability the City incurs on account of Tenant's failure to meet Tenant's tax liabilities, which indemnification will survive the termination of this Agreement.

(c) Notification to Tenant pursuant to California Revenue and Taxation Code section 107.6: a possessory interest subject to property taxation may be created by entering into this Agreement and Tenant may be subject to the payment of property taxes levied on such interest.

## **ARTICLE VI INSURANCE; INDEMNITY**

6.1 Insurance. Throughout the life of this Agreement, Tenant shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

(a) **COMMERCIAL GENERAL LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, entertainment device coverage for the merry go round, liquor liability (the responsibility for such coverage may be assigned to Tenant's vendor) and contractual liability (including, without limitation, indemnity obligations under this Agreement) with limits of liability of not less than the following;

\$5,000,000 per occurrence for bodily injury and property damage, including liquor liability

\$5,000,000 per occurrence/aggregate for personal and advertising injury

\$300,000 damage to premises rented to you

\$5,000,000 products and completed operations aggregate

\$6,000,000 general aggregate

**LIQUOR LIABILITY INSURANCE** for alcoholic beverages that are to be sold, served or furnished, Liquor Liability coverage is required with limits of liability of not less than:

\$1,000,000 per occurrence;

\$4,000,000 aggregate for bodily injury and property damage;

(b) **COMMERCIAL AUTOMOBILE LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non owned automobiles or other licensed vehicles (Code 1 Any Auto) with limits of liability of not less than \$5,000,000 per accident for bodily injury and property damage.

(c) **WORKERS' COMPENSATION** insurance as required under the California Labor Code.

(d) **EMPLOYERS' LIABILITY** insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(e) **COMMERCIAL PROPERTY** insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CP 10 30 (Cause of Loss – Special Form), with limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of the Stadium with no coinsurance penalty provisions. Such insurance shall include coverage for business income, including "rental value", in an amount equal to the two (2) years of Tenant's annual Rent. Coverage for business income, including "rental value," shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CP 00 30. City of Fresno shall be a named insured under this policy and further the policy will be endorsed to provide that the City of Fresno is named a Loss Payee on this policy.

(f) COMMERCIAL CRIME insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Crime and Fidelity Form CR 00 20 with limits of insurance of not less than \$500,000.

In the event Tenant purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

City will provide the Commercial Property insurance required by subsection (e) under the City's Property insurance policy that will meet all the requirements as stated above at the full (100%) replacement cost and Tenant shall reimburse City the actual cost based the current insurance rate. This rate will adjust July 1 of each year based upon the City's annual renewal premium. Tenant shall remit to City payment of the premium due for such Commercial Property insurance within ten days of receipt of invoice from City. If the rate for Commercial Property insurance through the City increases by more than 10%, Tenant may opt instead to purchase insurance that meets the requirements outlined in subsection (e) by providing written notice to City, no later than July 31 of a given year.

Tenant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder including the Commercial Property insurance if insured under the City's policy and Tenant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. Notwithstanding the foregoing, the City shall be responsible for the payment of any deductibles that are payable due to a claim against Tenant's commercial property insurance which claim relates to a loss resulting from a City Sponsored Event.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to the City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Tenant shall furnish the City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during this Agreement, Tenant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability, Liquor Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City, its officers, officials, agents, employees and volunteers as an additional insured. All such policy(ies) of insurance shall provide or be endorsed to provide that Tenant's insurance shall be primary and no contribution shall be required of the City. The Crime insurance policies shall be endorsed to name the City as a loss payee. The General Liability, Liquor Liability, Automobile Liability and Workers' Compensation and Employer's Liability insurance policy shall contain a waiver of subrogation as to the City, its officers, officials, agents, employees and volunteers. The insurance required herein shall contain no



special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents and volunteers.

Tenant shall furnish the City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to the City's execution of this Agreement. Upon request of the City, Tenant shall immediately furnish the City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City hereunder shall in any way relieve Tenant of its responsibilities under this Agreement. The phrase "fail" to maintain any required insurance" shall include, without limitation, notification received by the City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Tenant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Tenant, its principals, officers, agents, employees, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

If Tenant should contract any work on the Stadium or subcontract any of its obligations under this Agreement, Tenant shall require each consultant, contractor, subcontractor and vendor to provide indemnification coverage (a) as indicated below and insurance protection in favor of the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the consultants', contractors' and subcontractors' certificates and endorsements shall be on file with Tenant and the City prior to the commencement of any work by the consultant, contractor or subcontractor.

## 6.2 Indemnity.

(a) To the furthest extent allowed by law, Tenant shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by the City, Tenant or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of: (i) the Tenant's occupancy, use, operation, maintenance and repair of the Stadium; and/or (ii) the performance of this Agreement.

(b) Should Tenant contract any work on the Stadium or subcontract any of its obligations under this Agreement, Tenant shall require each consultant, contractor, subcontractor and vendor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph and name the City as an additional insured with primary and noncontributory coverage.

(c) To the furthest extent allowed by law, the City shall indemnify, hold harmless and defend Tenant and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by Tenant, the City or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the City's use of the Stadium. Tenant agrees that this Agreement shall in no way act to abrogate or waive any immunities available to CITY under the Tort Claims Act of the State of California.

(d) The Parties' obligations contained in this Section 6.3 shall survive expiration or termination of this Agreement.

## **ARTICLE VII LOSS OF FACILITIES**

### **7.1 Condemnation.**

(a) If all of the Stadium or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings, this Agreement shall automatically terminate on the earlier to occur of (i) the date on which title to the Stadium vests in the condemning authority; or (ii) the date on which Tenant is dispossessed of the Stadium.

(b) If a portion of the Stadium or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and such taking materially affects Tenant's ability to utilize the Stadium, Tenant shall have the right to terminate this Agreement effective as of the earlier to occur of (i) the date on which title to the condemned portion of the Stadium vests in the condemning authority; or (ii) the date on which Tenant is dispossessed of the portion of the Stadium, by giving written notice to the City within sixty (60) days after Tenant's receipt of notice of the partial condemnation.

(c) If a portion of the Stadium or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and Tenant does not terminate this Agreement pursuant to the terms and conditions of Section 7.1(b) above: (i) this Agreement shall be deemed terminated with respect to only the condemned portion of the Stadium or use thereof; (ii) Tenant's Rent obligations shall be equitably reduced, as determined by the Parties in good faith, taking into account Tenant's prior use of the condemned portion of the Stadium and the potential of such portion to generate revenue for Tenant based upon attendance over the previous three (3) year period; and (iii) the City shall, at its sole cost and expense, promptly make any

repairs and restoration that Tenant deems reasonably necessary as a result of such condemnation.

(d) Each Party shall have the right to seek, at its sole cost and expense, any award to which it might be entitled as a result of any condemnation of all or any portion of the Stadium or the use thereof. Neither Party shall have any rights to any award made to the other.

(e) If all or a portion of the Stadium or the use thereof is temporarily condemned, this Agreement shall remain in full force and effect, but Tenant's Rent obligations shall be equitably reduced, as determined by the Parties in good faith, taking into account Tenant's prior use of the condemned portion of the Stadium and the potential of such portion to generate revenue for Tenant based upon attendance over the previous three (3) year period.

#### 7.2 Damage to the Stadium.

(a) If the Stadium or any portion thereof is damaged or destroyed by fire or any other casualty, then neither Party shall have the right to terminate this Agreement and the City shall promptly employ its commercially reasonable efforts to promptly restore and repair the Stadium to a condition substantially similar to that prior to such damage or destruction and the Term shall be extended by the period of restoration and repair. To that end, the City shall use all insurance proceeds available for such purposes and Tenant shall assign any applicable proceeds to the City. The restoration and repair details shall be undertaken in the same manner involved in the original construction of the Stadium.

(b) Notwithstanding Section 7.2(a), the City's obligation to restore and repair the Stadium shall not exceed the amount of insurance proceeds made available to the City. Furthermore, if the Stadium is damaged in a material manner within the last five (5) years of the Term, the City shall have the option, in the City's sole and absolute discretion, to restore and repair the Stadium as provided in Section 7.2(a) or to terminate this Agreement effective as of the date of such damage by giving written notice to Tenant within sixty (60) days after the date the City received notice of such damage.

(c) During any period that the Stadium is totally unusable by Tenant, the Rent shall abate so long as the rental interruption insurance required by Section 6.1(e) has been maintained and the City receives the proceeds from such insurance. If only a portion of the Stadium is rendered unusable by the damage or destruction, the Rent shall be equitably reduced, as determined by the Parties in good faith, taking into account Tenant's prior use of the condemned portion of the Stadium and the potential of such portion to generate revenue for Tenant based upon attendance over the previous three (3) year period.

(d) In the event the Stadium or any portion thereof is damaged or destroyed by fire or any other casualty and such damage or destruction (i) causes the Stadium to be unusable by Tenant for Grizzlies' home games, and (ii) such unusable condition cannot be remedied within twenty-four (24) months after the date of the damage or destruction (as reasonably determined by the City's construction

consultants), then, at Tenant's request, the City shall cause the City Council to consider and make a recommendation on a potential mutual termination of this Agreement and Tenant's occupancy of the Stadium. Nothing contained in this Section 7.2(d) shall be deemed to give Tenant any rights to terminate this Agreement.

## **ARTICLE VIII DEFAULTS AND REMEDIES**

### **8.1 Default by Tenant.**

(a) An event of default by Tenant (a "Tenant Default") shall be deemed to have occurred under this Agreement if:

(i) Tenant fails to make any payment of Fixed Rental as it falls due and which failure is not cured within three (3) days after written notice to Tenant of such failure;

(ii) Tenant fails to make any payment of Rent other than Fixed Rental, or any other payment due under this Agreement, as it falls due and which failure is not cured within ten (10) days after written notice to Tenant of such failure;

(iii) Tenant fails to observe or to perform any obligation, condition or covenant on its part to be performed or observed in accordance with this Agreement and such failure remains uncured for more than thirty (30) days after Tenant's receipt of written notice of such failure from the City (or such longer period as may be reasonably necessary to effect such cure, if such cure cannot be effected within such thirty (30) days period using reasonable efforts);

(iv) Tenant's interest in and to the Stadium or this Agreement is taken by process of law directed against Tenant, or is subject to attachment by any creditor or claimant of Tenant, and such attachment is not discharged or disposed of within thirty (30) days after the levy thereof;

(v) Tenant 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 Tenant or substantially all of Tenant's assets; files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization under any bankruptcy or insolvency laws; or files an answer admitting the material allegations of a petition filed against Tenant in any bankruptcy, reorganization or insolvency proceedings;

(vi) A court enters an order, judgment or decree, without the application, approval or consent of Tenant, approving a petition seeking reorganization of Tenant under any bankruptcy or insolvency law; appointing a receiver, trustee or liquidator for Tenant or substantially all of Tenant's assets; or adjudicating Tenant as bankrupt or insolvent, and such order, judgment or decree is not vacated, stayed or set aside within forty-five (45) days after its date of entry;

(vii) Tenant loses any rights, licenses or other interest in the Grizzlies franchise due to its negligence, willful misconduct or material violation of PCL rules or the rules of the Office of the Commissioner of Baseball; and/or

(viii) Tenant fails to observe or perform any obligation or covenant on its part to be performed or observed under any Ancillary Agreement, debt obligation or other material contract to which it is a party and any such default is not cured within any applicable notice or grace period.

(b) Upon the occurrence of a Tenant Default, the City shall be entitled to seek any rights and remedies available to it in law, or at equity including, without limitation, the right to: (i) seek monetary damages, including interest on the unpaid Rent at the maximum legal per annum rate (which interest shall for purposes of Section 8.1(a) begin to accrue without regard to the thirty (30) day grace period); (ii) terminate this Agreement; (iii) exercise the City's self-help remedy set forth in Section 8.1(c); (iv) proceed against the security provided by Tenant pursuant to Article IX hereof; and (v) declare a default by Tenant under any of the Ancillary Agreements to which the City and Tenant are parties and pursue the City's remedies thereunder.

(c) Upon the occurrence of a Tenant Default pursuant to Section 8.1(a)(iii), the City may, at its sole option and without obligation, elect to perform Tenant's unsatisfied obligation(s) for and on behalf of Tenant. Notwithstanding the foregoing, if during Tenant's thirty (30) day cure period, Tenant gives notice to the City that its failure to perform its obligation(s) is caused by a Force Majeure Event or that the cure of such failure cannot reasonably be completed within such period, then the City shall not perform such obligation during the continuation of such Force Majeure Event or extended cure period, as the case may be, and for so long thereafter as Tenant continues diligently to prosecute such cure or the resolution of such Force Majeure Event; provided, however, that the City shall not be required to so forbear if Tenant's failure to perform poses a reasonably perceived threat to public health, safety or welfare. If the City performs any obligations of Tenant as provided in this Section 8.1(c): (i) Tenant shall reimburse the City within thirty (30) business days following demand, the sum so paid, or the reasonable expense incurred by the City in performing such obligation, together with interest thereon at the maximum legal per annum rate if such payment is not made within such period, computed from the date of the City's demand until payment is made, or the City may, in its sole and absolute discretion, elect to offset/reduce any payments otherwise due to Tenant from the City by such amounts; and (ii) the City shall use due diligence with respect thereto and as long as it uses such care, the City shall have no liability to Tenant by reason of inconvenience, annoyance, interruption or injury to the business of Tenant resulting therefrom.

(d) If the City should terminate this Agreement in accordance with Section 8.1(b), Tenant shall assign to the City any and all right, title and interest in any contracts entered into by Tenant for supplies, services, concessionaires, or other similar agreements necessary for the daily operation of the Stadium. Tenant shall require in all such contracts that if the City terminates this Agreement in accordance with Section 8.1, Tenant shall have the right to assign the contract and any interest therein to the City.

## 8.2 Default by the City.

(a) An event of default by the City (a "City Default") shall be deemed to have occurred under this Agreement if the City fails to perform or observe any obligation or condition on its part to be performed or observed in accordance with this Agreement

that relates to Tenant's right to use and operate the Stadium and such failure remains uncured for more than thirty (30) days after the City's receipt of written notice of such failure from Tenant (or such longer period as may be reasonably required to effect such cure if such cure cannot be effected within such thirty (30) day period using reasonable efforts).

(b) Upon the occurrence of a City Default, Tenant shall be entitled to seek all rights and remedies available to it at law, or in equity, including, but not limited to, the right to: (i) seek monetary damages; (ii) terminate this Agreement; and (iii) cure such default on behalf of the City and bill the City for all costs incurred by Tenant to affect such cure.

8.3 Remedies Cumulative. Except as expressly limited in this Article VIII, the remedies described herein are cumulative and are not intended to be exclusive of any other remedies to which the Parties may be entitled at law or in equity. The failure of a Party to (a) insist in any one or more instances upon the strict performance or observance of any of the obligations or conditions of this Agreement by the other Party; or (b) exercise any remedy contained herein for any nonperformance or nonobservance of any obligation or condition by the other Party shall not be considered a waiver of such Party's rights to later insist upon performance or observance or to exercise its remedies. Additionally, the exercise or commencement of the exercise of any right or remedy by either Party shall not preclude the simultaneous or later exercise of any or all other rights and remedies available to such Party.

#### **ARTICLE IX SECURITY FOR TENANT'S PERFORMANCE**

9.1 Non-Relocation Agreement. Concurrent with the Closing, Tenant and City shall execute and deliver a Non-Relocation Agreement ("NRA") in the form attached as Exhibit D."

9.2 Letter of Credit. Prior to the Effective Date of this Agreement, Tenant 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 on February 16, 2023, as long as Tenant is not then in default under this Agreement or the Ancillary Agreements.

#### **ARTICLE X SALE OF TEAM SHARES OR ASSETS**

10.1 Sale of Ownership Interests. The owners of membership interests in Tenant may sell their ownership interests at any time without the prior approval of the City; provided, however, if any such sale, in the aggregate, is of a controlling interest in Tenant, then the selling owner must obtain the written approval of the City prior to such sale, which approval shall not be unreasonably withheld. No transfer of ownership interests in Tenant shall affect the enforceability of this Agreement and upon any sale or other transfer of Tenant, or any controlling interest therein, the new owner(s) must assume any and all obligations of Tenant under this Agreement.

10.2 Sale of Assets. Tenant may not sell or otherwise transfer all or substantially all of its assets (including the franchise) to another entity without (a) the

prior written approval of the City (which approval shall not be unreasonably withheld), the PCL and the Office of the Commissioner of Baseball, and (b) the acceptance of an assignment and assumption of this Agreement by such transferee; provided, however, that the Parties expressly agree that the transfer of Tenant's assets shall in no way entitle the transferee to avoid performance of any term hereof, including but not limited to the obligation of the Grizzlies to play their home games in the Stadium as required by Article XIV hereof. Notwithstanding the foregoing, Tenant shall structure any sale or other transfer of Tenant as a sale of ownership interests (stock) in Tenant, or a merger or other similar transaction involving Tenant pursuant to which the surviving entity continues to be obligated to perform under this Agreement so as not to trigger the termination right set forth in paragraph 11 of the Sponsorship, Marketing Rights and Stadium Naming Rights Agreement dated August 19, 2006 between CEDA and Tenant. For any sale or other transfer of Tenant (whether structured as a stock sale or asset sale), Tenant shall make reasonable efforts to sell to local ownership interests if possible.

### 10.3 Capital Transactions.

(a) Upon the sale or transfer by: (i) Tenant 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 Tenant or in any Owner (in either case, an "Interest Owner") of its ownership interest in Tenant 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 Tenant 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 Tenant.

(e) 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 if on or before February 16, 2019;

(ii) Forty percent (40%) of any Net Surplus between February 17, 2019, and February 16, 2020;

(iii) Thirty percent (30%) of any Net Surplus between February 17, 2020, and February 16, 2021; and

(iv) Ten percent (10%) of any Net Surplus between February 17, 2021 and expiration of the Term.

10.4 Tenant's Right to Terminate Agreement. Tenant shall have no further obligations under this Agreement, including future Fixed Rental payments, upon the occurrence of any of the following:

(a) A Major League Baseball franchise is located in the Fresno County area and Tenant is therefore prohibited from continuing a MiLB franchise in Fresno County. In such an event, Tenant shall pay to the City twenty percent (20%) of any net award paid to Tenant as a result thereof, less the City's proportionate share of reasonable expenses incurred by Tenant in collecting the award, or the then present value of the remaining payments of Fixed Rental discounted at a prime rate of interest charged by Bank of America, N.A. at the time of the award of the major league franchise, whichever is less;

(b) The obligations under this Agreement are assumed by another entity upon a transfer of the franchise as provided in Section 10.2 above, or

(c) The PCL, or any other league in which Tenant is a member, ceases operations; provided Tenant shall make good faith efforts to continue to play professional baseball at the Stadium, in which case this Agreement shall remain in effect.

## **ARTICLE XI ASSIGNMENT AND SUBLETTING**

11.1 Assignment. This Agreement may not be assigned by Tenant except as part of the sale of the assets of Tenant as provided in Section 10.2 and only with the prior written approval of the City, which approval shall not be unreasonably withheld.

11.2 Sublease. Tenant shall obtain the approval of the City, not to be unreasonably delayed or withheld, of the sub-sublease of any areas of the Stadium, by way of example and not limitation, restaurants and related retail facilities. City has approved the Soccer Sublease.



**ARTICLE XII  
NAMING AND ADVERTISING RIGHTS**

12.1 Naming Rights. Tenant has the exclusive right to name, or contract with a naming sponsor for, all or any part of the Stadium, from time to time during the Term and to receive all revenues throughout the Term from such naming rights. Any such names shall be submitted to City for its prior review and approval, which shall not be unreasonably withheld.

12.2 Tenant Sponsorships and Advertising. Subject to the rights of the City set forth in Section 12.3, Tenant has the exclusive right to (a) all sponsorship revenues of every kind throughout the Term, and (b) sell, and retain all revenues throughout the Term from advertising, promotional, and pouring rights of every kind in, on or about the Stadium, and to install permanent signage and displays related thereto in, on and about the Stadium, including without limitation, Stadium outfield fences and walls, structures erected above fences and walls, scoreboards, video boards, pedestrian walkway and concourse areas outside and inside the Stadium and concession and catering areas. Notwithstanding the foregoing, any and all such signage and displays shall comply with all rules, policies, resolutions, ordinances and other governmental actions of general application to the City of Fresno related to signage and advertising.

12.3 City Advertising Rights.

(a) The City shall receive, at no cost to the City, the following advertising rights for the purpose of promoting City entities, City events or other civic-oriented events as selected by the City, from time to time, in its sole discretion:

(i) certain signage space at the Stadium made available to the City at all times during the Term, including, at a minimum, a four foot (4') by twenty foot (20') banner on the upper section of the Stadium's left field wall;

(ii) a reasonable amount of Scoreboard time during each Tenant Sponsored Event, including, at a minimum, four (4) video clips of no less than thirty (30) seconds each; and

(iii) a reasonable amount of public address announcements during each Tenant Sponsored Event, which amount shall be no less than four (4).

(b) For any City Sponsored Event, the City shall have temporary advertising rights, and shall be entitled to any revenues resulting from such rights; provided, however, that the City's advertising rights shall at all times be subject to any exclusivity agreements entered into by Tenant for the sponsorship of the Grizzlies that provide annual revenue in excess of \$200,000.00 (subject to annual escalation equal to the lesser of three percent (3.0%) or the CPI Adjustment Factor).

(c) The City shall have the right, at its sole cost and expense, to prominently display on fixed signage at the main entrance of the Stadium the following message (or a substantially similar message): "The City of Fresno Welcomes You to Chukchansi Park".

(d) Tenant shall permanently display, in a visible and tasteful manner, "City of Fresno" on the Scoreboard.

12.4 Broadcasting Rights. Subject to the rights of MiLB, Major League Baseball, and Major League Soccer and its affiliates, Tenant has the exclusive right to (a) all broadcasting or reports of all professional baseball games of MiLB or Major League Baseball played at the Stadium during the Term, including without limitation, radio, television, cable and other media broadcasts, whether currently existing or developed during the Term, and (b) all revenues therefrom. Tenant has the right to exercise such right at such times and in such manner as it considers appropriate.

### **ARTICLE XIII CITY RIGHTS**

13.1 City Season Tickets and Luxury Suite. City shall be provided, free of charge, tickets for all seats in a twelve-seat Luxury Suite at the Stadium for all events held at the Stadium during the Term, subject to any agreement to the contrary. The City shall retain its discretion whether to accept or use such tickets to ensure compliance with applicable laws.

### **ARTICLE XIV COVENANTS OF TENANT AND CITY**

14.1 Tenant Covenants. Tenant, and its successors or assigns, covenants that during the Term:

(a) Tenant shall assure the Grizzlies maintain their good standing with the PCL or its successor(s);

(b) Tenant shall assure the Grizzlies conduct its play as a Triple A MiLB baseball team;

(c) Tenant agrees that pricing of tickets and Concessions shall be in amounts so as to encourage and facilitate attendance by families at all Tenant Sponsored Events;

(d) Tenant agrees to make reasonable efforts to initiate a system that will result in a wider distribution of Grizzlies tickets within California;

(e) Tenant shall preserve its corporate or other separate legal existence and all its rights and licenses to the extent necessary or desirable in the operation of its business and affairs to be qualified to do business in the County of Fresno, State of California;

(f) Tenant shall not, and shall not permit any of its affiliates to, create, incur, assume or suffer to exist any lien or other encumbrance on or with respect to any of Tenant's properties or assets (including any right to receive payment), other than those created pursuant to the express terms of an Ancillary Agreement;

(g) Tenant shall not obtain any loans or advances or accept any investment in Tenant from CEDA or any of its departments or affiliates, without the prior written consent of the City;

(h) Tenant shall use its best efforts to host an exhibition game at the Stadium with its Major League Baseball affiliate (the Houston Astros or its successor) each year during the Term;

(i) Tenant shall use its best efforts to host the Triple A MiLB All-Star game at the Stadium within the first five (5) years of the Term and, concurrently with the execution and delivery of this Agreement, shall deliver to the City a letter from the President of the PCL supporting an All-Star game at the Stadium within such time frame;

(j) In the event of the dissolution of the PCL, or in the event of the Tenant's loss of membership therein through no fault of its own, Tenant shall use all reasonable and financially feasible means to obtain membership in another such organization and maintain the status of, or equivalent to, a Triple A MiLB baseball team. If Tenant fails to use all such reasonable and financially feasible means to maintain either its membership in the PCL or its status as a Triple A MiLB baseball team, or if Tenant fails to use all reasonable and financially feasible means to obtain a membership in another such association and a status therein equivalent to a Triple A MiLB baseball team, such failure shall constitute a Tenant Default; and

(k) Tenant shall not discriminate against or segregate any person or group of persons because of race, color, creed, religion, sex, sexual orientation, age, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein subleased, and neither Tenant nor any person claiming under or through Tenant, will establish or permit any such practice of discrimination or segregation in the selection, location, number, use or occupancy of tenants, lessees, subtenants or vendees in the Stadium.

14.2 Renegotiation. If Tenant or any of its owners or representatives approach any City employee or official other than the City Manager, or her/his designee, in an attempt to renegotiate any term or condition of this Agreement 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 the attempt to renegotiate this Agreement, with the closing to occur no later than one hundred eighty (180) after such right is exercised. Fair market value shall be determined by an independent valuation expert that has substantial experience valuing sports franchises/assets as selected by the City subject to the approval of Tenant, which approval shall not be unreasonably withheld.

14.3 Affiliates. During the Term, Tenant must obtain the prior written approval of the City before entering into any transaction with an affiliate of Tenant that involves any payment or provision of goods or services by Tenant in excess of \$25,000.00. Tenant and its affiliates shall maintain separate business operations and financial records with no commingling of funds. Tenant shall cause each of its affiliates with which it transacts business to deliver to the City such affiliates' annual financial statements (which may or may not be audited).

14.4 City Covenants. The City, and its successors or assigns, covenants that during the Term, so long as Tenant is not in default of any of its obligations hereunder or under any Ancillary Agreement:

(a) The City shall not offer any financial incentives to, or assist in establishing or locating, any other professional baseball franchise within Fresno County. Financial incentives shall include, without limitation, cash payments, tax abatements,

transferring interests in real estate or personal property, loans, guarantees, or any other form of financial accommodations; provided, however, that this covenant shall not apply if Tenant receives an award pursuant to Section 10.4(a); and

(b) If the bonds issued by the Fresno Joint Powers Financing Authority related to the Stadium are defeased prior to expiration of the Term, which defeasance does not result from a refinancing, the City shall not issue any additional bonds if such issue would materially alter the terms and conditions of this Agreement.

**ARTICLE XV  
QUIET ENJOYMENT**

The City covenants that, subject to the terms and conditions of this Agreement, Tenant shall peaceably and quietly have, hold and enjoy the Stadium for the Term and any extension of the Term. City represents that there are currently no liens, judgments or claims to the Stadium that will affect Tenant's right to occupy and enjoy the Stadium except that the Stadium is collateral for certain City bonds.

**ARTICLE XVI  
NOTICES**

All notices permitted or required to be made hereunder shall be in writing and delivered by hand, overnight courier or certified mail. Notices shall be deemed given (a) when actually received if delivered by hand; (b) one (1) business day after delivery to an overnight courier if delivered by an overnight courier; or (c) three (3) business days after deposit with the United States Postal Service if delivered by certified mail. All such notices shall be addressed to the appropriate Party as follows:

If to the City:           City Manager  
                                  City of Fresno  
                                  2600 Fresno Street  
                                  Fresno, CA 93721-3602

With a Courtesy Copy to:  
City Attorney  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721-3602

If to Tenant:            President  
                                  Fresno Sports & Events, LLC  
                                  1800 Tulare St.  
                                  Fresno, CA 93721

Either Party may from time to time designate a different address for notices by giving notice to that effect to the other Party in accordance with the terms and conditions of this Article XVI.

## **ARTICLE XVII MISCELLANEOUS**

17.1 Force Majeure. Wherever there is provided in this Agreement a time for the performance of any obligation other than the payment of a sum certain, the time provided therefor shall be extended for as long as and to the extent that delay in compliance with such time limitation is due to a Force Majeure Event. "Force Majeure Event" means any of the following events which prevents a Party from performing any obligation under this Agreement: any act of public enemy, blockade, war, insurrection, civil disturbance, explosion or riot; epidemic; landslide, earthquake, fire, storm, flood, or washout; any act of God, labor strike, lockout or other industrial disturbance, including a strike or lockout by Minor League Baseball players or umpires; title dispute, or other litigation, including the inability to timely obtain judgments in eminent domain or timely obtain possession through eminent domain; governmental restraint such as rules, policies, resolutions, ordinances and other governmental actions of general application to the City of Fresno and not specifically directed to Tenant or the Stadium, action or inaction, either federal, state, county, civil or military, including the adoption of any new law materially affecting either the ability of the Parties to proceed or the costs of proceeding; any initiative or referendum; and failure to obtain any necessary federal, state or county governmental approval.

17.2 Partial Invalidity. If any Section of this Agreement 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 Agreement 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.

17.3 Obligations of the City and Tenant. The obligations and undertakings of the City and Tenant under or in accordance with this Agreement are and shall be the obligations solely of the City and Tenant. Except as otherwise expressly stated herein, no recourse shall be had, whether in contract, in tort or otherwise against any officer, director, employee, agent, member, volunteer or representative of the City or Tenant in his or her individual capacity on account of any obligation or undertaking of or any act or omission by the City or Tenant under or pursuant to this Agreement.

17.4 Time of the Essence. Time is of the essence with respect to all Sections of this Agreement. Accordingly, subject to applicable grace and cure periods provided herein and the terms and conditions of Article VIII above and any other Section of this Agreement to the contrary, the failure of either Party to perform any act strictly within the applicable period specified herein shall entitle the other Party to exercise all rights and remedies contemplated hereby.

17.5 Successors and Assigns. This Agreement and all terms and conditions contained herein shall inure to the benefit and be binding upon the successors and permitted assigns of each of the Parties hereto.

17.6 Entire Agreement; Ancillary Agreements. This Agreement (including all exhibits attached hereto) and the Ancillary Agreements constitute the entire and exclusive agreement between the City and Tenant relating to the Tenant's use of the

Stadium. Each exhibit referenced in this Agreement is by such reference, incorporated and made a part of this Agreement. The Sections of this Agreement shall prevail and supersede any inconsistencies between the Sections of this Agreement and any exhibits attached hereto. This Agreement may not be modified or terminated, nor any of its Sections waived, except by an agreement in writing signed by the Party against whom the enforcement of any such modification, termination or waiver is sought. All prior agreements and understandings relative to the development, use, possession or occupancy of the Stadium by Tenant, other than the Ancillary Agreements, are deemed merged herein or hereby revoked. The execution and delivery of this Agreement is intended to amend and restate, in its entirety, the 2010 Sublease. Except as may be expressly stated herein to the contrary, this Agreement shall not modify or terminate any of the Ancillary Agreements, except that, from and after the Effective Date, any reference in the Ancillary Agreements to the 2010 Sublease, shall be deemed to be a reference to this Agreement.

17.7 Representations. Each Party hereby represents and warrants to the other that it has all necessary right, power and authority to enter into this Agreement. Additionally, each Party represents and warrants that the execution and delivery of this Agreement and the performance and observance of all obligations and conditions to be performed or observed by each Party hereunder have been duly authorized by all necessary action of Tenant and the City. This Agreement, when fully executed and delivered by the City and Tenant shall constitute the legal, valid and binding obligation of the City and Tenant, enforceable in accordance with the terms hereof.

17.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of California located in Fresno County or the U.S. District Court for the Eastern District of California, Fresno Division. All Parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedure prescribed by law.

17.9 Attorney's Fees. If either Party files any action or brings any proceeding against any other Party arising out of this Agreement, or is made a party to any action or proceeding relating to this Agreement brought by any person or entity, then as between the Parties hereto, the prevailing Party shall be entitled to recover as an element of its costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be a party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. A Party not entitled to recover its costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted when calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.

17.10 Subordination of Tenant's Interest.

(a) It is understood by the Parties that the City entered into the Original Sublease in anticipation of financing the construction costs for the Stadium and other related City expenses through a bond transaction (the "Bond Transaction"). Tenant

agrees that any interest created in this Agreement of any kind shall be subordinated and junior to any interest in bondholders, underwriters or other third parties commercially necessary for City to issue municipal bonds. Tenant further agrees to execute and sign any agreement necessary to subordinate any interest Tenant may have under this Agreement for purposes of the Bond Transaction.

(b) City agrees that Tenant's possession of the Stadium shall not be disturbed by bondholders, underwriters, trustees or other third parties ("Bond Parties") related to the Bond Transaction during the Term, and City shall not join Tenant in any action or proceeding for the purpose of terminating this Agreement, except upon the occurrence of a Tenant Default.

(c) If Bond Parties obtain possession of the Stadium, Tenant shall attorn to any rights of the Bond Parties acquired in accordance with the Bond Transaction, be bound to the Bond Parties in accordance with all of the provisions of this Agreement and related documents and agreements for the balance of the Term, and recognize Bond Parties as the City under this Agreement for the unexpired Term. Such attornment shall be effective without Bond Parties being: (i) subject to any offsets or defenses, or otherwise liable, for any prior act or omission of the City; (ii) bound by any amendment, modification, or waiver of any of the provisions of this Agreement, or by any separate agreement between the City and Tenant relating to the Stadium, unless any such action was taken with the prior written consent of the Bond Parties; (iii) liable for the return of any security or other deposit unless the deposit has been paid to the Bond Parties; (iv) bound by any payment of Rent made by Tenant more than one (1) month in advance of the due date; or (v) bound by any option, right of first refusal, or similar right of Tenant granted by the City.

17.11 Confidentiality. Tenant and the City each agree to use commercially reasonable efforts to maintain the confidentiality of any information or materials delivered to them pursuant to this Agreement and designated as confidential by the delivering party (the "Confidential Information"); provided, however, Tenant acknowledges that certain information and materials obtained by the City pursuant to this Agreement may be required to be disclosed to the public or third parties by virtue of the City's status as a public entity. The City shall promptly give Tenant written notice of any request or demand made upon it for inspection, release or disclosure of any Confidential Information of Tenant. In the event of any such request or demand, the City shall use reasonable efforts to take such actions as may be available under Article 2 of Chapter 2 of Division 7 of Title 1 of the California Government Code and Sections 1040 and 1060 of the California Evidence Code, or any successor provisions, to protect against the public disclosure of Tenant's Confidential Information, including an objection to any request or demands to have any of the Confidential Information inspected, used, released or disclosed, or otherwise treated, as a public record. Tenant will cooperate with the City to identify the Confidential Information to be protected and provide such reasonable assistance to the City as it may request. The obligations set forth in this Section 17.11 shall survive the expiration or earlier termination of this Agreement.

17.12 Review by PCL, NAPBL, MiLB and/or MLB. The parties acknowledge and agree that one or more of the PCL, NAPBL, MiLB and the commissioner of Major League Baseball may be required or permitted, pursuant to the Grizzlies' franchise

agreement or related agreements, constitutions, bylaws, rules or regulations, to review and approve this Agreement. To the extent one or more of such parties has the right to approve this Agreement (or any provision thereof), Tenant shall promptly and diligently pursue such approval. In the event any such party exercises or threatens to exercise any right it may have to withhold its approval of this Agreement, then the City and Tenant shall use commercially reasonable to efforts to cooperate in good faith with such party(s) to amend this Agreement as may be necessary to obtain such approval. If, despite the parties' cooperation and commercially reasonable efforts, the parties are not able to amend the Agreement as required to obtain approval from the PCL, NAPBL, MiLB and/or the commissioner of Major League Baseball, as set forth above, then this Agreement shall be annulled, the 2010 Sublease shall be deemed fully reinstated and the rights and obligations of the Parties shall continue thereunder as if this Agreement had never existed.

17.13 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.

**[Signatures and acknowledgements appear on following page]**



IN WITNESS WHEREOF, the Parties have executed this Amended and Restated Sublease Agreement to have effect as of the date first written.

CITY OF FRESNO,  
A California municipal corporation

FRESNO SPORTS & EVENTS, LLC

By \_\_\_\_\_  
Wilma Quan-Schechter, City Manager

By:  \_\_\_\_\_

Name: Michael Baker

Date:

Title: Manager

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

Date: 12/7/18

By:  \_\_\_\_\_ Date 12/11/18  
Laurie Avedisian-Favini  
Assistant City Attorney

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**Exhibit "A"**

**Lease description**

That Real property located in the City of Fresno, County of Fresno, State of California, lying within the "Town of Fresno" as shown on the entitled "Map of the Town of Fresno", recorded June 8, 1876, filed in Book 1, Page 2 of Plats, in the office of the Recorder for said County, more particularly described as follows:

Beginning at the most southerly corner of Block 59, of said Town of Fresno;

Thence, along the southwesterly boundary of said Block 59, North 41 Degrees 40 Minutes West, 11.33 feet;

Thence, North 86 Degrees 40 Minutes West, 16.97 Feet;

Thence, along a line lying parallel with and 12 feet southwesterly of the southwesterly boundary of said Block 59, North 41 Degrees 40 Minutes West, 746.67 feet;

Thence leaving said parallel line, North 39 Degrees 56 Minutes 54 Seconds West, 85.87 feet;

Thence, North 04 Degrees 11 Minutes 32 Seconds East, 13.13 feet to the southwesterly boundary of Block 60 of said Town of Fresno;

Thence, along the southwesterly boundary of said Block 60, North 41 Degrees 40 Minutes West, 5.02 feet to a point from which the northwesterly corner of said Block 60 bears North 41 Degrees 40 Minutes West, 10.00 feet;

Thence, along a line parallel with and 10.00 feet southeasterly of the northwesterly boundary of said Block 60, North 48 Degrees 20 Minutes East, 395.00 feet;

Thence, along a line lying parallel with and 5 feet southwesterly of the southwesterly boundary of said Block 73, South 41 Degrees 40 Minutes East, 112.00 feet;

Thence, along a line parallel with and 3 feet northwesterly of the southeasterly boundary of Lot 28 in said Block 73, North 48 Degrees 20 Minutes East, 12.00 feet;

Thence, along a line lying parallel with the southwesterly boundary of said Block 73, South 41 Degrees 40 Minutes East, 4.00 feet;

Thence, along a line parallel with and 1 foot southeasterly of the southeasterly boundary of Lot 28 in said Block 73, North 48 Degrees 20 Minutes East, 45.00;

Thence, along a line lying parallel with the southwesterly boundary of said Block 73, North 41 Degrees 40 Minutes West, 4.00 feet;

Thence, along a line parallel with and 3 foot northwesterly of the southeasterly boundary of Lot 28 in said Block 73, North 48 Degrees 20 Minutes East, 98.00 feet to the southwesterly boundary of the alley in said Block 73;

Thence, along the southwesterly boundary of said alley and the southwesterly boundary of the alley for Block 74 of said Town of Fresno, South 41 Degrees 40 Minutes East, 758.00 Feet to the most easterly corner of Lot 17, of Block 74 of said Town of Fresno;

Thence, along the southeasterly boundary of said Block 74 and Block 59, South 48 Degrees 20 Minutes West, 550.00 feet to the Point of Beginning.

Containing 470,954 Square Feet/10.81 Acres More or Less.

End Lease Description



Phil Reimer PLS 6391

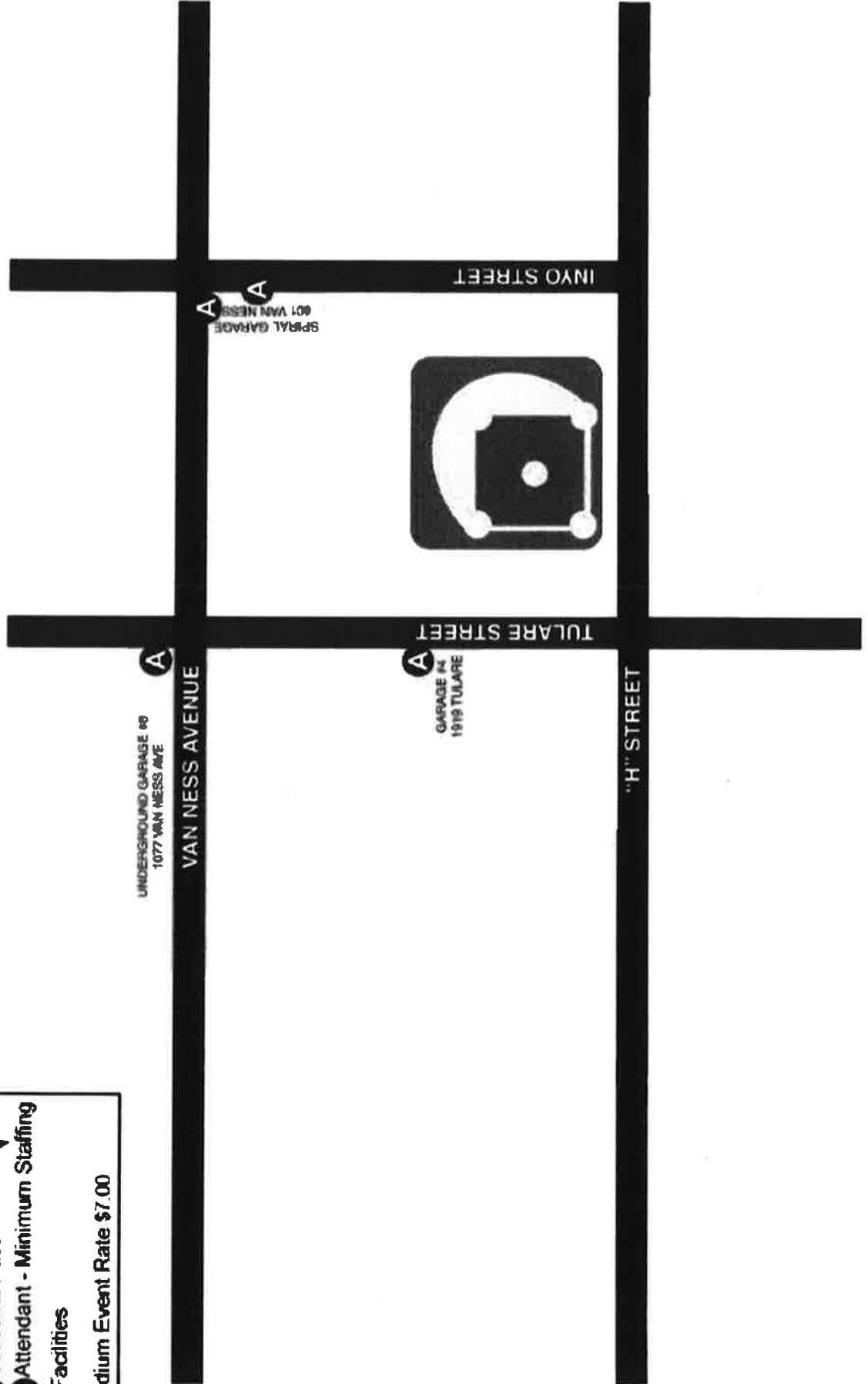
Expires: 12-31-02

June 8, 2001

Date



Downtown  
**FRESNO**  
 Handicap  
 Seasonal Pass  
 Attendant - Minimum Staffing  
 Facilities  
 Stadium Event Rate \$7.00



**EXHIBIT B**  
**CITY SPACES**



**EXHIBIT C**  
**CAPITAL REPAIRS AND IMPROVEMENTS**

**EXHIBIT D**  
**NON-RELOCATION AGREEMENT**



## 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

CLUB

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2017

Dated: \_\_\_\_\_, 2017

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
Laurie Avedisian-Favini, Assistant

Dated: \_\_\_\_\_, 2017

Dated: \_\_\_\_\_, 2017

**Schedule 1**

**Liquidated Damages and Annual Debt Service**

<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