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CITY OF FRESNO
City Clerk's Office (Original)

**AMENDED AND RESTATED
STADIUM SUBLEASE AGREEMENT**

BETWEEN

THE CITY OF FRESNO

AND

FRESNO BASEBALL CLUB, LLC

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EXHIBITS

- Exhibit A Legal Description
- Exhibit B City Spaces
- Exhibit C Tenant's Chart of Accounts
- Exhibit D Personal Guaranty

AMENDED AND RESTATED
STADIUM SUBLEASE AGREEMENT

This AMENDED AND RESTATED STADIUM SUBLEASE AGREEMENT, (this "Agreement") is made to be effective the 1st day of January, 2010 (the "Effective Date"), notwithstanding the date of execution, by and between the City of Fresno, a California municipal corporation (the "City") and Fresno Baseball Club, 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 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, Tenant, 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, the 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.

WHEREAS, in order to provide financial relief to Tenant and to protect the City's original investment in the Stadium, the City is willing to accommodate Tenant by amending and restating the Original Sublease as further provided herein.

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) that certain Pledge Agreement, dated to be effective as of the Original Agreement, by and among the City, FDG LLC and FG Inc., (b) the LLLP Pledge Agreement, (c) the Concessions Agreement, (d) that certain Agreement Regarding Parking Fresno Downtown Stadium Project by and among FDG LLC, the City and the Redevelopment Agency, (e) that certain Non-Relocation and Continuous Operation Agreement, dated January 3, 2001, by and among FDG LLC, TTI and the City, (f) that certain Subordination Agreement, dated October 13, 2005, by and among the City, Tenant, and the LLLP, (g) that certain Sponsorship, Marketing Rights and Stadium Naming Rights Agreement, dated August 19, 2006, by and between CEDA and Tenant, and (h) that certain Personal Guaranty Agreement, dated as of the Effective Date, by the limited partner(s) of the LLLP for the benefit of the City, 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 repair, replacement, or improvement to the Stadium or associated improvements that is necessary or appropriate, as reasonably determined by the City, and that, under GAAP, would normally be capitalized.

"Capital Reserve Fund" means the capital repair, replacement and improvement reserve fund established, funded and controlled by the City to help fund Tenant's performance of its obligations regarding 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 Ovations Concessions Agreement 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.

"FDG LLC" has the meaning given to that term in the Recitals.

"FG Inc." has the meaning given to that term in the Recitals.

"First Amendment" has the meaning given to that term in the Recitals.

"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 reimbursements by the City to Tenant pursuant to Section 4.4(a), investments by the City pursuant to Section 4.5(c), or any amounts that may be received by Tenant from the City pursuant to Section 4.7(b).

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

"LLLP" shall mean Fresno Baseball Club, LLLP, a Delaware limited liability limited partnership.

"LLLP Pledge Agreement" means the agreement entered into between the City and the LLLP, dated October 13, 2005, wherein the LLLP pledged all of its membership interests in Tenant to secure Tenant's obligations under this Agreement.

"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.

"Management LLC" shall mean Fresno Baseball Club Management, LLC, a Delaware limited liability company.

"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" means any and all agreements between the City and Tenant relating to the implementation of this Agreement, including, without limitation, the implementation of Sections 3.3(g) and (i).

"Original Agreement" has the meaning given to that term in the Recitals.

"Original Sublease" has the meaning given to that term in the Recitals.

"Ovations Concessions Agreement" means that certain Concessions Agreement made and entered into on or about August 20, 2003, by and between FDG LLC and Ovations Food Services, as the same was amended by that certain Assignment and Assumption Agreement (Concessions Agreement), dated October 13, 2005, by and between FDG LLC, Tenant and Ovations Food Services.

"Ovations Food Services" means Ovations Food Services, L.P., a Pennsylvania limited partnership.

"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.

"Prior Tenant Improvements" means the original video board, concert staging, corporate swimming pool and Walk of Fame installed by Tenant's predecessor pursuant to Section 3.5(b) of the Original Sublease. Prior Tenant Improvements do not include the Enkamat turf protection system.

"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 Section 2.5, and any and all other amounts payable by Tenant to the City hereunder.

"Scoreboard" has the meaning given to that term in Section 4.7(a).

"Second Amendment" has the meaning given to that term in the Recitals.

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

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

"Tenant" means Fresno Baseball Club, 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.

"Tenant's Personal Property" has the meaning given to that term in Section 4.8(b).

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

"Third Amendment" has the meaning given to that term in the Recitals.

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

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

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 predecessor 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, and the costs previously incurred by the City to construct the Stadium, Tenant hereby agrees to pay to the City a fixed rental of \$1,500,000.00 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 \$125,000.00 (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. Beginning as of January 1, 2015, the City shall have the option to increase the per ticket APES Fee by up to, but not more than, \$0.50 every five (5) years during the Term. 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. 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.

2.5 Profit-Sharing.

(a) In addition to the Fixed Rental, the APES Fees and any additional consideration owed to the City by Tenant, Tenant shall pay to the City, on an annual basis, the greater of:

(i) Twenty percent (20%) of Tenant's EBITDA over \$500,000 for any given calendar year;

(ii) Twenty percent (20%) of Tenant's Gross Revenues over \$7,250,000 for any given calendar year; or

(iii) \$2.00 per ticket for paid attendance at Tenant Sponsored Events in excess of 300,000 tickets for any given calendar year.

(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 Gross Revenue and per ticket figures above are subject to an annual escalation equal to the lesser of three percent (3.0%) or the CPI Adjustment Factor. The EBITDA figure is not subject to an annual escalation.

(d) EBITDA and Gross Revenues shall be determined by Tenant's independent certified public accountant, consistent with GAAP and Tenant's and the Grizzlies' financial statements as provided to the City in connection with the negotiation of this Agreement. 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) Commencing with the year 2010 and for each year thereafter during the Term, Tenant shall have an annual audit of its financial statements completed by an independent, licensed California (i) certified public accountant or (ii) accounting firm (hereinafter "Accountant"). Such Accountant shall (A) be reasonably acceptable to the City and (B) agree to comply with the terms of this Section 2.6. Such annual Tenant financial statements shall be prepared in accordance with GAAP and the annual audit shall be conducted in accordance with Generally Accepted Auditing Standards. Tenant shall provide written notice to the City not later than one hundred sixty (160) days prior to the close of its fiscal year as to the identity of the Accountant selected by Tenant for the annual audit. The City shall provide written notice of its acceptance or denial of Tenant's proposed Accountant within fifteen (15) days following receipt of the notification. The audit shall be completed no later than ninety (90) days following the close of Tenant's fiscal year (e.g. March 31 if Tenant utilizes a calendar year as its fiscal year). Tenant shall timely provide to the City a copy of the audited annual financial statements, including the Accountant's unqualified opinion letter for each annual audit, 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 annual 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 annual financial statement 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) Upon completion of Tenant's audit for calendar year 2010, the City shall engage an independent financial advisor or accountant with sports industry experience to review Tenant's audited financial statements. If it is reasonably determined by the independent financial advisor or accountant, in consultation with the City and Tenant's auditors, that (i) the audited financial statements materially vary from the representations made by Tenant during the negotiations of this Agreement or the historical or projected financial statements provided by Tenant for the City's review in connection therewith, and (ii) any material variances resulted from other than reasonable business or financial circumstances affecting Tenant or its operations during the calendar year 2010, the City shall have the right to annul this Agreement, which right must be exercised, if at all, no later than thirty (30) days after completion of the City's review of Tenant's audit. If the City exercises its right to annul this Agreement, (A) the Original Sublease shall be deemed fully reinstated and the rights and obligations of the Parties shall continue thereunder as if this Agreement had never existed, and (B) Tenant shall reimburse the City for (I) all costs actually incurred by the City in engaging the City's independent financial advisor or accountant pursuant to this Section 2.6(b), (II) to the extent not previously paid by Tenant, all costs actually incurred by the City to negotiate this Agreement (including, without limitation, the

City's attorneys' fees), and (III) all payments made or Rent credits given by the City to Tenant pursuant to Sections 4.4, 4.5(c), and 4.7(b) hereof.

(c) 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(c) shall survive expiration or termination of this Agreement.

2.7 Payments under the Original Sublease. The City acknowledges that it has received from Tenant all amounts due and owing under the Original Sublease as of December 31, 2009.

ARTICLE III USE OF THE STADIUM; REVENUE

3.1 Tenant Sponsored Events. Subject to the City's rights under Section 3.3(c), Tenant shall be entitled to the use of the Stadium for home games of the Grizzlies, practices of the Grizzlies, home games of the Fresno Fuego soccer team and up to five (5) special events per calendar year for CEDA, and, subject to industry practices, load-in and load-out requirements related to the same, all as scheduled pursuant to Section 3.2 below (the "Tenant Sponsored Events"). In addition to the foregoing, 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. The Parties understand that there will be approximately ninety-five (95) Tenant Sponsored Events per year, exclusive of Playoff Games.

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.

(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 the Fresno Fuego schedule to City within five (5) business days after its distribution by the league in which Fresno Fuego plays.

3.3 City Sponsored Events.

(a) The Parties acknowledge that the City intends to make the maximum use of the Stadium to generate revenues by producing events for the benefit of the City (the "City Sponsored Events") and to that end, the City shall be entitled to use of the Stadium, excluding the Exclusive Team Areas, for such events on any Available Date. An "Available Date" shall be any date other than a date on which Tenant has scheduled a Tenant Sponsored Event in accordance with Sections 3.1 and 3.2 above.

(b) 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" for use by the City.

(c) 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.

(d) 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 City understands and acknowledges that as of the Effective Date of this Agreement the provision of Concessions at the Stadium is governed by the Ovations Concessions Agreement and that Tenant may not agree to an amendment of the Original Sublease that in any way may negatively affect the rights of Ovations Food Services under the Ovations Concessions Agreement. Accordingly, as long as the Ovations Concessions Agreement is in effect, if the City wishes to provide for the sale and provision of Concessions at the Stadium for City Sponsored Events, the City must negotiate an agreement for the sale of Concessions at City Sponsored Events with Ovations Food Services. In the event the Ovations 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 with Ovations Food Services or a new concessionaire, as the case may be. 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.

(e) 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.

(f) 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, (ii) the City's use of Tenant's Personal Property during City Sponsored Events, and (iii) liability for property damage or personal injury during City Sponsored Events, shall be more fully addressed in the Operations Agreement.

(g) 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 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.

(h) 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 in this Agreement, Tenant shall be entitled to receive all revenues generated at 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.

(b) In addition to the revenues set forth above, Tenant shall be entitled to a credit against Rent for the 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 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. 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. No later than ten (10) days after the end of each calendar month during the Term, the City shall provide to

Tenant a statement of parking revenues and expenses, along with the credit or statement of amount owed, broken down on a daily basis. 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. To the extent the Parking Agreement would give the City the right to determine the parking rates for the City Spaces during Tenant Sponsored Events, the Parties acknowledge and agree that this Section 3.4(b) shall control and Tenant, not the City, shall have such right.

(c) Concession operations and the revenues resulting therefrom for Tenant Sponsored Events shall be determined and allocated pursuant to the Concessions Agreement, if any, and if none, by Tenant.

(d) 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;

announcers; (ix) Operating the scoreboard and the public address system, including

(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.

(d) Notwithstanding anything to the contrary contained herein, Tenant shall not be responsible for the maintenance, repair and replacement of the concert staging apparatus, except and to the extent Tenant uses the same, which use shall be permitted only with the prior written approval of the City.

4.3 Evaluation of Operation, Maintenance, Repair and Replacement.

(a) Tenant and the City shall meet at least once prior to October 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.

(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 Reimbursement by the City.

(a) In order to provide financial relief to Tenant and to protect the City's original investment in the Stadium, the City shall reimburse Tenant for fifty percent (50%) of the annual Reimbursable Expenses, up to a maximum reimbursement of \$500,000.00 per year. "Reimbursable Expenses" shall mean Tenant's actual costs and expenses for operating, maintaining, repairing and replacing the Stadium in the manner required hereunder that are consistent with the Tenant's Chart of Accounts set forth on Exhibit C attached hereto and incorporated herein and historical practice, which Chart of Accounts may be revised from time to time by Tenant, subject to reasonable approval by the City, in order to meet future, changing conditions in regard to the management, operation, maintenance, repair and replacement of a sports stadium. Reimbursements shall be made quarterly (no later than fifteen (15) days after the end of each calendar quarter), subject to adjustment based on Tenant's annual audit conducted in accordance with Section 2.6.

(b) If the City's share of Reimbursable Expenses is less than \$500,000.00 in any given year, the City may elect, in its sole and absolute discretion, to contribute the difference between \$500,000.00 and the City's share in that given year into the Capital Reserve Fund.

4.5 Capital Improvements.

(a) Tenant shall be responsible for making all Capital Improvements, except for maintenance, repair and replacement of the Structural Elements, which maintenance, repairs and replacements are the responsibility of the City pursuant to Section 4.2(a). Subject to the City's approval rights as set forth in Section 4.5(d) below, Tenant shall make (or cause others to make) all necessary or appropriate Capital Improvements as required of it by this Agreement, whether interior or exterior, ordinary or extraordinary, foreseen or unforeseen, in a prompt and timely manner.

(b) Prior to the start of the 2010 Triple A MiLB Baseball Season, the City and Tenant shall meet and jointly develop a five (5) year Capital Improvements plan. The five (5) year Capital Improvements plan shall be modified, as appropriate, on an annual basis, no later than October 31 of each year during the Term, as determined jointly by the City and Tenant. In addition to the annual review, the Capital Improvements plan may be modified from time to time as appropriate to address (i) the parties' performance of their respective obligations related to Capital Improvements, and (ii) additional appropriate Capital Improvements, subject to the approval of the City, which approval will not be unreasonably withheld.

(c) In order to provide financial relief to Tenant and to protect the City's original investment in the Stadium, the City shall invest \$100,000.00 per year during the Term in the Capital Reserve Fund, which funds shall be used by Tenant to meet Tenant's obligations under this Section 4.5. The City's investment shall be made in four (4) equal quarterly installments of \$25,000.00, which installments shall be made no later than fifteen (15) days after the end of each calendar quarter.

(d) Prior to commencing any Capital Improvement for which Tenant is seeking funds from the Capital Reserve Fund, Tenant shall submit its request for such funds to the City together with any and all information the City requests regarding such Capital Improvement. The City shall retain final approval over all Capital Improvements and expenditures from the Capital Reserve Fund, which approval shall not be unreasonably withheld.

(e) During the last five (5) years of the Term, the City shall act reasonably in imposing requirements for Capital Improvements, recognizing the age and useful life of the Stadium; provided, however, that Tenant's repair and maintenance obligations shall not be diminished during this period.

4.6 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.

4.7 Replacement of the Stadium's Scoreboard.

(a) Tenant shall replace the Stadium's video board and scoreboard with a first class, state-of-the-art system (the "Scoreboard"), the pricing, design, location and installation of which shall be subject to the City's prior review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant has contracted for the design, manufacture and installation of the Scoreboard, and installation is scheduled so that the Scoreboard is fully operational prior to the beginning of the 2010 PCL Baseball Season. Subject

to the City's investment as provided in Section 4.7(b) below, Tenant shall pay all costs and expenses related to the design, manufacture and installation of the Scoreboard.

(b) In order to provide financial relief to Tenant and to protect the City's original investment in the Stadium, the City shall provide funding and timely pay for the design, manufacture and installation of the Scoreboard, up to a maximum of \$500,000.00, which shall be reimbursed in full by Tenant as provided in section 4.7(c). Tenant shall be solely responsible for any costs above \$500,000.00.

(c) Commencing December 1, 2010 and for nine (9) consecutive years thereafter on such date, Tenant shall reimburse the City \$50,000.00, which reimbursements may, at Tenant's election, be made from the Capital Reserve Fund; provided, however, that no such reimbursement made by Tenant from the Capital Reserve Fund shall limit or otherwise modify Tenant's obligations hereunder with respect to Capital Improvements. In the event of a sale or other transfer of the controlling interest in Tenant, Tenant shall immediately pay to the City any non-reimbursed amounts.

4.8 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 to Prior Tenant Improvements, title to all trade fixtures, furnishings, equipment, and other personal property in the Stadium funded or acquired by Tenant, its predecessors, assignees or concessionaires, including without limitation, the Enkamat turf protection system, the carousel and the climbing wall 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, 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

(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.

(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).

Tenant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder 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 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. Such policy(ies) of insurance shall be endorsed so Tenant's insurance shall be primary and no contribution shall be required of the City, except as provided in Section 6.3(c) below. The Property and Crime insurance policies shall name the City as a loss payee. 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 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 Waiver of Subrogation. It is the intent of the Parties that the risk of loss or damage arising out of or relating to this Agreement should be borne by insurance to the extent of available coverage. Accordingly, the City and Tenant waive all rights against each other (and against the agents, employees, representatives and/or insurers of the other) for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such other Party (its agents, employees and/or representatives); provided, however, that: (a) this waiver of rights shall only be applicable to the extent of insurance proceeds actually paid to the Parties suffering such loss or damage; and (b) this waiver of rights shall in no way diminish the indemnity obligations of the City or Tenant as set forth in Section 6.3 below. Tenant and the City shall give written notice of the terms of this mutual waiver of rights to their respective insurers and shall have their insurance policies endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of this waiver of rights.

6.3 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.

(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.

(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 Article VI 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 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; provided, however, that Tenant shall not be deemed in default hereunder and no Tenant Default shall be declared by the City due to a default (or claimed default) by Tenant under the Ovations Concessions Agreement, which default (or claimed default) is the direct result of the parties entering into the Third Amendment and/or this Agreement.

(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 Tenant's Pledge. Tenant shall cause the LLLP to amend the LLLP Pledge Agreement as necessary to ensure the same provides security for Tenant's obligations under this Agreement.

9.2 Guaranty. Prior to the execution and delivery of this Agreement, Tenant has caused a limited partner of the LLLP, to deliver to the City a personal guaranty (attached hereto as Exhibit D) in the aggregate amount of \$1,500,000.00 as additional security for a Tenant Default. This additional security shall be in addition to any and all remedies the City has under this Agreement or the Ancillary Agreements. As more particularly set forth in the personal guaranty, if there is no uncured default at the time, the \$1,500,000.00 security shall only remain in place until the completion of the City's review of Tenant's annual audit for the calendar year 2014. The City shall complete its review of Tenant's audit for calendar year 2014 no later than ninety (90) days after the City has been provided copies of the audited annual financial statements, the Accountant's unqualified opinion letter, and all other information required by Sections 2.6(a)(I) and 2.6(a)(II) related to such audit; provided, however, that in the event the City requests, in good faith, additional information as provided in the penultimate sentence of Section 2.6(a), then the City's 90-day deadline shall be extended, to extent reasonably necessary, by up to forty-five (45) days; and provided, further, that if during such extended time period, the

City again requests, in good faith, additional information as provided in the penultimate sentence of Section 2.6(a), then the 135-day deadline shall be extended, to extent reasonably necessary, by up to thirty (30) days. Upon the completion of an approved Capital Transaction of the type set forth in Section 10.3(a)(i), the limited partner that executed the guaranty shall be released by the City from its obligations under the personal guaranty.

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) the LLLP or Management LLC of its stock or assets (including, without limitation, any of such entities' ownership interests in Tenant); and/or

(ii) any partner in the LLLP or member of the Management LLC (an "Interest Owner") of its partnership interest in the LLLP or membership interest in the LLC,

(any such sale or transfer pursuant to (i) or (ii) to be defined as a "Capital Transaction") the City shall be entitled to receive a share of the excess of such proceeds from any such Capital Transaction over the Total Net Investment as set forth in this Section 10.3. The "Total Net

Investment" shall mean the initial cash investment made in Tenant, plus any operating losses, less any operating profits, less any distributions made to the Interest Owners. The Total Net Investment shall be determined and agreed upon annually by the 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 the City, which sources may include, without limitation, Tenant's PCL reports or Tickets.com reports. The Parties acknowledge and agree that the Total Net Investment as of December 31, 2008 is \$9,334,156.00. The excess of the proceeds from any Capital Transaction over the Total Net Investment shall be defined as the "Net Surplus."

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

- (i) 2009 or 2010 – fifty percent (50%) of any Net Surplus
- (ii) 2011 – thirty percent (30%) of any Net Surplus
- (iii) 2012 – twenty percent (20%) of any Net Surplus
- (iv) 2013 and thereafter – ten percent (10%) of any Net Surplus

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.

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 recommendation.

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 or Fresno Fuego 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, the United Soccer Leagues Premier Development League, 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 and all soccer games of Fresno Fuego and of the United Soccer Leagues Premier Development League, or such other league within which the Fresno Fuego are then a part, 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. Each year during the Term, Tenant shall provide the City with twelve (12) "season ticket" packages, free of charge, for use in a twelve-seat Luxury Suite at the Stadium for all Tenant Sponsored Events. 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 cause Ovation Food Services to enter into an agreement with the City that obligates Ovation Food Services (and its successors) to provide, if requested by the City, concession services at City Sponsored Events, the gross receipts from which will be split between Ovation Food Services (sixty-five percent (65%)) and the City (thirty-five percent (35%));

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

(j) 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;

(k) To the extent not already paid by Tenant, Tenant shall reimburse the City for any and all fees and expenses of the City's consultants retained to assist in evaluating, negotiating and documenting this Agreement (including legal fees);

(l) 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

(m) 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 attempts, directly or indirectly, to renegotiate this Agreement at any time during the Term, the City shall have the right to purchase Tenant, or identify a potential buyer for Tenant, at fair market value. Such right must be

exercised, 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.

**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 Baseball Club, LLC
1800 Tulare St.
Fresno, CA 93721

With a Courtesy Copy to:

John C. Ganahl, Esq.

Dowling, Aaron & Keeler
P.O. Box 28902
Fresno, CA 93729-8902

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 Original 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 Original 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, and consented to by the Redevelopment Agency (whether by joinder herein or by separate instrument), 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 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, (a) the Original Sublease shall be deemed fully reinstated and the rights and obligations of the Parties shall continue thereunder as if this Agreement had never existed, and (b) Tenant shall reimburse the City for all payments made or Rent credits given by the City to Tenant pursuant to Sections 4.4, 4.5(c), and 4.7(b) hereof.

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.

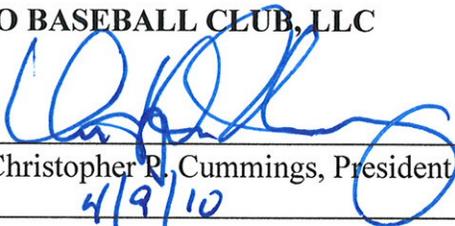
[Signatures and acknowledgements appear on following pages]

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

By: 
Title: _____
Date: 4/12/10

FRESNO BASEBALL CLUB, LLC

By: 
Christopher R. Cummings, President
Date: 4/9/10

ATTEST:
REBECCA KLISCH
City Clerk

By: 
Deputy
Dated: 4/13/10

APPROVED AS TO FORM:
JAMES SANCHEZ
City Attorney

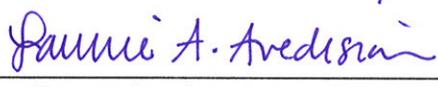
By: 
Deputy/Assistant
Dated: 4/13/10

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;

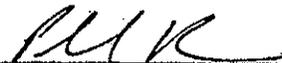
Thence, along a line parallel with and 3 foot northwesterly of the southeasterly boundary of Lot 28 in said Block 73, North 48 Degrees 20 Minutes East, 98.00 feet to the southwesterly boundary of the alley in said Block 73;

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



EXHIBIT B
CITY SPACES

City of **FRESNO**




-  Handicap
-  Seasonal Pass
-  Parking Facilities
-  Players & Employees Only

STADIUM EVENT RATE \$5.00

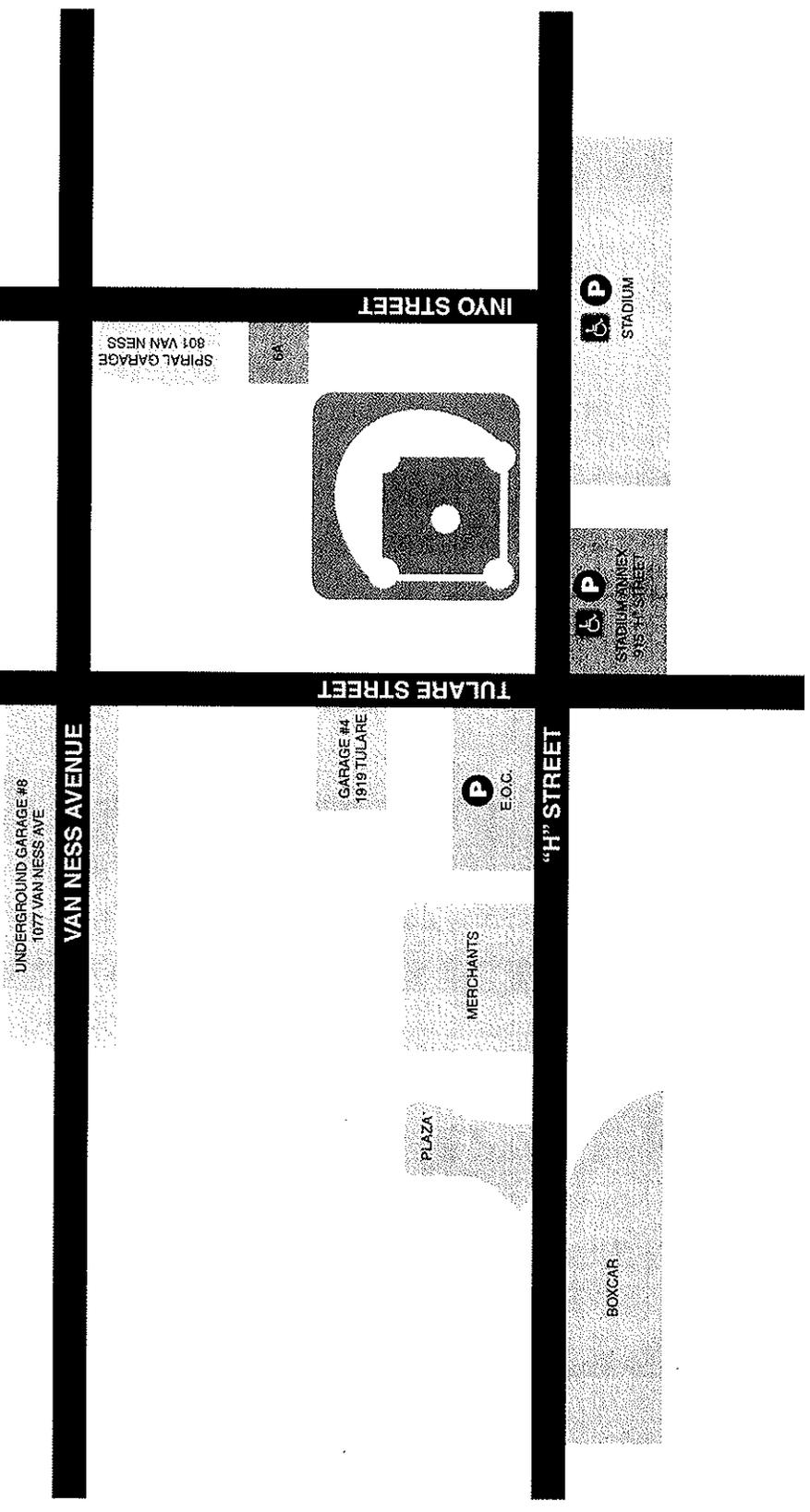


EXHIBIT C

TENANT'S CHART OF ACCOUNTS

<i>Account</i>	2006	2007	2008	2009	Average 2006 to 2009
Expenses				Grizzlies Est.	
6003 Video Board	\$27,448	\$47,959	\$50,636	\$38,726	\$41,192
6004 Security	\$67,679	\$89,227	\$60,624	\$57,029	\$68,640
6012 Maintenance Grounds	\$11,150	\$35,791	\$20,820	\$20,537	\$22,075
6015 Stadium Cleaning	\$170,638	\$202,200	\$225,600	\$168,035	\$191,618
6030 Supplies	\$32,309	\$24,155	\$21,381	\$17,944	\$23,947
6032 Repairs and Maintenance	\$64,031	\$50,648	\$52,766	\$39,348	\$51,698
6034 Field Maintenance	\$29,233	\$20,042	\$23,439	\$14,255	\$21,742
6035 Vehicle Maintenance	\$6,641	\$13,900	\$8,791	\$5,775	\$8,777
6038 Utilities					
6038/1 Electricity and Gas	\$318,365	\$406,782	\$370,830	\$368,499	\$366,119
60382 Water and Waste Disposal	\$29,677	\$25,660	\$51,177	\$41,711	\$37,056
60383 Cable Television	\$8,809	\$8,657	\$9,416	\$9,760	\$9,160
6043 Pest Control	\$0	\$980	\$1,755	\$495	\$808
6056 Alarm	\$3,817	\$5,877	\$5,559	\$3,357	\$4,653
6059 Video Board Equipment	\$2,320	\$4,354	\$12,720	\$6,308	\$6,426
6064 Overnight Stadium Security	\$0	\$0	\$43,582	\$35,566	\$19,787
600J Operations Housekeeping	\$41,055	\$70,181	\$32,880	\$30,350	\$43,617
Sub-Total	\$813,173	\$1,006,414	\$991,977	\$857,696	\$917,315

Annual Maintenance and Repair Payment	
%	50%
\$ Max	\$500,000
Annual Maintenance and Repair Payment - Total	\$495,988
	\$428,848
	\$457,856

EXHIBIT D

PERSONAL GUARANTY

PERSONAL GUARANTY AGREEMENT

THIS PERSONAL GUARANTY AGREEMENT (this "Guaranty") is made and entered into as of March ____, 2010, by _____, a resident of the State of Massachusetts (the "Guarantor"), for the benefit of the City of Fresno, a California municipal corporation (the "City"), and its successors and/or assigns, with a current address of Fresno City Hall, 2600 Fresno Street, Second Floor, Fresno, CA 93721-3600.

RECITALS

A. The City has agreed to amend and restate (the "Amendment") that certain Agreement dated January 3, 2001, originally between the City and Fresno Diamond Group, LLC (the "Sublease," as it may be amended, renewed, modified, assigned, supplemented, transferred, reinstated or extended, from time to time).

B. On or about October 13, 2005, Fresno Baseball Club, LLC, a Delaware limited liability company ("FBC," including its successors and/or assigns) purchased and assumed all of the Fresno Diamond Group, LLC's rights under the Sublease. The sole member and manager of FBC is Fresno Baseball Club, LLLP, a Delaware limited liability limited partnership ("LLLP").

C. Guarantor is a limited partner of the LLLP, and, as such, will receive financial and other benefits from the Amendment.

D. FBC's performance under Sublease is secured, in part, by that certain Pledge Agreement, dated October 13, 2005, wherein the LLLP granted the City a security interest in certain personal property of the LLLP (the "Pledge Agreement").

E. In order to induce the City to approve the Amendment, and as additional security for FBC's performance under the Sublease, as amended by the Amendment, Guarantor has agreed to give this Guaranty.

F. The City is not willing to sign the Amendment unless this Guaranty is executed by the Guarantor and delivered to City; provided, however, this Guaranty shall not be effective unless and until the Amendment is finally approved and executed by the City and FBC.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees with the City as follows:

1. Guaranty of Obligations. Subject only to the condition precedent in Paragraph 5 below, Guarantor hereby irrevocably, unconditionally, primarily, and absolutely guarantees to the City, the due and prompt payment, performance and collection of all of the following under the Sublease (hereinafter being collectively referred to as the "Obligations Guaranteed"): (i) the prompt payment when due of all indebtedness (principal, interest and other), liabilities and monetary obligations of FBC to City, of every kind, nature, and description under the Sublease, including, without limitation, rental payments; (ii) the prompt performance of all other

covenants, obligations and agreements to be kept and performed by FBC under the Sublease; and (iii) the payment of any costs and expenses under the Sublease, including, without limitation all collection costs, expenses and attorneys' fees (whether or not there is a lawsuit, and if there is a lawsuit, any fees and costs for trial and appeals) that City may sustain as a result of or in connection with any exercise of remedies available to the City under the Sublease. This is a limited guaranty, subject only to the condition precedent in Paragraph 5 below, whereby the deficiency guaranteed by the Guarantor shall be established.

2. Limitation on Guarantor's Obligations. Subject to Paragraph 3 below, Guarantor's payment obligations hereunder shall be limited to Guarantor's Share of the Obligations Guaranteed. "Guarantor's Share of the Obligations Guaranteed" shall mean an amount not to exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) of the Obligations Guaranteed. Guarantor's Share of the Obligations Guaranteed will only be reduced by sums actually paid by Guarantor under this Guaranty, but will not be reduced by sums from any other source, including, but not limited to, sums realized from the LLLP, FBC, or payments by anyone other than Guarantor, or reductions by operation of law, judicial order or equitable principles, unless and until the Obligations Guaranteed have been reduced to less than Guarantor's Share of the Obligations Guaranteed. City has the sole and absolute discretion to determine how any amounts collected from anyone other than Guarantor shall be applied to the Obligations Guaranteed and among the guaranties of the Sublease. This limitation on Guarantor's liability is not a restriction on the amounts owing under the Sublease by FBC to City, either in the aggregate or at any one time, nor shall it affect the liability of any other guarantors of the Sublease. This Guaranty is in addition to, and shall not limit in any way, any and all remedies the City has under existing documents.

3. Costs of Collection Against Guarantor. Notwithstanding Paragraph 2 above, in addition to Guarantor's Share of the Obligations Guaranteed, Guarantor shall be liable to the City and shall promptly pay upon demand any and all collection costs, expenses and attorneys' fees (whether or not there is a lawsuit, and if there is a lawsuit, any fees and costs for trial and appeals) incurred by the City in enforcing its rights against Guarantor under this Guaranty.

4. Independent Obligations. The obligations of Guarantor to City hereunder are direct and independent of any obligations of FBC to City. Subject only to the condition precedent in Paragraph 5 below, a separate action or actions may be brought against Guarantor, without regard to whether any action is brought against FBC or the LLLP, or whether FBC or the LLLP is joined in any such action or actions. No circumstance which operates to discharge, or to bar, suspend, or delay City's right to enforce, any obligation of FBC or the LLLP to City, including, without limitation, the effect of any statute of limitations or the pendency or conclusion of any proceeding under the Bankruptcy Code (11 U.S.C. § 101, *et. seq.*) or any similar present or future federal or state law, shall have any effect upon the enforceability of Guarantor's obligations to City hereunder. Any payment by FBC or the LLLP or any other circumstance which operates to toll any statute of limitations as to Borrower shall operate likewise to toll the statute of limitations as to Guarantor.

5. City's Collection Obligations. City shall be entitled to bring an action or actions against Guarantor under this Guaranty immediately following the satisfaction of the following condition precedent: City uses commercially reasonable efforts to exercise its rights and

remedies under the Pledge Agreement against the Pledged Collateral (as defined in the Pledge Agreement) and those rights and remedies are reasonably expected to be satisfied within 180 days after the notice of default has been delivered to FBC. However, in the event that any proceeding is commenced by or against FBC or the LLLP under the Bankruptcy Code (11 U.S.C. § 101, *et. seq.*) or under any similar present or future federal or state law the City shall have the right to bring an action or actions immediately against Guarantor under this Guaranty. The City shall only be required to pursue its rights and remedies against the Pledged Collateral to the extent that the City determines, in its reasonable discretion, that the net revenue generated by its collection efforts will exceed its cost of collection, resulting in a net reduction in the Obligations Guaranteed. The condition precedent in this paragraph shall be deemed fully satisfied by the City upon the occurrence of the following events, whichever event occurs first: (a) any personal property of FBC, over which the City actually obtains possession or control under the Pledge Agreement, has been sold by the City in an arms-length transaction to a third-party purchaser; provided, however, the City's obligations hereunder shall be deemed fully satisfied, if the City determines, in its reasonable discretion, that the revenue generated by any further sales of FBC's personal property will exceed the cost of such sales; (b) any proceeding is commenced by or against FBC or the LLLP under the Bankruptcy Code (11 U.S.C. § 101, *et. seq.*) or under any similar present or future federal or state law; or (c) the Obligations Guaranteed are not satisfied within one hundred eighty (180) days after the City delivers a notice of default to FBC. Guarantor understands and agrees that, despite commercially reasonable efforts of City, there is no guaranty that the City will be able to exercise its rights and remedies under the Pledge Agreement, or that the City's collection efforts will result in a reduction in Guarantor's Share of the Obligations Guaranteed.

6. Term of Guaranty. Guarantor agrees that this shall be a continuing, absolute and unconditional Guaranty and shall be in full force and effect until all sums due under the Sublease and the Obligations Guaranteed have been satisfied in full; provided, however, that Guarantor's obligations under this Guaranty shall be deemed fully satisfied if, and only if: (a) on the date the City has completed its review of the audit of FBC, as set forth in the Sublease, for the fiscal year that includes the 2014 baseball season for the Fresno Grizzlies (the "2014 Audit Date") there is no existing "Tenant Default" (as such term is defined in Section 8.1 of the Sublease) and, (b) in the event there is a circumstance existing on the 2014 Audit Date that, with the lapse of time, would constitute a Tenant Default, such circumstance is remedied prior to the expiration of the applicable cure period as set forth in Section 8.1 of the Sublease. Regarding subclause (b) of the foregoing sentence, by way of illustration and not limitation, if FBC has been provided notice of its failure to perform a given obligation under the Sublease, but the cure period for such failure as set forth in Section 8.1 of the Sublease has not expired prior to the 2014 Audit Date (and therefore FBC's failure does not constitute a "Tenant Default" on such date), then this Guaranty will not be deemed fully satisfied unless and until FBC has cured (or caused to be cured) such failure prior to the expiration of the applicable cure period.

7. Release of Guaranty by City. As more fully set forth in the Sublease, and subject to the terms and conditions therein, including but not limited to, the obligation of any third-party purchaser to assume any and all obligations of the Team under the Sublease and related agreements, the Sublease and related agreements may be assigned and sold by FBC in an arms-length transaction to a third-party purchaser (the "Sale"). No less than thirty (30) days before such Sale, FBC and the prospective purchaser may propose to the City, in writing, a substitute

guarantor for the Sublease (the "Substitute Guarantor"). Such proposal shall include a current, verified personal financial statement for such Substitute Guarantor, together with such other additional financial information and documentation as the City may reasonably request. Subject to the personal net worth and documentation requirements as reasonably determined by the City, the City's approval of the Substitute Guarantor shall not be unreasonably withheld, conditioned, or delayed. If the City approves such Substitute Guarantor, then simultaneously with the closing of such Sale and with the Substitute Guarantor's execution of a personal guaranty agreement acceptable to City, this Guaranty shall be marked "paid-in-full" and returned to Guarantor, and Guarantor shall be fully and unconditionally released from all further obligations hereunder. If the Substitute Guarantor is not approved by the City, then this Guaranty shall remain a continuing, absolute and unconditional guaranty and shall continue in full force and effect.

8. Guaranty Absolute. Guarantor hereby agrees that the City may from time to time without notice to or consent of the Guarantor and upon such terms and conditions as the City may deem advisable and without affecting this Guaranty or the liability of Guarantor under this Guaranty, which shall remain absolute and unconditional: (a) make any agreement extending or otherwise altering the time for or the terms of payment of all or any part of the sums due under the Sublease or the Obligations Guaranteed, or otherwise be amending, renewing, modifying, supplementing or extending the terms of the Sublease, or any agreement transferring or assigning the Sublease; (b) modify, waive, compromise, release, subordinate, resort to, exercise or refrain from exercising any right the City may have hereunder or under the Sublease; (c) accept or release additional security or guarantees of any kind for the Obligations Guaranteed; (d) accept from FBC or any other party partial payment or payments on account of the Obligations Guaranteed; or (e) release, settle or compromise any claim of the City against FBC, or against any other person, firm or corporation whose obligation is held by the City as collateral security for repayment of the Obligations Guaranteed.

9. Guarantor Waiver. Guarantor hereby unconditionally and absolutely waives: (a) any obligation on the part of the City to protect, secure or insure any of the security given for the payment of the sums due under the Sublease or for payment of the Obligations Guaranteed; (b) the invalidity or unenforceability of the Obligations Guaranteed; (c) notice of acceptance of this Guaranty by the City; (d) notice of presentment, demand for payment, notice of non performance or non-observance of any term or condition of the Sublease, protest, notices of protest and notices of dishonor, notice of non-payment or partial payment under the Sublease; (e) notice of any defaults under the Sublease or in the performance of any of the covenants and agreements contained therein; or (f) any right of subrogation against FBC in respect of this Guaranty.

10. No Impairment, Waiver or Release. The obligations of Guarantor hereunder shall not be subject to any reduction, limitation, impairment, or termination for any reason, including, without limitation, any claim of waiver, release, surrender, alteration, or compromise, and shall not be subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever, other than the full and complete payment by Guarantor of Guarantor's Share of the Obligations Guaranteed. Without limiting the generality of the foregoing, Guarantor will not assert against the City any defense of waiver, release, discharge in bankruptcy, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, ultra vires acts, usury, illegality or unenforceability that may be available to FBC, the LLLP or the Guarantor. Guarantor further agrees that no act or thing, except for Guarantor's payment, in full, of Guarantor's Share of the

Obligations Guaranteed, which but for this provision might or could in law or in equity act as a release of the liabilities of the Guarantor hereunder, shall in any way affect or impair this Guaranty.

11. Representations, Warranties and Covenants. Guarantor hereby represents and warrants to City, and covenants with City, that: (i) there are no legal proceedings, material claims or demands pending against, or to the knowledge of the Guarantor threatened against, Guarantor or any of Guarantor's assets, (ii) the Guarantor is not in material breach or material default of any obligation to pay money, (iii) no event (including specifically the Guarantor's execution and delivery of this Guaranty) has occurred which, with or without the lapse of time or action by a third party, constitutes or could constitute a material breach or material default under any document evidencing or securing any obligation to pay money or under any other contract or agreement to which the Guarantor is a party, (iv) the Sublease and the guarantee of payment of the Obligations Guaranteed under this Guaranty will result in a direct financial benefit to Guarantor, (v) Guarantor has read and approved the terms of the Sublease, including, without limitation the terms of the Amendment, and (vi) the Guarantor has knowledge of FBC's financial condition and affairs and of all other circumstances which bear upon the risk assumed by the Guarantor under this Guaranty. The Guarantor shall not transfer any of his assets for the purpose of preventing City from satisfying any judgment rendered under this Guaranty therefrom, either before or after the entry of any such judgment.

12. Jurisdiction. Guarantor submits and consents to personal jurisdiction in the State of California for the enforcement of this Guaranty and waives any and all personal rights under the laws of any state or the United States of America to object to jurisdiction in the State of California for the purposes of litigation to enforce this Guaranty.

13. Cumulative Remedies. No right or remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but only by an instrument in writing duly executed by the City.

14. Governing Law. This Guaranty is delivered in and made in and shall in all respects be construed pursuant to the laws of the State of California.

15. Binding Effect. Guarantor agrees that notice of the acceptance of this Guaranty shall be deemed given upon the execution of the Amendment by the City. This Guaranty shall inure to the benefit of City and any successor or assign of City under the Sublease. This Guaranty, and each and every part hereof, shall be binding upon Guarantor and upon Guarantor's heirs, administrators, representatives, executors, successors and assigns.

16. Notices. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and the mailing thereof by certified mail to their respective addresses as set forth herein, or to such other places any party hereto may hereafter by notice in writing designate, shall constitute service of notice hereunder. Guarantor hereby represents and warrants to the City that the address of the Guarantor as specified below is true

and correct and until the City shall have actually received a written notice specifying any such change of address and specifically requesting that notices be issued to such changed address, the City may rely on the address stated as being accurate. Guarantor hereby agrees to provide the City with written notice of any change of address of a Guarantor within fifteen (15) days after such change.

17. Joint and Several Liability. If two or more Guarantors execute this Guaranty or related Personal Guaranty Agreements, each Guarantor shall be jointly and severally liable hereunder or thereunder, provided that the aggregate amount guaranteed by all Guarantors shall not exceed Guarantor's Share of the Obligations Guaranteed.

IN WITNESS WHEREOF, the undersigned Guarantor has caused this Guaranty to be duly executed and delivered as of the date first above written.

GUARANTOR:

Name: _____, individually

Address:

11/11/11 

PERSONAL GUARANTY AGREEMENT

THIS PERSONAL GUARANTY AGREEMENT (this "Guaranty") is made and entered into as of March ___, 2010, by Binkley C. Shorts, a resident of the State of Massachusetts (the "Guarantor"), for the benefit of the City of Fresno, a California municipal corporation (the "City"), and its successors and/or assigns, with a current address of Fresno City Hall, 2600 Fresno Street, Second Floor, Fresno, CA 93721-3600.

RECITALS

A. The City has agreed to amend and restate (the "Amendment") that certain Agreement dated January 3, 2001, originally between the City and Fresno Diamond Group, LLC (the "Sublease," as it may be amended, renewed, modified, assigned, supplemented, transferred, reinstated or extended, from time to time).

B. On or about October 13, 2005, Fresno Baseball Club, LLC, a Delaware limited liability company ("FBC," including its successors and/or assigns) purchased and assumed all of the Fresno Diamond Group, LLC's rights under the Sublease. The sole member and manager of FBC is Fresno Baseball Club, LLLP, a Delaware limited liability limited partnership ("LLLP").

C. Guarantor is a limited partner of the LLLP, and, as such, will receive financial and other benefits from the Amendment.

D. FBC's performance under Sublease is secured, in part, by that certain Pledge Agreement, dated October 13, 2005, wherein the LLLP granted the City a security interest in certain personal property of the LLLP (the "Pledge Agreement").

E. In order to induce the City to approve the Amendment, and as additional security for FBC's performance under the Sublease, as amended by the Amendment, Guarantor has agreed to give this Guaranty.

F. The City is not willing to sign the Amendment unless this Guaranty is executed by the Guarantor and delivered to City; provided, however, this Guaranty shall not be effective unless and until the Amendment is finally approved and executed by the City and FBC.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees with the City as follows:

1. Guaranty of Obligations. Subject only to the condition precedent in Paragraph 5 below, Guarantor hereby irrevocably, unconditionally, primarily, and absolutely guarantees to the City, the due and prompt payment, performance and collection of all of the following under the Sublease (hereinafter being collectively referred to as the "Obligations Guaranteed"): (i) the prompt payment when due of all indebtedness (principal, interest and other), liabilities and monetary obligations of FBC to City, of every kind, nature, and description under the Sublease, including, without limitation, rental payments; (ii) the prompt performance of all other

covenants, obligations and agreements to be kept and performed by FBC under the Sublease; and (iii) the payment of any costs and expenses under the Sublease, including, without limitation all collection costs, expenses and attorneys' fees (whether or not there is a lawsuit, and if there is a lawsuit, any fees and costs for trial and appeals) that City may sustain as a result of or in connection with any exercise of remedies available to the City under the Sublease. This is a limited guaranty, subject only to the condition precedent in Paragraph 5 below, whereby the deficiency guaranteed by the Guarantor shall be established.

2. Limitation on Guarantor's Obligations. Subject to Paragraph 3 below, Guarantor's payment obligations hereunder shall be limited to Guarantor's Share of the Obligations Guaranteed. "Guarantor's Share of the Obligations Guaranteed" shall mean an amount not to exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) of the Obligations Guaranteed. Guarantor's Share of the Obligations Guaranteed will only be reduced by sums actually paid by Guarantor under this Guaranty, but will not be reduced by sums from any other source, including, but not limited to, sums realized from the LLLP, FBC, or payments by anyone other than Guarantor, or reductions by operation of law, judicial order or equitable principles, unless and until the Obligations Guaranteed have been reduced to less than Guarantor's Share of the Obligations Guaranteed. City has the sole and absolute discretion to determine how any amounts collected from anyone other than Guarantor shall be applied to the Obligations Guaranteed and among the guaranties of the Sublease. This limitation on Guarantor's liability is not a restriction on the amounts owing under the Sublease by FBC to City, either in the aggregate or at any one time, nor shall it affect the liability of any other guarantors of the Sublease. This Guaranty is in addition to, and shall not limit in any way, any and all remedies the City has under existing documents.

3. Costs of Collection Against Guarantor. Notwithstanding Paragraph 2 above, in addition to Guarantor's Share of the Obligations Guaranteed, Guarantor shall be liable to the City and shall promptly pay upon demand any and all collection costs, expenses and attorneys' fees (whether or not there is a lawsuit, and if there is a lawsuit, any fees and costs for trial and appeals) incurred by the City in enforcing its rights against Guarantor under this Guaranty.

4. Independent Obligations. The obligations of Guarantor to City hereunder are direct and independent of any obligations of FBC to City. Subject only to the condition precedent in Paragraph 5 below, a separate action or actions may be brought against Guarantor, without regard to whether any action is brought against FBC or the LLLP, or whether FBC or the LLLP is joined in any such action or actions. No circumstance which operates to discharge, or to bar, suspend, or delay City's right to enforce, any obligation of FBC or the LLLP to City, including, without limitation, the effect of any statute of limitations or the pendency or conclusion of any proceeding under the Bankruptcy Code (11 U.S.C. § 101, *et. seq.*) or any similar present or future federal or state law, shall have any effect upon the enforceability of Guarantor's obligations to City hereunder. Any payment by FBC or the LLLP or any other circumstance which operates to toll any statute of limitations as to Borrower shall operate likewise to toll the statute of limitations as to Guarantor.

5. City's Collection Obligations. City shall be entitled to bring an action or actions against Guarantor under this Guaranty immediately following the satisfaction of the following condition precedent: City uses commercially reasonable efforts to exercise its rights and

remedies under the Pledge Agreement against the Pledged Collateral (as defined in the Pledge Agreement) and those rights and remedies are reasonably expected to be satisfied within 180 days after the notice of default has been delivered to FBC. However, in the event that any proceeding is commenced by or against FBC or the LLLP under the Bankruptcy Code (11 U.S.C. § 101, *et. seq.*) or under any similar present or future federal or state law the City shall have the right to bring an action or actions immediately against Guarantor under this Guaranty. The City shall only be required to pursue its rights and remedies against the Pledged Collateral to the extent that the City determines, in its reasonable discretion, that the net revenue generated by its collection efforts will exceed its cost of collection, resulting in a net reduction in the Obligations Guaranteed. The condition precedent in this paragraph shall be deemed fully satisfied by the City upon the occurrence of the following events, whichever event occurs first: (a) any personal property of FBC, over which the City actually obtains possession or control under the Pledge Agreement, has been sold by the City in an arms-length transaction to a third-party purchaser; provided, however, the City's obligations hereunder shall be deemed fully satisfied, if the City determines, in its reasonable discretion, that the revenue generated by any further sales of FBC's personal property will exceed the cost of such sales; (b) any proceeding is commenced by or against FBC or the LLLP under the Bankruptcy Code (11 U.S.C. § 101, *et. seq.*) or under any similar present or future federal or state law; or (c) the Obligations Guaranteed are not satisfied within one hundred eighty (180) days after the City delivers a notice of default to FBC. Guarantor understands and agrees that, despite commercially reasonable efforts of City, there is no guaranty that the City will be able to exercise its rights and remedies under the Pledge Agreement, or that the City's collection efforts will result in a reduction in Guarantor's Share of the Obligations Guaranteed.

6. Term of Guaranty. Guarantor agrees that this shall be a continuing, absolute and unconditional Guaranty and shall be in full force and effect until all sums due under the Sublease and the Obligations Guaranteed have been satisfied in full; provided, however, that Guarantor's obligations under this Guaranty shall be deemed fully satisfied if, and only if: (a) on the date the City has completed its review of the audit of FBC, as set forth in the Sublease, for the fiscal year that includes the 2014 baseball season for the Fresno Grizzlies (the "2014 Audit Date") there is no existing "Tenant Default" (as such term is defined in Section 8.1 of the Sublease) and, (b) in the event there is a circumstance existing on the 2014 Audit Date that, with the lapse of time, would constitute a Tenant Default, such circumstance is remedied prior to the expiration of the applicable cure period as set forth in Section 8.1 of the Sublease. Regarding subclause (b) of the foregoing sentence, by way of illustration and not limitation, if FBC has been provided notice of its failure to perform a given obligation under the Sublease, but the cure period for such failure as set forth in Section 8.1 of the Sublease has not expired prior to the 2014 Audit Date (and therefore FBC's failure does not constitute a "Tenant Default" on such date), then this Guaranty will not be deemed fully satisfied unless and until FBC has cured (or caused to be cured) such failure prior to the expiration of the applicable cure period.

7. Release of Guaranty by City. As more fully set forth in the Sublease, and subject to the terms and conditions therein, including but not limited to, the obligation of any third-party purchaser to assume any and all obligations of the Team under the Sublease and related agreements, the Sublease and related agreements may be assigned and sold by FBC in an arms-length transaction to a third-party purchaser (the "Sale"). No less than thirty (30) days before such Sale, FBC and the prospective purchaser may propose to the City, in writing, a substitute

guarantor for the Sublease (the "Substitute Guarantor"). Such proposal shall include a current, verified personal financial statement for such Substitute Guarantor, together with such other additional financial information and documentation as the City may reasonably request. Subject to the personal net worth and documentation requirements as reasonably determined by the City, the City's approval of the Substitute Guarantor shall not be unreasonably withheld, conditioned, or delayed. If the City approves such Substitute Guarantor, then simultaneously with the closing of such Sale and with the Substitute Guarantor's execution of a personal guaranty agreement acceptable to City, this Guaranty shall be marked "paid-in-full" and returned to Guarantor, and Guarantor shall be fully and unconditionally released from all further obligations hereunder. If the Substitute Guarantor is not approved by the City, then this Guaranty shall remain a continuing, absolute and unconditional guaranty and shall continue in full force and effect.

8. Guaranty Absolute. Guarantor hereby agrees that the City may from time to time without notice to or consent of the Guarantor and upon such terms and conditions as the City may deem advisable and without affecting this Guaranty or the liability of Guarantor under this Guaranty, which shall remain absolute and unconditional: (a) make any agreement extending or otherwise altering the time for or the terms of payment of all or any part of the sums due under the Sublease or the Obligations Guaranteed, or otherwise be amending, renewing, modifying, supplementing or extending the terms of the Sublease, or any agreement transferring or assigning the Sublease; (b) modify, waive, compromise, release, subordinate, resort to, exercise or refrain from exercising any right the City may have hereunder or under the Sublease; (c) accept or release additional security or guarantees of any kind for the Obligations Guaranteed; (d) accept from FBC or any other party partial payment or payments on account of the Obligations Guaranteed; or (e) release, settle or compromise any claim of the City against FBC, or against any other person, firm or corporation whose obligation is held by the City as collateral security for repayment of the Obligations Guaranteed.

9. Guarantor Waiver. Guarantor hereby unconditionally and absolutely waives: (a) any obligation on the part of the City to protect, secure or insure any of the security given for the payment of the sums due under the Sublease or for payment of the Obligations Guaranteed; (b) the invalidity or unenforceability of the Obligations Guaranteed; (c) notice of acceptance of this Guaranty by the City; (d) notice of presentment, demand for payment, notice of non performance or non-observance of any term or condition of the Sublease, protest, notices of protest and notices of dishonor, notice of non-payment or partial payment under the Sublease; (e) notice of any defaults under the Sublease or in the performance of any of the covenants and agreements contained therein; or (f) any right of subrogation against FBC in respect of this Guaranty.

10. No Impairment, Waiver or Release. The obligations of Guarantor hereunder shall not be subject to any reduction, limitation, impairment, or termination for any reason, including, without limitation, any claim of waiver, release, surrender, alteration, or compromise, and shall not be subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever, other than the full and complete payment by Guarantor of Guarantor's Share of the Obligations Guaranteed. Without limiting the generality of the foregoing, Guarantor will not assert against the City any defense of waiver, release, discharge in bankruptcy, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, ultra vires acts, usury, illegality or unenforceability that may be available to FBC, the LLLP or the Guarantor. Guarantor further agrees that no act or thing, except for Guarantor's payment, in full, of Guarantor's Share of the

Obligations Guaranteed, which but for this provision might or could in law or in equity act as a release of the liabilities of the Guarantor hereunder, shall in any way affect or impair this Guaranty.

11. Representations, Warranties and Covenants. Guarantor hereby represents and warrants to City, and covenants with City, that: (i) there are no legal proceedings, material claims or demands pending against, or to the knowledge of the Guarantor threatened against, Guarantor or any of Guarantor's assets, (ii) the Guarantor is not in material breach or material default of any obligation to pay money, (iii) no event (including specifically the Guarantor's execution and delivery of this Guaranty) has occurred which, with or without the lapse of time or action by a third party, constitutes or could constitute a material breach or material default under any document evidencing or securing any obligation to pay money or under any other contract or agreement to which the Guarantor is a party, (iv) the Sublease and the guarantee of payment of the Obligations Guaranteed under this Guaranty will result in a direct financial benefit to Guarantor, (v) Guarantor has read and approved the terms of the Sublease, including, without limitation the terms of the Amendment, and (vi) the Guarantor has knowledge of FBC's financial condition and affairs and of all other circumstances which bear upon the risk assumed by the Guarantor under this Guaranty. The Guarantor shall not transfer any of his assets for the purpose of preventing City from satisfying any judgment rendered under this Guaranty therefrom, either before or after the entry of any such judgment.

12. Jurisdiction. Guarantor submits and consents to personal jurisdiction in the State of California for the enforcement of this Guaranty and waives any and all personal rights under the laws of any state or the United States of America to object to jurisdiction in the State of California for the purposes of litigation to enforce this Guaranty.

13. Cumulative Remedies. No right or remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but only by an instrument in writing duly executed by the City.

14. Governing Law. This Guaranty is delivered in and made in and shall in all respects be construed pursuant to the laws of the State of California.

15. Binding Effect. Guarantor agrees that notice of the acceptance of this Guaranty shall be deemed given upon the execution of the Amendment by the City. This Guaranty shall inure to the benefit of City and any successor or assign of City under the Sublease. This Guaranty, and each and every part hereof, shall be binding upon Guarantor and upon Guarantor's heirs, administrators, representatives, executors, successors and assigns.

16. Notices. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and the mailing thereof by certified mail to their respective addresses as set forth herein, or to such other places any party hereto may hereafter by notice in writing designate, shall constitute service of notice hereunder. Guarantor hereby represents and warrants to the City that the address of the Guarantor as specified below is true



and correct and until the City shall have actually received a written notice specifying any such change of address and specifically requesting that notices be issued to such changed address, the City may rely on the address stated as being accurate. Guarantor hereby agrees to provide the City with written notice of any change of address of a Guarantor within fifteen (15) days after such change.

17. Joint and Several Liability. If two or more Guarantors execute this Guaranty or related Personal Guaranty Agreements, each Guarantor shall be jointly and severally liable hereunder or thereunder, provided that the aggregate amount guaranteed by all Guarantors shall not exceed Guarantor's Share of the Obligations Guaranteed.

IN WITNESS WHEREOF, the undersigned Guarantor has caused this Guaranty to be duly executed and delivered as of the date first above written.

GUARANTOR:

Binkley C/Shorts, individually

Address:

74 Cherry St
Wenham Ma 01984