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Agenda Item: ID#15-333 (2-D)

Date: 4/30/15

CITY CLERK, FRESNO

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Item(s) – ID#15-333

Contents of Supplement: “Revised” First Amendment to the Amended and Restated Stadium Sublease Agreement

Item(s)

Approve the First Amendment to Amended and Restated Stadium Sublease Agreement

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

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

THIS FIRST AMENDMENT effective as of November 1, 2014 (“**Effective Date**”), to
CITY CLERK, FRESNO CA
the Amended and Restated Stadium Sublease Agreement effective January 1, 2010

(“**Agreement**”), is by and between the City of Fresno, a California municipal corporation
 (“**City**”) and Fresno Baseball Club, LLC, a Delaware limited liability company (“**Tenant**”).

Recitals

A. Tenant is currently attempting to sell the Grizzlies and has asked the City to cooperate in the sale process by assisting in the marketing effort, modifying the Agreement to provide more favorable lease terms to the purchaser of the Grizzlies and providing financial relief to Tenant during the transaction process.

B. City believes that sale of the Grizzlies is in the best interests of the City. Accordingly, the City is willing to accommodate Tenant’s requests by amending the Agreement as provided herein in order to protect its investment in the Stadium and to preserve Minor League Baseball in Fresno.

C. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

NOW THEREFORE, in consideration of the foregoing, 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 Agreement is hereby amended as follows:

Amendment

(1) Section 2.3 is hereby amended and restated in its entirety to read as follows:

“2.3(a) In consideration of the use and occupancy of the Stadium by Tenant, and the costs previously incurred by City to construct the Stadium, Tenant hereby agrees to pay to City, a fixed rental of \$1,500,000 per year during the Term, to be paid in advance on the first day of each month during the Term, in equal monthly installments of \$125,000 (“**Fixed Rental**”); provided, however, that commencing November 1, 2014, City shall accept \$40,000 per month towards payment of the Fixed Rental and Tenant shall have the right to defer payment of up to \$85,000 of monthly Fixed Rental through December 31, 2015. In addition, Tenant shall also have the right to defer payment of all other outstanding amounts owing to the City under the Agreement as of the Effective Date. The cumulative deferred amount of monthly Fixed Rental shall be paid to City on December 31, 2015, or at the closing of the sale of the Grizzlies, whichever date first occurs.

(b) In addition to the payment to City of all deferred Fixed Rental as required by (a) above, Tenant shall pay prior to or at the time of closing of a sale of the Grizzlies all amounts owed by Tenant to City and third parties in connection with the operation of the Grizzlies and performance of its obligations as Tenant under the Agreement, including, but not limited to, scoreboard acquisition loan, utilities, league fees, fines and penalties and the specific deferred maintenance obligations listed in attached Exhibit “A”. Nothing herein shall limit or otherwise modify Tenant’s obligations under Article IV of this Agreement.

(2) Section 14.4(c) is hereby added to the Agreement, as follows:

“(c) In an effort to induce a sale of the Grizzlies, City hereby agrees to offer to potential purchasers of the Grizzlies, the following amendments to the Agreement. The Parties acknowledge that any amendment to the Agreement made in connection with, or as a result of, the sale of the Grizzlies by Tenant may contain the following amendments and that any such amendment of the Agreement may require other changes to the Agreement and the Operations Agreement to accommodate any such amendments, which amendments shall not become effective until approved by the City Council of City.”

(i) Section 2.3 Fixed Rental will be amended to provide for a Fixed Rental of \$750,000 per year during the term, to be paid in advance on the first of the day of each month of April, May, June, July and August during the Term in equal monthly installments of \$150,000.

(ii) Section 2.4 will be amended by the addition of the following sentence:

“So long as Tenant is not in default on its obligations hereunder, City shall contribute to the Capital Reserve Fund all APES fees paid to City by Tenant. Despite any other provisions of the Agreement to the contrary, the Capital Reserve Fund will be administered jointly as determined in good faith by agreement of the City and the purchaser of the Grizzlies. The Capital Reserve Fund shall be used exclusively for Capital Improvements to the Stadium, excluding the maintenance, repair and replacement of the

Structural Elements which remains the responsibility of the City pursuant to Section 4.2(a) of the Agreement.”

(iii) Section 2.5(a) will be amended by the elimination of subparts (ii) and (iii).

(iv) Section 3.1 will be amended to read as follows:

“Tenant Sponsored Events. Tenant shall be entitled to use of the Stadium for home games of the Grizzlies, same day pre-home game and post-home game activities, practices of the Grizzlies, home games of the Fresno Fuego soccer team, for load-in and load-out requirements, scheduled field rest or maintenance according to industry practices, general Stadium maintenance, up to five (5) special events per calendar year for CEDA (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 constitute a Tenant Sponsored Event. In addition, Tenant shall have the right to use the Stadium on any Available Date (“Other Tenant Events”). All events and use under this Section 3.1 shall be scheduled pursuant to Section 3.2 below.”

(v) Section 3.2(d), (e), (f) and (g) will be added to the Agreement to read as follows:

“(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.”

“(g) If the Fresno Fuego ceases operations, days that had been scheduled for and would have been utilized by the Fresno Fuego will automatically become "Available Dates".”

(v) Section 3.3(a) will be amended in its entirety to read as follows:

“(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. The City agrees to use reasonable efforts to cooperate with Tenant in an effort to preclude any increase in Possessory Interest Tax payable by Tenant hereunder above the amount paid for the 2014-2015 tax year.”

- (vi) Section 3.3(b) will be eliminated.
- (vi) Section 4.4 will be eliminated.
- (vii) Section 4.5(c) of the Agreement will be amended to read as follows:

“(c) In order to provide financial relief to, and enhance the financial improvement of, Tenant, and to protect the City’s original investment in the Stadium, from time to time during the Term, Tenant may propose in writing that specified capital repairs and improvements be made to the Stadium. Upon the submission of any such request to the City, Tenant and the City shall meet promptly and in good faith agree on a capital repair and improvement plan for the Stadium. The cost of capital repairs and improvements made under this Section shall not exceed a cumulative amount of \$2,000,000 with Tenant and the City each being responsible for the payment of one-half of any such costs. The cost of maintenance, repair and replacement of the Structural Elements which remains the responsibility of the City pursuant to

Section 4.2(a) of the Agreement shall not be included as part of the capital repairs and improvements funded under the provisions of this Section, but shall remain the sole responsibility of the City.”

(viii) Section 10.3 will be eliminated.

(3) Reimbursable Expenses; Capital Reserve Fund. Notwithstanding any other provision of this First Amendment or the Agreement to the contrary, if a sale of the Grizzlies occurs on or at any time before December 31, 2015, the following shall apply:

(a) Tenant shall be entitled to reimbursement of its Reimbursable Expenses through the closing date of any such sale not to exceed the maximum of \$500,000 as provided in Section 4.4(a) of the Agreement with the final reimbursement to be made within fifteen (15) days after that closing date, subject to adjustment based on Tenant’s annual audit conducted in accordance with Section 2.6 hereof.

(b) The City shall contribute \$100,000 to the Capital Reserve Fund as provided in Section 4.5(c) of the Agreement.

(c) Tenant shall make its annual \$50,000 scoreboard reimbursement to the City under Section 4.7(c) for 2015 as of the closing date of any such sale by reimbursement from the Capital Reserve Fund or otherwise as provided in said Section; provided, however, that the amount of Tenant’s reimbursement from the Capital Reserve Fund shall be pro rated (based on the number of

months elapsed between January 1, 2015 and the closing date of the sale of the Grizzlies. For example, if such sale occurred on June 30, 2015, Tenant's reimbursement from the Capital Reserve Fund would be \$25,000).

(d) Tenant shall be entitled to use up to the remaining \$_____ balance to be contributed by the City to the Capital Reserve Fund to pay for Tenant's 2015 Capital Improvements.

- (4) Related Letter Agreement. The City and Tenant have entered into that certain letter agreement of even date herewith which, by its terms, constitutes a part of this First Amendment and by this reference is hereby incorporated herein.
- (5) Prior Agreement Confirmed. Except as otherwise expressly modified by the terms hereof and by that certain letter agreement referenced in paragraph (4) above, all of the remaining terms of the Agreement remain in effect and are hereby ratified and affirmed.
- (6) Partial Invalidity. If any section of the First Amendment or its application to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this First Amendment or the application of such section to persons or circumstances, other than those as to which it is so determined invalid or enforceable to any extent, shall not be affected thereby, and each section hereof shall be valid and enforceable to the fullest extent permitted by law.
- (7) Time of the Essence. Time is of the essence with respect to all sections of this First Amendment.

- (8) Successors and Assigns. This First Amendment and all terms and conditions contained herein shall inure to the benefit and be binding upon the successors and permitted assigns of the Parties.
- (9) Counterparts. This First Amendment 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.
- (10) Governing Law. This first Amendment and the actions of the Parties shall in all respects be governed by, and construed in accordance with, the Laws of the State of California notwithstanding any choice-of-law or conflict-of-law principle that might dictate a different governing law. In the event of any proceedings regarding this First Amendment, the Parties agree that the venue shall be the state courts of California located in Fresno County or any Federal court whose jurisdiction includes Fresno County, California.

[Signatures and acknowledgement on following page]

IN WITNESS WHEREOF, the Parties have executed this First Amendment to Amended and Restated Stadium Sublease Agreement effective as of the date first above written.

CITY OF FRESNO

By: _____
Title: _____
Date: _____

FRESNO BASEBALL CLUB, LLC

By: _____
Christopher P. Cummings,
President
Date: _____

ATTEST:

City Clerk

By: _____
Date: _____

APPROVED AS TO FORM:

City Attorney

By: _____
Date: _____