



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO. 3:00 PM "C"  
COUNCIL MEETING 8/30/05  
APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

*Andrew T. Souza*

August 30, 2005

FROM: ANDREW T. SOUZA, CITY MANAGER

BY: NICOLE R. ZIEBA, MANAGEMENT ANALYST III  
CITY MANAGER'S OFFICE

SUBJECT: APPROVE ASSIGNMENT AGREEMENT, SUBORDINATION AGREEMENT and PLEDGE AGREEMENT CONCERNING THE SALE OF THE GRIZZLIES FRANCHISE FROM FRESNO DIAMOND GROUP, LLC TO FRESNO BASEBALL CLUB, LLC.

**KEY RESULT AREA**

Resource Management

**EXECUTIVE SUMMARY**

Fresno Diamond Group, the current owners of the Fresno Grizzlies franchise, is selling their franchise rights to Fresno Baseball Club, LLC (FBC). The City is given the right under its Sublease Agreement to approve the sale or transfer of the franchise. The current Pledge Agreement calls for the pledge of the membership interest in FBC in the event that there should be a breach of the City's Sublease Agreement or other stadium documents. City staff have conducted due diligence and research over the past few months to ensure that the partnership purchasing the Grizzlies is structurally and financially sound and that the City maintains a secured interest in the new Agreements on at least a parity with the old Agreements. The City is also requiring any debt incurred by FBC for initial capitalization of the LLC to be subordinate to the City's secured interest.

Staff believes the FBC is structurally and financially sound, and that the agreements in this transaction do maintain, and in some ways improve, the City's security interest.

**KEY OBJECTIVE BALANCE**

This transaction maintains a balance of the three Key Objectives. It maintains the security interest of the City, thereby shielding the Fresno constituents of any unnecessary risk. It maintains the fiscal parameters of the initial agreements with the Fresno Diamond Group. It does not adversely impact employee satisfaction.

Presented to Fresno Redevelopment Agency  
Date 8/30/05 8/30/05

Board of \_\_\_\_\_ approved as recommended

## **BACKGROUND**

On October 17, 2000, the City Council approved the Pledge Agreement, Sublease, and other various documents relating to the Grizzlies franchise under the Fresno Diamond Group (FDG). Within those agreements, there are provisions calling for the City to have final approval authority over any sale or transfer of interest of the Grizzlies franchise.

Several months ago, the Fresno Baseball Club, LLC, (FBC) made its intentions to purchase the Grizzlies franchise known to the City. City staff began to conduct due diligence research about the new ownership entity to ensure that it is fiscally and organizationally sound. Staff also began negotiations with FBC concerning the assignment of the Pledge Agreement and various other documents to the FBC. The City Attorney's Office also had Orrick, Herrington & Sutcliffe, the City's outside counsel, review the financial and legal documents to ensure soundness.

At this point, staff believes the agreements before City Council today ensure the City's security in the transfer of the Grizzlies franchise from FDG to FBC.

## **FISCAL IMPACT**

None. The City is a party in the transaction for approval authority only. Inasmuch as the sale may impact the equity interest the City holds, the Pledge and Assignment Agreements contain the same and in some cases better substantive points as the previous agreements with the FDG. The City retains an equity interest in the franchise, and will continue to have approval rights over the sale of the franchise, or any other sale or transfer of assets.

Attachments: Attachment A – Pledge Agreement  
Attachment B – Stadium Sublease Amendment and Global Assignment and Assumption  
Agreement with Consent of City of Fresno  
–  
Attachment C- Subordination Agreement

**PLEDGE AGREEMENT**

(Fresno Baseball Club, LLLP)

This Pledge Agreement ("Agreement") dated as of October 13, 2005 is made and executed by and between Fresno Baseball Club, LLLP, a Delaware limited liability limited partnership ("**Grantor**"), Fresno Baseball Club, LLC, a Delaware limited liability company ("**FBC**"), and the City of Fresno, a Municipal Corporation ("**Secured Party**").

**RECITALS**

A. On or about January 3, 2001, Secured Party entered into various agreements with the Fresno Grizzlies, Inc. (the "**Grizzlies**") and/or the Fresno Diamond Group, LLC ("**FDG**"), including the Sublease Agreement, the Parking Agreement and the Non-Relocation and Continuous Operation Agreement (each as defined below).

B. On or about January 3, 2001, Secured Party entered into the Pledge Agreement (Fresno Grizzlies Inc.) with the Grizzlies and FDG.

C. FBC has entered into an Asset Purchase Agreement dated as of July 15, 2005 with FDG and certain other parties named therein, in which FBC has agreed (1) to purchase the Franchise and substantially all of the assets used in the operation of FDG and the professional baseball team called the Fresno Grizzlies, including the Franchise, and (2) to assume certain contracts including the Sublease Agreement, the Parking Agreement, and the Non-Relocation and Continuous Operation Agreement.

D. FBC has asked Secured Party to consent to the transfer and assignment to FBC (and the acceptance and assumption by FBC) of all rights, title and interest in and to the Sublease Agreement, the Parking Agreement, and the Non-Relocation and Continuous Operation Agreement.

E. Grantor is the sole member and sole manager of FBC, and owns in the aggregate all of the outstanding membership interests and other equity securities in FBC.

F. As a condition precedent to Secured Party's consent to the transfer and assignment to FBC of all rights, title and interest in and to the Sublease Agreement, the Parking Agreement, and the Non-Relocation and Continuous Operation Agreement, Secured Party has required that Grantor and FBC enter into this Agreement with Secured Party to secure the prompt and complete payment and performance of all of the obligations set forth in **Section 3** of this Agreement (all such obligations are hereinafter referred to collectively as the "**Obligations**").

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Defined Terms.** Any term not defined in this Agreement shall have the meaning set forth in the Sublease Agreement. As used in this Agreement, the following terms shall have the following meanings:

**"Code"** shall mean the Uniform Commercial Code as the same may from time to time be in effect in the State of California.

**"Formation Agreement"** shall mean the Certificate of Formation of Fresno Baseball Club, LLC dated June 8, 2005, pursuant to which FBC was formed, as such agreement may be hereafter amended from time to time in accordance with the terms of this Agreement.

**"Franchise"** means the Class AAA Minor League Baseball franchise currently operating as the Fresno Grizzlies baseball club, and the corresponding membership interest in the Pacific Coast League of Professional Baseball Clubs, Inc., protected territorial rights, and other rights and entitlements necessary, or in any way related, to the ownership, use or operation of the franchise.

**"Non-Relocation and Continuous Operation Agreement"** shall mean that certain Non-Relocation and Continuous Operation Agreement by and between The Fresno Diamond Group, LLC, Fresno Grizzlies, Inc., Tucson Toros, Inc. and the City of Fresno dated January 3, 2001, as amended.

**"Parking Agreement"** shall mean that certain Agreement Regarding Parking Fresno Downtown Stadium Project by and between The Fresno Diamond Group, LLC, the City of Fresno and the Redevelopment Agency of the City of Fresno, as amended.

**"Proceeds"** shall mean "proceeds", as such term is defined in the Code and, in any event, shall include, but not be limited to, (a) any and all payments (in any form whatsoever) made or due and payable to Grantor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Pledged Collateral by any governmental body, authority, bureau or agency (or any person acting under color of governmental authority), (b) any and all amounts paid or payable to Grantor for or in connection with any sale or other disposition of Grantor's interests in FBC, and (c) any and all other amounts from time to time paid or payable under or in connection with any of the Pledged Collateral.

**"Sublease Agreement"** shall mean 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, as amended by the First Amendment to Agreement Concerning Construction and Sublease of a Multi-Purpose Stadium dated as of December 20, 2001, as amended by that certain Stadium Sublease Amendment And Global Assignment And Assumption Agreement with Consent of City dated as of the same date as this Agreement.

2. **Grant of Security Interest.** As collateral security for the prompt and complete payment and performance when due of the Obligations, Grantor hereby grants to Secured Party a security interest in and pledges to Secured Party all of the following (all of which being herein collectively called the **"Pledged Collateral"**):

(a) all of Grantor's right, title and interest as a member in FBC, including without limitation all of Grantor's right to receive distributions from FBC;

(b) to the extent Grantor has any rights to any FBC property, all of Grantor's right, title and interest in specific FBC property;

(c) all of Grantor's right, title and interest, if any, to participate in the management and voting of FBC;

(d) all of Grantor's right, title and interest in and to:

(i) all rights, privileges, authority and power of Grantor as owner and holder of the items specified in (a), (b) and (c) above, including but not limited to, all contract rights related thereto;

(ii) all options and other agreements for the purchase or acquisition of any interests in FBC; and

(iii) any document or certificate representing or evidencing Grantor's rights and interests in FBC; and

(iv) to the extent not otherwise included, all Proceeds and products of any of the foregoing.

3. **Obligations Secured.** This Agreement secures the performance or payment of the following Obligations:

(a) All obligations of FBC (as the assignee of FDG and Grizzlies) under the Sublease Agreement, the assignment for which is dated as of the date of this Agreement, (including, but not limited to, FBC's obligation to pay Secured Party \$1,500,000.00 in annual rental payments for the term of the Sublease Agreement, as such annual rental payments may be amended pursuant to the terms of the Sublease Agreement);

(b) All obligations of FBC (as the assignee of FDG and Grizzlies) under the Non-Relocation and Continuous Operation Agreement, the assignment for which is dated as of the date of this Agreement;

(c) Performance by Grantor of all covenants, conditions, and warranties made by Grantor in this Agreement; and

(d) The timely payment and performance of all present and future obligations of FBC to Secured Party evidenced by, and in accordance with the terms and conditions of, the Sublease Agreement, the Parking Agreement and the Non-Relocation and Continuous Operation Agreement as such agreements are amended or modified from time to time.

4. Representations and Warranties. Grantor and FBC, jointly and severally, represent and warrant that:

(a) Grantor is the sole owner of each item of the Pledged Collateral (or, in the case of after-acquired Pledged Collateral, at the time Grantor acquires rights in the Pledged Collateral, will be the record legal and beneficial owner thereof), free and clear of any and all liens and claims whatsoever except for the security interest granted to Secured Party pursuant to this Agreement.

(b) All membership interests in FBC included in the Pledged Collateral have been (or in the case of after-acquired membership interests, at the time Grantor acquires rights therein, will have been) duly authorized, validly issued and fully paid and are (or in the case of after-acquired membership interests, at the time Grantor acquires rights therein, will be) non-assessable.

(c) No security agreement, financing statement, assignment, equivalent security or lien instrument or continuation statement covering all or any part of the Pledged Collateral is on file or of record in any public office or at the records of FBC, except financing statements with respect to the Pledged Collateral filed by Secured Party pursuant to this Agreement.

(d) Upon the filing of all appropriate financing statements by the Secured Party under the applicable Uniform Commercial Code, all steps necessary to create and perfect the security interest created by this Agreement as a valid and continuing first lien on and first perfected security interest in the Pledged Collateral in favor of Secured Party, prior to all other liens, security interests and other claims of any sort whatsoever, will have been taken. This Agreement and the security interest created hereby are enforceable as such against creditors of and purchasers from Grantor.

(e) Grantor has not changed Grantor's name, or used, adopted or discontinued the use of any trade name, fictitious name or other trade name or trade style.

(f) Grantor's interests in FBC consist of a one hundred percent (100%) interest as a member in FBC.

(g) This Agreement is a valid and binding obligation of Grantor and FBC. Grantor and FBC have all power, statutory and otherwise, to execute and deliver this Agreement, to perform Grantor's and FBC's respective obligations hereunder and to subject the Pledged Collateral to the security interest created hereby, all of which has been duly authorized by all necessary action.

(h) No amendments or supplements have been made to the Formation Agreement since it was originally entered into; such Formation Agreement remains in effect; and no party to the Formation Agreement is presently in default thereunder.

(i) Grantor has the right to transfer all or any part of the Pledged Collateral free of any lien or encumbrance.

(j) No authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either (i) for Grantor's granting of a security interest in the Pledged Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by Grantor and FBC or (ii) for the exercise by Secured Party of the rights provided for in this Agreement or the remedies in respect of the Pledged Collateral pursuant to this Agreement (except as may be required in connection with such disposition by laws affecting the offering and sale of securities generally).

(k) Neither the execution and delivery of this Agreement, nor the taking of any action in compliance with it, will (i) violate or breach any law, regulation, rule, order, or judicial action binding on Grantor or FBC or any agreement to which Grantor or FBC is a party; or (ii) result in the creation of a lien against the Pledged Collateral except that created by this Agreement. There exists no event or omission that would be a default under this Agreement, except for the passage of time or the giving of notice.

(l) Grantor is a limited liability limited partnership duly formed, validly existing, and in good standing under the laws of Delaware, with its principal place of business at 53 Walsh Avenue, Stoneham, MA 02180.

(m) FBC is a limited liability company duly formed, validly existing, and in good standing under the laws of Delaware, with its principal place of business as of the date hereof, at 1800 Tulare Street, Fresno, CA 93721.

(n) Upon the transfer of the Pledged Collateral, or any portion thereof, to any party pursuant to Section 11 below, FBC shall continue in existence and the Formation Agreement provides for such continuation.

(o) As of the date hereof, there are no certificates, instruments or other documents evidencing any of the Pledged Collateral.

(p) Grantor keeps all records concerning the pledged membership interests in FBC and all certificates, instruments and other writings evidencing the same at its chief executive office located at 53 Walsh Avenue, Stoneham, MA 02180.

**5. Covenants.** Grantor and FBC, jointly and severally, covenant and agree that from and after the date of this Agreement and until the Obligations are fully satisfied:

(a) Further Documentation; Pledge of Instruments. At any time and from time to time, upon the written request of Secured Party, and at the sole expense of Grantor, Grantor and FBC will promptly and duly execute and deliver any and all such further instruments and documents and take such further actions as Secured Party may reasonably deem necessary to obtain the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the execution and filing of any financing or continuation statements under the Uniform Commercial Code in effect in any jurisdiction with respect to the security interest granted hereby and, transferring Pledged Collateral to the possession of Secured Party (if a security interest in such Pledged Collateral can be perfected by possession). Grantor also hereby authorizes Secured Party to file any such financing or continuation statement without

the signature of Grantor to the extent otherwise permitted by applicable law. If any amount payable under or in connection with any of the Pledged Collateral shall be or become evidenced by any promissory note, certificate, or other instrument (other than an instrument which constitutes chattel paper under the Code), such note or instrument shall be immediately pledged hereunder and a security interest therein hereby granted to Secured Party and shall be duly endorsed in a manner satisfactory to Secured Party and delivered to Secured Party.

(b) Priority of Liens. Grantor will defend the right, title and interest hereunder of Secured Party, as a first priority security interest in the Pledged Collateral, against the claims and demands of all persons whomsoever.

(c) Notices. Grantor and FBC will advise Secured Party promptly, in reasonable detail, (i) of any lien, security interest, encumbrance or claim made or asserted against any of the Pledged Collateral, (ii) of any distribution of cash or other property by FBC, whether in complete or partial liquidation or otherwise and of any other change in the composition of the Pledged Collateral, Grantor or FBC, and (iii) of the occurrence of any default, potential default or any other event which would have an adverse effect on the aggregate value of the Pledged Collateral or on the security interest created hereunder, including the priority thereof.

(d) Continuous Perfection. Grantor will not change Grantor's name, in any manner which might make any financing or continuation statement filed hereunder seriously misleading within the meaning of Section 9-506 of the Code (or any other then-applicable provision of the Code) unless Grantor shall have given Secured Party at least thirty (30) days prior written notice thereof and shall have taken all action (or made arrangements to take such action substantially simultaneously with such change if it is impossible to take such action in advance) necessary or reasonably requested by Secured Party to amend such financing statement or continuation statement so that it is not seriously misleading. Grantor will not sign or authorize the signing on Grantor's behalf of any financing statement naming Grantor as debtor covering all or any portion of the Pledged Collateral, except financing statements naming Secured Party as secured party.

(e) Place of Business. Grantor will not change Grantor's place of business (or, if Grantor has more than one place of business, its chief executive office), or the office in which Grantor's records relating to the pledged membership interests are kept unless Grantor has previously notified Secured Party thereof and taken such action as is necessary or reasonably requested by Secured Party to cause the security interest of Secured Party in the Pledged Collateral to continue to be perfected.

(f) Transfer of Assets/Permitted Indebtedness. Except for the lien in favor of Secured Party created hereunder, Grantor and FBC will not directly or indirectly sell, pledge, mortgage, assign, transfer or otherwise dispose of or create or suffer to be created any lien, security interest, charging order or encumbrance on any of the Pledged Collateral, the Franchise or any other assets of FBC other than such lien, security interest, charging order or encumbrance on the assets of FBC (other than on the Franchise) for "Permitted Indebtedness" (as defined below). Neither Grantor nor FBC shall create, incur, assume or permit to exist any Indebtedness except Indebtedness of FBC in an aggregate principal amount not exceeding 45% of the Fair

Market Value of FBC at any time outstanding (such permitted indebtedness referred to as "Permitted Indebtedness). For purposes of this Section 5(f), unsecured loans or advances to FBC from FBC's member(s) shall not be included in the foregoing calculation and shall be considered Permitted Indebtedness hereunder only to the extent such FBC's members have signed a Subordination Agreement in form and substance acceptable to the Secured Party subordinating such loans or advances to the Obligations.

"Indebtedness" means, without duplication, (a) all obligations for borrowed money or with respect to deposits or advances of any kind, (b) all obligations evidenced by bonds, debentures, notes or similar instruments, (c) all obligations upon which interest charges are customarily paid, (d) all obligations under conditional sale or other title retention agreements relating to property acquired, (e) all obligations in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien on property owned or acquired by FBC, whether or not the Indebtedness secured thereby has been assumed, (g) all guarantees by FBC of Indebtedness of others, (h) all capital lease obligations, (i) all obligations, contingent or otherwise, as an account party in respect of letters of credit and letters of guaranty.

"Fair Market Value" means the price at which all or substantially all of the assets of a business would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of all relevant facts, including the performance of the Obligations. For purposes of this Agreement, the Fair Market Value of FBC shall equal the \$7.75 million or the most recent Appraised Value of FBC, if any, as agreed to by the Secured Party (which shall not be unreasonably withheld, delayed or conditioned). The "Appraised Value of FBC" shall equal the Fair Market Value of FBC as determined by KPMG, LLP or such other third-party appraiser experienced in providing Fair Market Value appraisals of professional baseball franchises. The use of any appraiser other than KPMG, LLP by FBC shall be subject to the prior consent of the Secured Party, which will not be unreasonably withheld or delayed. FBC shall be responsible for the costs and expenses of any such appraisal.

The Grantor and FBC shall within 45 days after the end of each fiscal quarter deliver to the Secured Party a certificate signed the Chief Financial Officer of FBC (or an equivalent officer or manager) certifying to the Secured Party compliance with this paragraph 5(f) and setting forth in reasonable detail the Indebtedness, Permitted Indebtedness of FBC.

(g) Performance of Obligations. Grantor will perform all of Grantor's obligations under the Formation Agreement prior to the time that any interest or penalty would attach against Grantor or any of the Pledged Collateral as a result of Grantor's failure to perform any of such obligations, and Grantor will do all things necessary to maintain FBC as a limited liability company under the laws of Delaware and to maintain Grantor's interest in FBC in full force and effect without diminution.

(h) Formation Agreement. Grantor will not (i) suffer or permit any amendment, or modification of the FBC Formation Agreement without the prior written consent of Secured Party, (ii) withdraw as a member of FBC or (iii) waive, release, or compromise any

rights or claims Grantor may have against any other party which arise under the Formation Agreement. Grantor will not vote under the Formation Agreement to cause FBC to dissolve, liquidate, merge or consolidate with any other entity or take any other action under the Formation Agreement that would adversely affect the security interest created by this Agreement, including, without limitation, the value or priority thereof. Grantor will not permit, suffer or otherwise consent to the modification or redemption of existing interests in FBC or the issuance of any new or additional interests in FBC or options or other agreements granting any right to receive interests in FBC.

(i) Member Agreements. Without the Secured Party consent (which will not be unreasonably withheld or delayed), Grantor and FBC will not enter into any shareholder or member agreement, voting trust, proxy agreement or other agreement or understanding which affects or is related to the voting or giving of written consents with respect to any of the Pledged Collateral.

(j) Stay or Extension Laws. Grantor will not at any time claim, take, insist upon or invoke the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Pledged Collateral prior to any sale or sales thereof to be made pursuant to the provisions hereof or pursuant to the decree, judgment, or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state to redeem the property so sold or any part thereof, and Grantor hereby expressly waives, on behalf of Grantor and each and every person claiming by, through and under Grantor, all benefit and advantage of any such law or laws, and covenants that Grantor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power, right or remedy herein or hereby granted and delegated to Secured Party, but will authorize, allow and permit the execution of every such power, right or remedy as though no such law or laws had been made or enacted.

(k) Delivery of Certificates. Grantor agrees (i) immediately to deliver to Secured Party, or Secured Party's designee, all certificates, instruments or other documents evidencing any of the Pledged Collateral which may at any time come into the possession of Grantor and (ii) to execute and deliver a notice of Secured Party's security interest in the Pledged Collateral (which notice shall be satisfactory to Secured Party in form and substance and which may request acknowledgment from the addressee) to any third party which either has possession of the Pledged Collateral or any certificates evidencing any of the Pledged Collateral or otherwise has the ability under applicable law or the terms of any agreement to record transfers or transfer ownership of any of the Pledged Collateral (whether at the direction of Grantor or otherwise). Grantor hereby appoints Secured Party as Grantor's attorney-in-fact, with authority at any time or times to take any of the foregoing actions on behalf of Grantor. Grantor agrees that this Agreement or a photocopy of this Agreement shall be sufficient as a financing statement.

(l) FBC's Records. Grantor shall cause FBC to make a notation on the records of FBC indicating the security interest granted hereby.

(m) Uncertificated Securities. If at any time the Pledged Collateral constitutes a "security" as defined in Article 8 of the UCC, Grantor shall, or shall permit Secured Party to,

promptly take all action necessary or appropriate to cause Secured Party to have sole and exclusive "control" over the Pledged Collateral, as such term is defined in Article 9 of the UCC.

(n) Business of FBC. As to the business conducted by FBC, Grantor and FBC covenant and agree:

(i) to ensure that FBC's business is conducted efficiently and without voluntary interruption.

(ii) to ensure that all necessary action is taken to preserve all rights privileges and franchises held by FBC.

(iii) to ensure that FBC's business property is kept in good repair.

**6. Grantor's Powers.**

(a) So long as an Event of Default shall not then exist, Grantor shall be the sole party entitled (i) to exercise for any purpose any and all (A) voting rights and (B) powers, and (ii) to receive any and all payments, dividends, distributions or other proceeds of any kind, in each case arising from or relating to the Pledged Collateral; provided, however, that Grantor shall not exercise such rights or powers, or consent to any action of FBC that would be in contravention of the provisions of, or constitute an Event of Default under, this Agreement, the Sublease Agreement, the Non-Relocation and Continuous Operation Agreement or the Parking Agreement; provided, further, that prior to Grantor's voting of the Pledged Collateral for the following purposes, Grantor shall obtain and file with the General Partner of Grantor the Secured Party's written consent, which shall be given at Secured Party's reasonable discretion to (i) merge, consolidate or dissolve FBC, (ii) sell all, or substantially all, of the assets of FBC, or (iii) do anything which would have the effect of impairing the position or interest of Secured Party with respect to the Pledged Collateral or which would alter the voting rights with respect to the membership interests of FBC, or be inconsistent with or violate any provisions of this Agreement.

(b) Until an Event of Default occurs, Secured Party is not allowed to exercise any rights against the Pledged Collateral (other than such rights as are necessary to perfect Secured Party's security interest in the Pledged Collateral). Subject to the immediately preceding sentence, upon the occurrence of an Event of Default, unless Secured Party designates in writing to Grantor to the contrary, all rights of Grantor provided in Section 6(a) hereof shall cease, and all voting rights and powers and rights to distributions included in the Pledged Collateral or otherwise described in such Section 6(a) shall thereupon become vested in Secured Party, and Secured Party shall thereafter have the sole and exclusive right and authority to exercise such voting rights and powers. Grantor shall execute such documents and instruments, including but not limited to, statements that Grantor no longer has the right to act as a member or otherwise relating to such change as Secured Party may request. Grantor agrees that FBC and any member in FBC may rely conclusively upon any notice from Secured Party that Secured Party has the right and authority to exercise all rights and powers of Grantor under the Formation Agreement. Grantor irrevocably waives any claim or cause of action against FBC

or any member in FBC who deals directly with Secured Party following receipt of such notice from Secured Party.

**7. Secured Party's Appointment as Attorney-in-Fact.**

(a) Grantor hereby irrevocably constitutes and appoints Secured Party with full power of substitution, as Grantor's true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Grantor and in the name of Grantor or in such attorney-in-fact's own name, from time to time in the discretion of each such attorney-in-fact following the occurrence of an Event of Default, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives each such attorney-in-fact the power and right, from and after an Event of Default, on behalf of Grantor, without notice to or assent by Grantor, to do the following:

(i) to collect and otherwise take possession of and title to any and all distributions of cash or other property due or distributable at any time after the date hereof to Grantor as a member from FBC, whether in complete or partial liquidation or otherwise, and to prosecute or defend any action or proceeding in any court of law or equity and to convert any non-cash distributions to cash, and to apply any such cash distributions, interest or proceeds of conversion in the manner specified in Section 11(d) of this Agreement;

(ii) to ask, demand, collect, receive and give acceptances and receipts for any and all moneys due and to become due under any Pledged Collateral and, in the name of Grantor or such attorney-in-fact's own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Pledged Collateral and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by such attorney-in-fact for the purpose of collecting any and all such moneys due under any Pledged Collateral whenever payable;

(iii) to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Pledged Collateral; and

(iv) (A) to direct any party liable for any payment under any of the Pledged Collateral to make payment of any and all moneys due and to become due thereunder directly to Secured Party or as such attorney-in-fact shall direct; (B) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Pledged Collateral; (C) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Pledged Collateral or any portion thereof and to enforce any other right in respect of any Pledged Collateral; (D) to defend any suit, action or proceeding brought against Grantor with respect to any Pledged Collateral; (E) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as such attorney-in-fact may deem appropriate; and (F) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Pledged Collateral as fully and

completely as though such attorney-in fact were the absolute owner thereof for all purposes, and to do, at the option of such attorney-in-fact at Grantor's expense, at any time, or from time to time, all acts and things which such attorney-in-fact reasonably deems necessary to protect, preserve or realize upon the Pledged Collateral and the security interest of Secured Party therein, in order to effect the intent of this Agreement, all as fully and effectively as Grantor might do.

Grantor hereby ratifies, to the extent permitted by law, all that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

(b) The powers conferred on Secured Party hereunder are solely to protect the interest in the Pledged Collateral of Secured Party and shall not impose any duty upon any such attorney-in-fact to exercise any such powers. Such attorney-in-fact shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to Grantor for any act or failure to act unless such action or failure to act constitutes gross negligence.

(c) Grantor also authorizes Secured Party at any time and from time to time upon the occurrence of any Event of Default, to execute, in connection with the sale provided for in Section 11 of this Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to any of the Pledged Collateral.

**8. Distributions.** Following an Event of Default, Grantor hereby grants Secured Party full irrevocable power and authority to receive and hold at any such time cash and non-cash distributions by FBC on account of any of the Pledged Collateral (together with all interest, if any, earned thereon), which may be held free and clear of the liens created hereby, and to convert any such non-cash distributions to cash, and to apply any such cash distributions, interest or proceeds of conversion in the manner specified in Section 11(d) of this Agreement.

**9. Performance by Secured Party of Grantor's Obligations.** If Grantor fails to perform or comply with any of Grantor's agreements contained herein and Secured Party as provided for by the terms of this Agreement, following written notice to Grantor, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the expenses of Secured Party incurred in connection with such performance or compliance, together with interest thereon at the rate of 7%, shall be payable by Grantor to Secured Party on demand and shall constitute Obligations secured hereby.

**10. Default.** Any of the following shall constitute an "Event of Default" hereunder:

(a) A failure by Grantor or FBC to observe or perform any obligation, covenant, condition, or agreement hereof to be performed by Grantor or FBC which involves the payment of money for a period of five (5) days after written notice from Secured Party is received by Grantor;

(b) A failure by Grantor or FBC to observe or perform any nonmonetary obligation, covenant, condition, or agreement hereof to be performed by Grantor or FBC (which is not otherwise included in Section 10(a), (c), or (d)) which is not cured within thirty (30) days

after written notice thereof to Grantor; provided that if such failure is capable of cure but cannot be cured within such 30-day period, no Event of Default shall occur so long as Grantor or FBC, as applicable, is diligently attempting to cure and does so within ninety (90) days after written notice of such failure to Grantor;

(c) Any representation or warranty made by Grantor or FBC in this Agreement is not true and correct in any material respect as of the time made;

(d) The occurrence of any "Event of Default," breach or default under the Sublease Agreement, the Non-Relocation and Continuous Operation Agreement or the Parking Agreement beyond all applicable grace or curative periods provided therein;

(e) The creation of any lien, security interest, charging order or encumbrance on the Pledged Collateral, the Franchise or the other assets of FBC in breach of Section 5(f) above, or the making of any levy, seizure or attachment thereon, that is not cured within the time period set forth in Section 10(b) above;

(f) The suspension for more than thirty (30) consecutive days, termination or liquidation of the business of Grantor; or

(g) The dissolution, termination of existence or insolvency of Grantor, the appointment of a receiver of all or part of Grantor's assets, Grantor's assignment for the benefit of creditors, or the commencement of a proceeding under a bankruptcy or insolvency law by or against Grantor; provided, however, that with respect to the commencement of any involuntary bankruptcy or insolvency proceeding against Grantor, no Event of Default shall have occurred if such proceeding shall be dismissed or discharged within the time period set forth in Section 10(b) above.

#### **11. Remedies, Rights Upon Default.**

(a) Upon the occurrence of any Event of Default, Secured Party or Secured Party's designee may, at Secured Party's option, elect to become a substituted member in FBC with respect to the Pledged Collateral and Grantor shall execute or cause to be executed all documents necessary to evidence Secured Party so becoming a substituted member. If any Event of Default shall occur, Secured Party or Secured Party's designee may, at the time of such Event of Default or any time thereafter, declare FBC in default or breach of the Sublease Agreement, the Parking Agreement and the Non-Relocation and Continuous Operation Agreement, and may exercise in addition to all other rights and remedies granted to Secured Party in this Agreement, the Sublease Agreement, the Parking Agreement and the Non-Relocation and Continuous Operation Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the Code. Without limiting the generality of the foregoing, Grantor expressly agrees that in any such event Secured Party, without demand of performance or other demand, advertisement or notice of any kind to or upon Grantor or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived except the notice specified below of time and place of public or private sale), may forthwith collect, receive, appropriate and realize upon the Pledged Collateral, or any part thereof, and/or may forthwith sell, assign, give option or options to purchase, or sell or

otherwise dispose of and deliver said Pledged Collateral (or contract to do so), or any part thereof, at public or private sale or sales, at any exchange or broker's board or at any of Secured Party's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without the assumption of any credit risk. Grantor expressly acknowledges that private sales may be less favorable to a seller than public sales but that private sales shall nevertheless be deemed commercially reasonable and otherwise permitted hereunder. In view of the fact that federal and state securities laws and/or other applicable laws may impose certain restrictions on the method by which a sale of the Pledged Collateral may be effected, Grantor agrees that upon the occurrence of an Event of Default, Secured Party may, from time to time, attempt to sell all or any part of the Pledged Collateral by means of a private placement, restricting the prospective purchasers to those who will represent and agree that they are purchasing for investment only and not for distribution and who otherwise satisfy all of the requirements of applicable federal and state securities laws. In so doing, Secured Party may solicit offers to buy the Pledged Collateral, or any part thereof, for cash, from a limited number of investors deemed by Secured Party in its judgment, to be financially responsible parties who might be interested in purchasing the Pledged Collateral, and if Secured Party solicits such offers, then the acceptance by Secured Party of the highest offer obtained therefrom shall be deemed to be a commercially reasonable method of disposing of the Pledged Collateral.

Upon the occurrence of any Event of Default, Secured Party or Secured Party's designee shall have the right upon any public sale or sales contemplated in the immediately preceding paragraph, and, to the extent permitted by law, upon any such private sale or sales contemplated in the immediately preceding paragraph, to purchase the whole or any part of said Pledged Collateral so sold free and clear of all liens, free of any right or equity of redemption, which equity of redemption Grantor hereby releases. Grantor further agrees, at the request of Secured Party, to deliver to Secured Party or any purchaser or purchasers of the Pledged Collateral any agreements, instruments and other documents evidencing or relating to the Pledged Collateral. Grantor further agrees, at the request of Secured Party, to deliver to Secured Party or any purchaser or purchasers of the Pledged Collateral any agreements, instruments and other documents evidencing or relating to the Pledged Collateral. Secured Party shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale as provided in Section 11(d) of this Agreement. Only after so applying such net proceeds and after the payment by Secured Party of any other amount required by any provision of law, including Section 9-608(a)(1)(C) of the Code, need Secured Party account for the surplus, if any, to Grantor. To the extent permitted by applicable law, Grantor waives all claims, damages, and demands against Secured Party arising out of the repossession, retention or sale of the Pledged Collateral. Grantor agrees that Secured Party need not give more than ten (10) days' notice (which notification shall be deemed given when delivered on an overnight courier basis (i.e., federal express or similar service, receipt acknowledged, addressed to Grantor at Grantor's address referred to in Section 13 hereof) of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters.

(b) Grantor also agrees to pay all costs of Secured Party, including reasonable attorneys' fees and expenses, incurred with respect to the enforcement of any of Secured Party's rights hereunder.

(c) Grantor hereby waives presentment, demand, or protest (to the extent permitted by applicable law) of any kind in connection with this Agreement or any Pledged Collateral. Except for notices expressly provided for herein, Grantor hereby waives notice (to the extent permitted by applicable law) of any kind in connection with this Agreement.

(d) The proceeds of any sale, disposition or other realization upon all or any part of the Pledged Collateral shall be distributed by Secured Party in the following order of priorities:

first, to Secured Party in an amount sufficient to pay in full the expenses of Secured Party in connection with such sale, disposition or other realization, including all expenses, liabilities and advances incurred or made by Secured Party in connection therewith, including reasonable attorneys' fees and expenses;

second, to Secured Party until the other Obligations are paid in full; and

finally, upon payment in full of all of the Obligations, to Grantor, or their representative or as a court of competent jurisdiction may direct.

Except for Secured Party's gross negligence or willful misconduct, Grantor agrees to indemnify and hold harmless Secured Party, its elected or appointed officials, employees and agents, and each of them, from and against any and all liabilities, obligations, claims, damages, or expenses incurred by any of them arising out of or by reason of entering into this Agreement and to pay or reimburse Secured Party for the fees and disbursements of counsel incurred in connection with any investigation, litigation or other proceedings (whether or not Secured Party is a party thereto) arising out of or by reason of any of the aforesaid. Any amounts properly due under this Section 11 shall be payable to Secured Party immediately upon demand.

**12. Limitation on Secured Party's Duty in Respect of Pledged Collateral.**

Except as expressly provided in the Code, Secured Party shall have no duty as to any Pledged Collateral in its possession or control or in the possession or control of any agent or nominee of Secured Party or as to any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

**13. Role of Major League Baseball.**

(a) Grantor represents and warrants to Secured Party that: Grantor's execution and performance of this Agreement has been approved by the President of the National Association of Professional Baseball Leagues, Inc. and by the Board of Directors of the Pacific Coast League of Professional Baseball Clubs, Inc. (and reviewed by the Baseball Office of the Commissioner) to grant a security interest of a "Control Interest," as defined by Rule 54 of the Major League Rules (which are incorporated by reference in the Professional Baseball Agreement), in a Minor League Baseball club.

(b) Notwithstanding any other provision of this Agreement to the contrary, Secured Party agrees to be bound by the Major League Rule Regarding Regulation of Minor League Franchises (the "**Rule**"). Secured Party acknowledges that the Rule does not permit a Minor League Baseball club to pledge its franchise as security for any indebtedness and requires

that a "Control Interest" transfer, as defined in the Rule, in such club is subject to the prior review and approval of the Board of Directors of the Pacific Coast League of Professional Baseball Clubs, Inc. and the President of the National Association of Professional Baseball Leagues, Inc. and prior review of the Baseball Office of the Commissioner in their sole and absolute discretion. Accordingly Secured Party acknowledges that such approval for a transfer of Control Interest in the club would be required by any foreclosure, sale or transfer of the Pledged Collateral to a third party as well as to the Secured Party. Secured Party shall immediately notify the President of the Pacific Coast League of Professional Baseball Clubs, Inc., the President of the National Association of Professional Baseball Leagues, Inc. and the Baseball Office of the Commissioner of any Event of Default under any Obligation secured by this Agreement. Secured Party acknowledges that any temporary or permanent management of the Pledged Collateral by the Secured Party or any receiver or trustee shall be subject to the prior approval of the Board of Directors of the Pacific Coast League of Professional Baseball Clubs, Inc., and the President of the National Association of Professional Baseball Leagues, Inc. and the review of the Baseball Office of the Commissioner, in their sole and absolute discretion. In the event that Secured Party desires to operate the Franchise for its own account on a temporary or permanent basis, Secured Party shall obtain the prior written approval of the President of the National Association of Professional Baseball Leagues, Inc. in accordance with the Rule. Nothing contained in this Section shall be deemed to limit the obligations of the Grantor to the Secured Party under any agreement and the rights of Secured Party thereunder which, in either case, are not inconsistent with the provisions of this Section. Any requirements of this Section or this Agreement which require Secured Party to seek and obtain any approvals of the President of the National Association of Professional Baseball Leagues, Inc., or any other third party to operate the Franchise or perfect Secured Party's security interest in the Pledged Collateral shall be at the sole and absolute expense of Grantor.

**14. Notices.** Any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, by telefax or sent by overnight courier and shall be deemed given: (a) if served in person, when served; (b) if telecopied, on the date of transmission if before 3:00 p.m. (California time) on a business day; provided, that a hard copy of such notice is also sent pursuant to clause (c) below; or (c) if by overnight courier service, receipt acknowledged, on the fifth (5<sup>th</sup>) day after deposit with such service.

If to Grantor: Fresno Baseball Club, LLLP  
53 Walsh Avenue  
Stoneham, MA 02180  
Attention: Christopher P. Cummings

Copy To: Carlton Fields, P.A.  
One Progress Plaza  
200 Central Avenue, Suite 2300  
St. Petersburg, Florida 33701-4352  
Attention: Ben J. Hayes, Esq.

If to Secured Party: City of Fresno

2600 Fresno Street  
Fresno, California 93721  
Attention: City Manager

Any party may change its respective address for the giving of notice to another address by giving at least 10 business days' notice of such change.

15. **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

16. **No Waiver; Cumulative Remedies.** Secured Party shall not, by any act, delay, omission or otherwise, be deemed to have waived any of its rights or remedies hereunder. No waiver hereunder shall be valid unless in writing signed by the party to be charged with such waiver and then only to the extent therein set forth. A waiver of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which Secured Party would otherwise have had on any future occasion. No failure to exercise nor any delay in exercising on the part of Secured Party any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies hereunder and under the Sublease Agreement, the Parking Agreement and the Non-Relocation and Continuous Operation Agreement are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law. Secured Party may resort to and realize on the Pledged Collateral simultaneously with any acts or proceedings initiated by Secured Party in its sole and conclusive discretion to resort to or realize upon any other sources of repayment of the Obligations, including, but not limited to, collateral granted by other security agreements and the personal liability of Grantor and any person or corporation which has guaranteed repayment of the Obligations. None of the terms or provisions of this Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by Grantor and Secured Party.

17. **Successors and Assigns; Governing Law.** This Agreement and all obligations of Grantor hereunder shall be binding upon the successors and assigns of Grantor. All rights and remedies of Secured Party hereunder shall inure to the benefit of Secured Party and its successors and assigns. This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of the State of California. Neither this Agreement nor anything set forth herein is intended to, nor shall it, confer any rights on any person or entity other than the parties hereto and all third party rights are expressly negated.

18. **Termination.** This Agreement, and the assignments, pledges and security interests created or granted hereby, shall terminate when FBC completes performance of all Obligations to Secured Party. Upon termination, Secured Party shall release and reassign (without recourse upon, or any warranty whatsoever by, Secured Party), and deliver to Grantor all Pledged Collateral and related documents then in the custody or possession of Secured Party,

including termination statements under the Code, all without recourse upon, or warranty whatsoever, by Secured Party and at the cost and expense of Grantor.

19. **Injunctive Relief.** Grantor recognizes that in the event Grantor fails to perform, observe or discharge any of Grantor's obligations hereunder, no remedy of law will provide adequate relief to Secured Party, and agrees that Secured Party shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

20. **Release of Grantor or FBC.** Without notice to Grantor or FBC, Secured Party may release Grantor or FBC, or any endorser, guarantor, or any other collateral security given to secure the obligations of Grantor or FBC.

21. **Waiver of Subrogation.** Grantor shall have no rights of subrogation as to any of the Pledged Collateral until full and complete performance and payment of the Obligations.

22. **Deleted.**

23. **Consent to Jurisdiction.** GRANTOR HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF FRESNO, STATE OF CALIFORNIA AND IRREVOCABLY AGREES THAT, SUBJECT TO SECURED PARTY'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. GRANTOR EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. GRANTOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON GRANTOR BY OVERNIGHT COURIER SERVICE, ADDRESSED TO GRANTOR, AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME HAS BEEN SENT.

24. **Subordination and Release.** All indebtedness now or hereafter owing by FBC to Grantor for borrowed money or otherwise is hereby subordinated to the payment in full of the Obligations, and subsequent to a default under this Agreement or the Sublease Agreement, the Parking Agreement or the Non-relocation and Continuous Operation Agreement, Grantor shall not accept payment of all or any portion of such subordinated indebtedness, and if any such payment is made to Grantor, Grantor shall receive such payment in trust for the benefit of Secured Party and shall promptly pay over such payment to Secured Party. If Secured Party succeeds to the interest(s) of Grantor in FBC, any and all obligations of FBC to Grantor, whether in its capacity as a member of FBC or otherwise (including, without limitation any indebtedness of FBC to Grantor and any obligation of FBC under the Formation Agreement or applicable law to indemnify Grantor) and whether arising before, on or after the date Secured Party succeeds to the interest of Grantor, shall be immediately released and discharged and FBC shall have no further obligations or liabilities whatsoever to Grantor.

25. **Liability of Grantor Not Affected.** This Agreement shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by, any circumstances or condition, including, without limitation:

(a) the attempt or the absence of any attempt by Secured Party to obtain payment or performance by FBC or any other Grantor;

(b) Secured Party's delay in enforcing the Obligations or the obligations of any other party under the Sublease Agreement, the Parking Agreement or the Non-relocation and Continuous Operation Agreement, or any prior partial exercise by Secured Party of any right or remedy hereunder or under the Sublease Agreement, the Parking Agreement or the Non-relocation and Continuous Operation Agreement;

(c) any renewal, extension, substitution, modification, replacement of or indulgence with respect to, any indebtedness, liabilities, or obligations under the Sublease Agreement, the Parking Agreement or the Non-relocation and Continuous Operation Agreement (collectively, "**FBC's Obligations**"), all of which Secured Party is hereby authorized to make;

(d) the fact that FBC may not be liable for the payment or performance of FBC's Obligations, or any portion thereof, for any reason whatsoever;

(e) any sale, exchange, release, surrender or other disposition of, or realization upon, any collateral securing FBC's Obligations, or any settlement or compromise of any guaranties of FBC's Obligations, or any other obligation of any person or entity with respect to the Sublease Agreement, the Parking Agreement or the Non-relocation and Continuous Operation Agreement;

(f) the acceptance by Secured Party of any additional security for FBC's Obligations;

(g) the failure by Secured Party to take any steps to perfect, maintain, or enforce its remedies under the Sublease Agreement, the Parking Agreement or the Non-relocation and Continuous Operation Agreement, or to preserve its rights to or protect any security or collateral for FBC's Obligations;

(h) the lack of validity or enforceability of, or Secured Party's waiver or consent with respect to, any provision of any instrument evidencing, securing or otherwise relating to FBC's Obligations, or any part thereof;

(i) any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshaling of assets and liabilities or similar event or proceedings with respect to FBC or Grantor, as applicable, or any of their respective properties (each, an "**Insolvency Proceeding**"), or any action taken by Secured Party, any trustee or receiver or by any court in any such proceeding;

(j) the failure by Secured Party to file or enforce a claim against the estate (either in an Insolvency Proceeding or other proceeding) of FBC or Grantor;

(k) in any Insolvency Proceeding under Title 11 of the United States Code (11 U.S.C. Section 101 et seq.), as amended (the "**Bankruptcy Code**"): (i) any election by Secured Party under Section 1111(b)(2) of the Bankruptcy Code, (ii) any borrowing or grant of a security interest by FBC as debtor-in-possession under Section 364 of the Bankruptcy Code, (iii) the inability of Secured Party to enforce FBC's Obligations against FBC by application of the automatic stay provisions of Section 362 of the Bankruptcy Code, or (iv) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Secured Party's claim(s) against FBC for repayment of FBC's Obligations;

(l) the failure of Grantor to receive notice of any intended disposition of any collateral (other than the Pledged Collateral) for any of FBC's Obligations;

(m) any merger or consolidation of FBC into or with any other entity, or any sale, lease or transfer of any of the assets of FBC or Grantor to any other person or entity;

(n) any change in the ownership of FBC or any change in the relationship between FBC and Grantor, or any termination of any such relationship;

(o) the dissolution or other change in the status of FBC or Grantor;

(p) the absence, impairment or loss of any right of reimbursement or subrogation or other right or remedy of Grantor;

(q) any modification, amendment, release or waiver of the terms of the Sublease Agreement, the Parking Agreement or the Non-relocation and Continuous Operation Agreement; and

(r) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of FBC or Grantor.

Grantor hereby expressly waives and surrenders any defense to its liability under this Agreement based upon any of the acts, omissions, agreements, waivers or matters set forth above in clauses (a) through (r) in this Section, whether or not Grantor had notice or knowledge of same. It is the purpose and intent of this Agreement that the obligations of Grantor hereunder shall be absolute and unconditional under any and all circumstances.

**26. Rights of Secured Party.** Secured Party is hereby authorized, without notice to or demand of Grantor and without affecting the liability of Grantor hereunder, to take any of the following actions from time to time: (a) increase or decrease the amount of, or renew, extend, accelerate or otherwise change the time for payment of, or other terms relating to, FBC's Obligations, or otherwise modify, amend or change the terms of any agreement evidencing, securing or otherwise relating to any of FBC's Obligations; (b) accept and apply any payments on or recoveries against FBC's Obligations from any source, and any proceeds of any security therefor, to FBC's Obligations in such manner, order and priority as Secured Party may elect in its sole discretion; (c) take, hold, sell, release or otherwise dispose of all or any security for FBC's Obligations; (d) settle, release, compromise, collect or otherwise liquidate FBC's Obligations or any portion thereof; (e) accept, hold, substitute, add or release any other Agreement or endorsements of FBC's Obligations; and (f) upon the failure of FBC to perform

any of FBC's Obligations, appropriate and apply toward payment of FBC's Obligations any indebtedness due or to become due from Secured Party to Grantor.

**27. Grantor's Waivers.**

(a) Election of Remedies. Grantor irrevocably waives any defense based upon an election of remedies made by Secured Party or any other election afforded to Secured Party pursuant to applicable law, including, without limitation, (i) any election to proceed by judicial or nonjudicial foreclosure or by Uniform Commercial Code sale or by deed or assignment in lieu thereof, or any election of remedies which destroys or otherwise impairs the subrogation rights of Grantor or the rights of Grantor to proceed against FBC for reimbursement, or both, (ii) the waiver by Secured Party, either by action or inaction of Secured Party or by operation of law, of a deficiency judgment against FBC, and (iii) any election pursuant to an Insolvency Proceeding.

(b) Demands and Notices. Except as provided in this Agreement, Grantor irrevocably waives all presentments, demands for performance, protests, notices of protest, notices of dishonor, notices of acceptance of this Agreement and of the existence, creation or incurring of new or additional FBC Obligations, notices of defaults by FBC or any other person liable for FBC's Obligations and demands and notices of every kind that may be required to be given by any statute or rule or law.

(c) FBC Information. Grantor irrevocably waives (i) any duty of Secured Party to advise Grantor of any information known to Secured Party regarding the financial condition of FBC (it being the obligation of Grantor to keep informed regarding such condition) and (ii) any defense based on any claim that Grantor's obligations exceed or are more burdensome than those of FBC.

(d) Limitation of Liability. To the extent permitted by law, Grantor irrevocably waives any impairment, modification, change, release or limitation of the liability of, or stay of actions or lien enforcement proceedings against, FBC or Grantor, their property, or their estate in bankruptcy, resulting from the operation of any provision of the state or federal bankruptcy laws, or from the decision of any court.

(e) Lack of Diligence. Grantor irrevocably waives any and all claims or defenses based upon lack of diligence in: (i) collection of any FBC Obligations; or (ii) protection of any collateral or other security for FBC's Obligations.

(f) Status of FBC. Grantor irrevocably waives any and all claims or defenses based upon the lack of authority of FBC.

(g) Consideration. Grantor irrevocably waives any and all claims or defenses based upon the lack of or inadequate consideration for this Agreement.

(h) Revocation or Repudiation. Grantor irrevocably waives any and all claims or defenses based upon the revocation or repudiation hereof by Grantor or the revocation or repudiation of the Sublease Agreement, the Parking Agreement or the Non-Relocation and Continuous Operation Agreement by FBC.

(i) Unenforceability. Grantor irrevocably waives any and all claims or defenses based upon the unenforceability in whole or in part of the Sublease Agreement, the Parking Agreement or the Non-Relocation and Continuous Operation Agreement.

(j) Risks to Grantor. Grantor irrevocably waives any and all claims or defenses based upon any acts or omissions of Secured Party relating to or in connection with the Sublease Agreement, Parking Agreement or Non-Relocation and Continuous Operation Agreement which vary, increase or decrease the risk on Grantor.

(k) Offset Rights. Grantor irrevocably waives any and all claims or defenses relating to the enforceability of this Agreement or its obligations hereunder based upon a right to offset by Grantor against any obligation now or hereafter owed to Grantor by FBC.

(l) Obligations of a Surety. Grantor irrevocably waives any and all claims or defenses based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of the principal obligor.

(m) Bankruptcy Code. Grantor irrevocably waives any and all claims or defenses based upon Secured Party's election, in any proceeding instituted under the Bankruptcy Code, of the application of Bankruptcy Code Section 1111(b)(2) or any successor statute and any borrowing or any grant of a security interest under Bankruptcy Code Section 364.

(n) Other Defenses. Grantor irrevocably waives any other defenses, set-offs or counterclaims which may be available to FBC or any other grantor if there is more than one, and any and all other defenses now or at any time hereafter available to Grantor (including without limitation those given to sureties) at law or in equity. Without limiting the generality of the foregoing, to the extent applicable, Grantor also waives (i) any defense based upon Secured Party's election to waive its lien as to all or any security for the Obligations pursuant to California Code of Civil Procedure ("**CCP**") Section 726.5 or otherwise, and (ii) any and all benefits which might otherwise be available to Guarantor under California Civil Code ("**Civil Code**") 2787-2855, 2899 and 3433, including without limitation, any and all rights or defenses Grantor may have by reason of protection afforded to the principal with respect to any of the Obligations set forth herein or to any other guarantor, if any, of the Obligations set forth herein, pursuant to the anti-deficiency or other laws of the state of California limiting or discharging the principal's indebtedness or such other guarantor's obligations, including without limitation, CCP Sections 580a, 580b, 580d or 726.

**28. Additional California Waivers**. Grantor understands and acknowledges that if Secured Party forecloses judicially or nonjudicially against any real property security for the Obligations, that foreclosure could impair or destroy any ability that Grantor may have to seek reimbursement, contribution or indemnification from FBC or others based on any right Grantor may have of subrogation, reimbursement, contribution or indemnification for the value of the Pledged Collateral under this Agreement. Grantor further understands and acknowledges that in the absence of this provision, the potential impairment or destruction of Grantor's rights, if any, may entitle Grantor to assert a defense to this Agreement based on CCP Section 580d as

interpreted in *Union Bank vs. Gradsky*. By executing this Agreement, Grantor freely, irrevocably and unconditionally:

(a) waives and relinquishes that defense, and agrees that Grantor will be fully liable under this Agreement, even though Secured Party may foreclose judicially or nonjudicially against any real property security for the Obligations;

(b) agrees that Grantor will not assert that defense in any action or proceeding that Secured Party may commence to enforce this Agreement;

(c) acknowledges and agrees that the rights and defenses waived by Grantor under this Agreement include any right or defense that Grantor may have or be entitled to assert based upon or arising out of any one or more of the following: (i) CCP Sections 580a, 580b and 580d, or 726, or (ii) Civil Code Section 2848; and

(d) acknowledges and agrees that Secured Party is relying on this waiver in consenting to the transfer and assignment to FBC of all rights, title and interest in and to the Sublease Agreement, the Parking Agreement and the Non-Relocation and Continuous Operation Agreement, and that this waiver is a material part of the consideration that Secured Party is receiving for such consent. WITHOUT LIMITING THE FOREGOING, GRANTOR WAIVES ALL RIGHTS AND DEFENSES THAT GRANTOR HAS BECAUSE FBC'S OBLIGATIONS MAY BE SECURED BY REAL PROPERTY. THIS MEANS, AMONG OTHER THINGS:

(i) SECURED PARTY MAY FORECLOSE ON THE PLEDGED COLLATERAL OR ENFORCE SECURED PARTY'S RIGHTS AGAINST GRANTOR HEREUNDER WITHOUT FIRST FORECLOSING ON ANY REAL OR PERSONAL PROPERTY COLLATERAL PLEDGED BY FBC; AND

(ii) IF SECURED PARTY FORECLOSURES ON ANY REAL PROPERTY COLLATERAL PLEDGED BY FBC:

(A) THE AMOUNT OF THE DEBT MAY BE REDUCED ONLY BY THE PRICE FOR WHICH THAT COLLATERAL IS SOLD AT THE FORECLOSURE SALE, EVEN IF THE COLLATERAL IS WORTH MORE THAN THE SALE PRICE; AND

(B) SECURED PARTY MAY FORECLOSE ON THE PLEDGED COLLATERAL OR ENFORCE SECURED PARTY'S RIGHTS AGAINST GRANTOR HEREUNDER EVEN IF SECURED PARTY, BY FORECLOSING ON THE REAL PROPERTY COLLATERAL, HAS DESTROYED ANY RIGHT GRANTOR MAY HAVE TO COLLECT FROM FBC.

THIS IS AN UNCONDITIONAL AND IRREVOCABLE WAIVER OF ANY RIGHTS AND DEFENSES GRANTOR MAY HAVE BECAUSE FBC'S OBLIGATIONS MAY BE SECURED BY REAL PROPERTY. THESE RIGHTS AND DEFENSES INCLUDE, BUT ARE NOT LIMITED TO, ANY RIGHTS OR DEFENSES BASED UPON CCP SECTIONS 580a, 580b, 580d OR 726.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or have caused this Agreement to be executed by their duly authorized representative(s) as of the date first above written.

**Secured Party:**

City of Fresno, a Municipal Corporation

By: [Signature]  
Its: Assistant City Manager

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

**Grantor:**

Fresno Baseball Club, LLLP, a Delaware limited liability limited partnership

By: Fresno Baseball Club Management, LLC  
Its: General Partner

By: Cummings Baseball Group, LLC, a Delaware limited liability company  
Its: Managing Member

By: [Signature]  
Christopher P. Cummings  
Its: Managing Member

**FBC:**

Fresno Baseball Club, LLC

By: [Signature]  
Christopher P. Cummings  
Its: President

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

BY [Signature]  
CITY ASSISTANT CITY ATTORNEY

**ATTEST:**

REBECCA E. KLISCH, CMC  
CITY CLERK

By: [Signature]  
Deputy / Date: 11/13/05

**STADIUM SUBLEASE AMENDMENT AND  
GLOBAL ASSIGNMENT AND ASSUMPTION AGREEMENT  
WITH CONSENT OF CITY AND REDEVELOPMENT AGENCY**

This Stadium Sublease Amendment and Global Assignment and Assumption Agreement With Consent of City and Redevelopment Agency (the "Assignment"), is dated as of October 13, 2005 (hereinafter "Effective Date"), by and among Fresno Diamond Group, LLC, a California limited liability company ("Seller"), Fresno Grizzlies, Inc., a California corporation ("Grizzlies"), Fresno Grizzlies Holding, Inc., an Arizona corporation formerly known as the Tucson Toros, Inc. ("TTI"); and Fresno Baseball Club, LLC, a Delaware limited liability company ("Assignee"). Seller, Grizzlies and TTI, and their successors and assignees, are hereinafter referred to collectively as the "Assignors."

**RECITALS**

A. On July 15, 2005, Seller, FDG Grizzlies Holdings, LLC, a California limited liability company (the "Franchise Seller"), Assignee, as "Buyer", and the other parties named therein entered into a certain Asset Purchase Agreement (the "APA") pursuant to which Seller and Franchise Seller agreed to sell to Buyer a professional baseball franchise known as the Fresno Grizzlies (the "Fresno Grizzlies") and substantially all of the assets associated with the operation of the Fresno Grizzlies.

B. Pursuant to the APA, on or about Effective Date, Seller and Franchise Seller are, among other things, transferring, selling, and conveying the Acquired Assets and the Franchise (as such terms are defined in the APA) to Assignee, and Assignee is assuming the Assumed Liabilities (as such term is defined in the APA), including the Stadium Sublease, the Parking Agreement, and Non-Relocation Agreement (each as defined below).

C. The "Stadium Sublease" means that "Agreement Between The City Of Fresno, Fresno Grizzlies, Inc. and Fresno Diamond Group, LLC Concerning Construction and Sublease of a Multipurpose Stadium" made and entered into as of January 3, 2001, by and among the City of Fresno, a California municipal corporation ("City") (Seller and Grizzlies being referred to therein, collectively as, the "Tenant"), as the same was amended by the First Amendment To Agreement Concerning Construction and Sublease of a Multi-Purpose Stadium made and entered into as of December 26, 2001, by and between the City and Tenant ("First Amendment"), all of which provide for the lease and demise of the Leased Premises (as defined below) and certain other matters.

D. The "Non-Relocation Agreement" means that "Non-Relocation and Continuous Operation Agreement dated as of January 3, 2001 by and among Seller, Grizzlies, TTI and City.

E. The "Parking Agreement" means that "Agreement Regarding Parking Fresno Downtown Stadium Project" by and among Seller, the City and the Redevelopment Agency of the City of Fresno (the "Redevelopment Agency").

F. The "Leased Premises" means certain land, more particularly described in Exhibit "A" annexed to the First Amendment, and improvements located thereupon, including, without limitation, a baseball stadium.

G. Each of the Assignors desire to assign all of the rights, title, interests, privileges and benefits they each may have, if any, arising under the Stadium Sublease, Non-Relocation Agreement and Parking Agreement (collectively, the "Assigned City Agreements") to Assignee, and Assignee desires to acquire all such rights, title, interest, privileges and benefits, and to assume all liabilities of Assignors arising under the Assigned City Agreements on and after the Effective Date, with the consent of City and Redevelopment Agency, all as more particularly set forth herein.

H. Assignee and the City desire to amend the Stadium Sublease to effect certain clarifying changes to conform the Stadium Sublease as a result of the foregoing assignment.

**NOW, THEREFORE**, in consideration of the foregoing, the consummation of the closing under the APA, the covenants set forth herein, and other good and valuable consideration paid by Assignee to Assignors, the receipt and sufficiency of which are hereby acknowledged by each of the Assignors, it is hereby mutually agreed as follows:

1. **Recitals**. The Recitals set forth hereinabove are true and correct and are incorporated herein by reference.

2. **Assignment**. Effective as of the Effective Date, subject to the consent of the City and the Redevelopment Agency, and the conditions set forth below, the Assignors do hereby sell, assign, transfer and set over to Assignee all of Assignors' rights, title, interests, privileges and benefits in, to, and under the Assigned City Agreements, including but not limited to, the right to use and occupy the Leased Premises, prepaid rent or deposits of any kind or nature relating to the use or occupancy of the Leased Premises, and all Assignors' income, profits, and revenues of every kind whatsoever due or to become due or arising from the use, occupancy, or operation of the Leased Premises, and all right, power and authority of Assignors to alter, modify, or change the terms of the Assigned City Agreements, or to surrender, renew, cancel, or terminate the Assigned City Agreements; provided, however, that pursuant to the APA, Assignors retain all obligations and liabilities accruing or arising under the Assigned City Agreements prior to the Effective Date.

3. **Acceptance**. Effective as of the Effective Date, Assignee hereby accepts the assignment and, in addition, does hereby covenant and agree, for the benefit of Assignors, the City and the Redevelopment Agency, to faithfully observe, keep, perform and fulfill all of the terms, covenants, conditions and obligations required to be observed, kept, performed and fulfilled by Assignors under the Assigned City Agreements accruing or arising on and after the Effective Date, including but not limited to, the obligation to make payments when due thereunder.

4. **Amendment to Sublease**. On and after the Effective Date, subject to the consent of the City and Redevelopment Agency, the Stadium Sublease is hereby amended as follows:

(a) **Tenant**. The term "Tenant" as defined in the Stadium Sublease shall mean "Fresno Baseball Club, LLC" and Section 1.25 of the Stadium Sublease shall be hereby amended to define Tenant as the "Fresno Baseball Club, LLC."

(b) **Grizzlies Pledge Agreement**. The term "Grizzlies Pledge Agreement" shall be replaced in the Stadium Sublease with the term "FBC LLLP Pledge Agreement". Section 1.15 of the Stadium Sublease shall be deleted in its entirety and replaced with the following:

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

(c) **The term "Grizzlies"**. The use of the capitalized term "Grizzlies" used in Sections 4.1(g), 13.1, and 14.1 shall mean the "Fresno Grizzlies, a professional baseball team."

(d) **Section 9.1. Tenant's Pledge**. The first sentence of Section 9.1 of the Sublease shall be replaced in its entirety with the following:

"Section 9.1 FBC LLLP Pledge Agreement.

Tenant shall cause the Fresno Baseball Club LLLP to provide the FBC LLLP Pledge Agreement as security of Tenant's obligations under this Agreement."

The existing Pledge Agreement attached to the Stadium Sublease as Exhibit D shall be replaced in its entirety by the Pledge Agreement attached to this Assignment as Exhibit A.

(e) **Stadium Rental Form**. The Stadium Rental Form attached to the Stadium Sublease as Exhibit C shall be replaced in its entirety by a new stadium rental form to be mutually agreed to by the City and Assignee, which form shall be substantially similar to the existing form. Neither the City nor Assignee shall unreasonably withhold, delay or condition its agreement as to the new stadium rental form.

5. **Assigned City Agreements**. Except as specifically amended above, the Assigned City Agreements shall remain in full force and effect and are hereby ratified and confirmed, and the execution, delivery and effectiveness of this Assignment shall not, except as expressly provided herein, operate as a waiver of any right, power, or remedy of the City, nor constitute a waiver of any provision of the Assigned City Agreements.

6. **Assignors Representations and Warranties**. Assignors hereby represent and warrant to the City, the Redevelopment Agency and Assignee as follows, which representations and warranties are effective as of the Effective Date:

(a) The Assigned City Agreements are each legal, valid, binding, and enforceable, and are in full force and effect.

(b) A true and complete copy of the Stadium Sublease is attached hereto as Exhibit 1. A true and complete copy of the Non-Relocation Agreement is attached hereto as Exhibit 2. A true and complete copy of the Parking Agreement is attached hereto as Exhibit 3. The Assigned City Agreements are incorporated herein by reference, and none of which have been altered, modified, amended or changed except for the Sublease Agreement by the First Amendment to the Sublease Agreement and this Assignment.

(c) To Assignors' knowledge, the Leased Premises are as described in Exhibit "A" that is annexed to the First Amendment, a copy of which is attached hereto as part of Exhibit 1.

(d) No party to the Assigned City Agreements is in breach or default, and to Assignors' knowledge no event has occurred that, with notice or lapse of time, would constitute a breach or default or permit termination, modification, or acceleration thereunder.

(e) There are no disputes, oral agreements, or forbearance programs in effect as to any of the Assigned City Agreements.

(f) Assignors have maintained the Leased Premises in good condition and repair (excepting normal wear and tear), and operated the Leased Premises, to the extent and in the manner required in the Stadium Sublease.

(g) The Assignors have not executed any other assignment of any of the Assigned City Agreements except that certain Assignment of Stadium Design Between Fresno Diamond Group And The City Of Fresno dated September 15, 2000 by and between the City and Seller.

(h) Except for the APA, neither the Stadium Sublease, the Non-Relocation Agreement nor the Parking Agreement is subject to any contract (oral or written) for sale, lease, assignment, or otherwise. Furthermore, Assignor represents and warrants that each of the Assigned City Agreements is free and clear of any tax, claim, mortgage, encumbrance, security interest, pledge, lien, charge, or any other restriction on any of the Assignors' rights, title, interests, privileges or benefits in, to or under any of the Assigned City Agreements, and upon Closing, this Assignment is expressly made and delivered free and clear of any and all of Assignors' retained liabilities.

7. **Further Assurances.** Assignors, for themselves and their successors and assigns, have covenanted and, by this Assignment, do covenant with Assignee, its successors and assigns, and the City and the Redevelopment Agency, that Assignors will do, execute and deliver or will cause to be done, executed and delivered all such further acts, transfers, assignments and conveyances, powers of attorney and assurances, and will take such further action, in order to better assure, convey and confirm to Assignee, its successors and assigns, all and singular, each of the Assigned City Agreements and all of the rights, title, interests, privileges and benefits hereby conveyed, assigned, transferred and delivered unto Assignee as Assignee, the City, and the Redevelopment Agency may reasonably request.

8. **Authority and Approval.** Assignors and Assignee have the requisite power and authority to execute, deliver and perform this Assignment, and all actions of each such party, necessary for such execution, delivery and performance have been duly taken. Assignors and Assignee do warrant each unto the other, and to the City and the Redevelopment Agency, that the person affixing his signature hereto on behalf of Assignors and Assignee, respectively, was duly authorized as the officer or manager to execute and deliver this Assignment. Assignee represents and warrants to the City and the Redevelopment Agency that it has the power and authority to assume the obligations under the Assigned City Agreements and has all necessary licenses and permits to operate the Fresno Grizzlies.

9. **Validity.** This Assignment, when executed and delivered by both Assignors and Assignee, and consented to by the City and the Redevelopment Agency (whether by joinder herein or by separate instrument), shall constitute the legal, valid and binding obligation of Assignors and Assignee, enforceable in accordance with the terms hereof.

10. **Ratification; Construction.** Except as assigned, assumed, or modified by this Assignment, the terms of the Assigned City Agreements are ratified and confirmed.

11. **Successors and Assigns.** This Assignment shall inure to the benefit of the Assignors' and Assignee's respective successors and assigns. The City and the Redevelopment Agency shall be third party beneficiaries of this Agreement.

12. **Counterparts.** This Assignment may be executed in any number of counterparts, each of which shall for all purposes be deemed an original, and all such counterparts shall together constitute but one document.

13. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and wholly performed in the State of California by California residents.

14. **Amendment.** This Assignment may not be amended or modified except in writing signed by each of the parties to this Assignment and the City and the Redevelopment Agency. This Assignment shall be construed as to its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

***SIGNATURE PAGES FOLLOW***

IN WITNESS WHEREOF, Assignors and Assignee have caused this Assignment to be duly executed on the day first above written.

**"ASSIGNORS"**

FRESNO DIAMOND GROUP, LLC,  
a California limited liability company

By: David Gates

Name: David Gates

Its: Manager

STATE OF CALIFORNIA  
COUNTY OF FRESNO

Personally appeared before me \_\_\_\_\_, as manager of FRESNO DIAMOND GROUP, LLC, a California limited liability company, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed as such officer of such company and the free act and deed of said company before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires

FRESNO GRIZZLIES, INC.,  
a California corporation

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

Name: \_\_\_\_\_

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

STATE OF CALIFORNIA  
COUNTY OF FRESNO

Personally appeared before me \_\_\_\_\_, as President of FRESNO GRIZZLIES, INC., a California corporation, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed as such officer of such company and the free act and deed of said company before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires

FRESNO GRIZZLIES HOLDING, INC.,

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

State of California  
County of LOS ANGELES

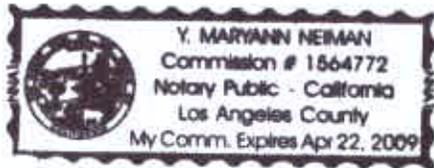
On November 16, 2005 before me, Y. Maryann Neiman, Notary Public

Date  
personally appeared \*\*\*\*\*DAVID CEE CATES\*\*\*\*\*  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

\*\*\*\*\*  
Name(s) of Signer(s)

personally known to me  
 Proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

*Y. Maryann Neiman*  
Signature of Notary Public  
Y.MARYANN NEIMAN

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document:

**\*\*STADIUM SUBLEASE AMENDMENT\***

Document Date: **\*\*\*\*\*NONE\*\*\***

Number of pages: **14 PAGES**

Signer(s) other Than Named Above:

**\*\*\*\*\*NONE\*\*\*\*\***

Capacity(ies) Claimed by Signer **Individual**

Signer's Name: **\*\*\*David Cee Cates\*\*\***



- Individual**
- Corporate Officer - Title(s): \_\_\_\_\_
- Partner  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

an Arizona corporation formerly known as the  
Tucson Toros, Inc.

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

Name: \_\_\_\_\_

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

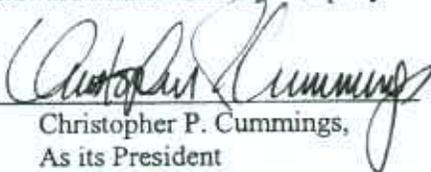
STATE OF CALIFORNIA  
COUNTY OF FRESNO

Personally appeared before me \_\_\_\_\_, as President of FRESNO GRIZZLIES HOLDING, INC., an Arizona corporation, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed as such officer of such company and the free act and deed of said company before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires

“ASSIGNEE”

FRESNO BASEBALL CLUB, LLC,  
a Delaware limited liability company

By:   
Christopher P. Cummings,  
As its President

STATE OF CALIFORNIA  
COUNTY OF FRESNO

Personally appeared before me Christopher P. Cummings, the President of FRESNO BASEBALL CLUB, LLC, a Delaware limited liability company, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed as such officer of such company and the free act and deed of said company before me.



  
Notary Public  
My Commission Expires 12/21/06

IN WITNESS WHEREOF, Assignors and Assignee have caused this Assignment to be duly executed on the day first above written.

**"ASSIGNORS"**

FRESNO DIAMOND GROUP, LLC,  
a California limited liability company

By: \_\_\_\_\_  
David Cates, Manager

STATE OF CALIFORNIA  
COUNTY OF FRESNO

Personally appeared before me David Cates, as manager of FRESNO DIAMOND GROUP, LLC, a California limited liability company, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed as such officer of such company and the free act and deed of said company before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires

FRESNO GRIZZLIES, INC.,  
a California corporation

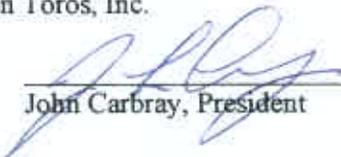
By: \_\_\_\_\_  
*John Carbray*  
John Carbray, President

STATE OF Michigan  
COUNTY OF Cheboygan

Personally appeared before me John Carbray, as President of FRESNO GRIZZLIES, INC., a California corporation, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed as such officer of such company and the free act and deed of said company before me.

Brenda Lee Nash  
Notary Public  
My Commission Expires

FRESNO GRIZZLIES HOLDING, INC.,  
an Arizona corporation formerly known as the  
Tucson Toros, Inc.

By:   
John Carbray, President

STATE OF MICHIGAN  
COUNTY OF Cheboygan

Personally appeared before me John Carbray, as President of FRESNO GRIZZLIES HOLDING, INC., an Arizona corporation, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed as such officer of such company and the free act and deed of said company before me.

  
Notary Public  
My Commission Expires

BRENDA LEE NASH  
NOTARY PUBLIC, STATE OF MICHIGAN  
COUNTY OF CHEBOYGAN  
MY COMMISSION EXPIRES AUG. 20, 2008  
ACTING IN THE COUNTY OF Cheboygan

“ASSIGNEE”

FRESNO BASEBALL CLUB, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Christopher P. Cummings,  
As its President

STATE OF CALIFORNIA  
COUNTY OF FRESNO

Personally appeared before me Christopher P. Cummings, the President of FRESNO BASEBALL CLUB, LLC, a Delaware limited liability company, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed as such officer of such company and the free act and deed of said company before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires

**ACKNOWLEDGEMENT, CONSENT, AND AGREEMENT OF  
THE CITY OF FRESNO**

**THE CITY OF FRESNO**, a California municipal corporation, (the "City") hereby acknowledges, approves, consents, and agrees as follows, all of which are effective as of the Effective Date (as defined below):

1. Reference is hereby made to that certain Stadium Sublease Amendment and Global Assignment and Assumption Agreement With Consent of City and the Redevelopment Agency (the "Assignment"), dated as of October 13, 2005 (hereinafter "Effective Date"), by and among Fresno Diamond Group, LLC, a California limited liability company ("Seller"), Fresno Grizzlies, Inc., a California corporation ("Grizzlies"), Fresno Grizzlies Holding, Inc., an Arizona corporation formerly known as the Tucson Toros, Inc. ("TTI"); and Fresno Baseball Club, LLC, a Delaware limited liability company ("Assignee"). Seller, Grizzlies and TTI, and their successors and assignees, are hereinafter referred to collectively as the "Assignors." All terms not otherwise defined herein shall have the meaning set forth in the Assignment.

2. The City is the sublessor under the Stadium Sublease.

3. A true and complete copy of the Stadium Sublease is attached hereto as Exhibit "A" and is incorporated herein by reference, and such Stadium Sublease has not been modified, amended or changed except by the First Amendment and the Assignment.

4. The Leased Premises are as described in Exhibit "A" to the First Amendment, which is attached hereto as part of Exhibit 1.

5. To City's knowledge, Tenant is not presently in breach or default, and no existing event has occurred to the City's knowledge, which, with notice or lapse of time, would constitute a breach or default or permit termination, modification, or acceleration under any of the Assigned City Agreements.

6. The City hereby agrees that all rent or other sums due and payable through the day before the Effective Date under the Assigned City Agreements, and all other obligations to be performed by Tenant under the Stadium Sublease through the day before the Effective Date under the Stadium Sublease, have been fully paid and satisfactorily performed.

7. The rights of the Assignors under the Assigned City Agreements are in full force and effect.

8. Subject to paragraph 9 below, the City hereby (a) approves and otherwise consents to the assignment and assumption of the Assigned City Agreements by Assignors to Assignee, (b) consents to the amendments to the Stadium Sublease as set forth in the Assignment, (c) fully and unconditionally releases and discharges Assignors, and their managers, members, directors, shareholders and officers, for obligations or liabilities arising under the Assigned City Agreements on and after the Effective Date and grants Assignors a novation with respect to, all such liabilities and obligations arising or accruing under the Assigned City Agreements for obligations or liabilities arising thereunder on and after the Effective Date. Notwithstanding the foregoing, the foregoing release and novation does not in any way release or novate Assignors from any liabilities or obligations under or relating to the Assigned City Agreements which arose prior to the Effective Date but are claimed or noticed on or after the Effective Date.

9. This Consent shall become effective on closing of the APA, subject to receipt by the City on or prior to the Effective Date of the following, each in form and substance reasonably satisfactory to the City and its counsel:

- (a) The Assignment duly executed by each party;
- (b) The closing of the APA;
- (c) The execution and delivery by the Fresno Baseball Club, LLLP of the Fresno Baseball Club LLP Pledge Agreement in form and substance acceptable to the City;
- (d) The execution and delivery by the Assignee of a Subordination Agreement in form and substance acceptable to the City;
- (e) Evidence of insurance from Assignors satisfying the requirements of Section 6.4 of the Stadium Sublease;
- (f) Written opinion from Carlton Fields, P.A., counsel for the Assignee addressed to the City covering such legal matters as the City may reasonably request;
- (g) All fees and expenses payable to the City and its counsel shall have been paid on or prior to the Effective Date; and
- (h) Such other evidence as the City may reasonably request to establish the accuracy and completeness of the representations and warranties and the compliance with the terms and conditions contained in the Assignment Amendment.

10. The terms of the Assigned City Agreements, as assigned, assumed and amended by the Assignment, are hereby ratified and confirmed.

**IN WITNESS WHEREOF**, the City has caused this Acknowledgement, Consent, and Agreement to be duly executed on the day first above written.

**THE "CITY"**

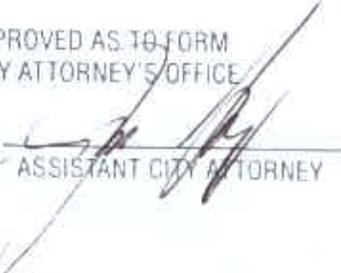
CITY OF FRESNO,  
a California municipal corporation

By: 

Its: Assistant City Manager

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

BY

  
ASSISTANT CITY ATTORNEY

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

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

STATE OF CALIFORNIA  
COUNTY OF FRESNO

Personally appeared before me \_\_\_\_\_, the \_\_\_\_\_ of the City of Fresno, a California municipal corporation, and \_\_\_\_\_, the \_\_\_\_\_ of the City of Fresno, a California municipal corporation, signers and sealers of the foregoing instrument, and acknowledged the same to be their free act and deed as such officers of such municipal corporation and the free act and deed of said municipal corporation before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires

**ACKNOWLEDGEMENT, CONSENT, AND AGREEMENT OF  
THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO**

**THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO**, a California Public Body, Corporate and Politic (the "Redevelopment Agency") hereby acknowledges, approves, consents, and agrees as follows, all of which are effective as of the Effective Date (as defined below):

1. Reference is hereby made to that certain Stadium Sublease Amendment and Global Assignment and Assumption Agreement With Consent of City and Redevelopment Agency (the "Assignment"), dated as of October 13, 2005 (hereinafter "Effective Date"), by and among Fresno Diamond Group, LLC, a California limited liability company ("Seller"), Fresno Grizzlies, Inc., a California corporation ("Grizzlies"), Fresno Grizzlies Holding, Inc., an Arizona corporation formerly known as the Tucson Toros, Inc. ("TTL"); and Fresno Baseball Club, LLC, a Delaware limited liability company ("Assignee"). Seller, Grizzlies and TTL, and their successors and assignees, are hereinafter referred to collectively as the "Assignors." All terms not otherwise defined herein shall have the meaning set forth in the Assignment.
2. The Redevelopment Agency is a party to the Parking Agreement.
3. A true and complete copy of the Parking Agreement is attached hereto as Exhibit 3, and is incorporated herein by reference, and such Parking Agreement has not been modified, amended or changed.
4. The Stadium Parking Area is described in Exhibit "A" to the Parking Agreement.
5. To the Redevelopment Agency's knowledge, the Assignors are not presently in breach or default under the Parking Agreement, and no existing event has occurred to the Agency's knowledge, which, with notice or lapse of time, would constitute a breach or default or permit termination, modification, or acceleration under the Parking Agreement.
6. The Redevelopment Agency hereby agrees that all rent or other sums due and payable through the day before the Effective Date under the Parking Agreement, and all other obligations to be performed by the Assignors through the day before the Effective Date under the Parking Agreement, have been fully paid and satisfactorily performed.
7. The rights of the Assignors under the Parking Agreement are in full force and effect.
8. Subject to paragraph 9 below, the Redevelopment Agency hereby (a) approves and otherwise consents to the assignment of the Parking Agreement by Assignors to Assignee and (b) fully and unconditionally releases and discharges Assignors, and their managers, members, directors, shareholders and officers, for obligations or liabilities arising under the Parking Agreement on and after the Effective Date and grants Assignors a novation with respect to, all such liabilities and obligations arising or accruing under the Parking Agreement for obligations or liabilities arising thereunder on and after the Effective Date. Notwithstanding the foregoing, the foregoing release and novation does not in any way release or novate Assignors from any liabilities or obligations under or relating to the Parking Agreement which arose prior to the Effective Date but are claimed or noticed on or after the Effective Date.

9. This Consent shall become effective on closing of the APA, subject to receipt by the Redevelopment Agency on or prior to the Effective Date of the following, each in form and substance reasonably satisfactory to the Redevelopment Agency and its counsel:

- (a) The Assignment duly executed by each party;
- (b) The closing of the APA;
- (c) The execution and delivery by Fresno Baseball Club, LLLP of the Fresno Baseball Club LLP Pledge Agreement in form and substance acceptable to the City;
- (d) Written opinion from Carlton Fields, P.A., counsel for the Assignee addressed to the Redevelopment Agency covering such legal matters as the Redevelopment Agency may reasonably request; and

(d) Such other evidence as the Redevelopment Agency may reasonably request to establish the accuracy and completeness of the representations and warranties and the compliance with the terms and conditions contained in the Assignment Amendment.

10. The terms of the Parking Agreement, as assigned and assumed by the Assignment, are ratified and confirmed.

IN WITNESS WHEREOF, the Redevelopment Agency has caused this Acknowledgement, Consent, and Agreement to be duly executed on the day first above written.

**THE "REDEVELOPMENT AGENCY"**

REDEVELOPMENT AGENCY OF THE CITY OF FRESNO,  
a California Public Body, Corporate and Politic

By: Maileene Muff  
Its: Executive Director

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

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

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

BY: [Signature]  
CITY ASSISTANT CITY ATTORNEY

STATE OF CALIFORNIA

COUNTY OF FRESNO

Personally appeared before me \_\_\_\_\_, the \_\_\_\_\_  
of the Redevelopment Agency of the City of Fresno, a California Public Body, Corporate and Politic, and  
\_\_\_\_\_, the \_\_\_\_\_ of the Redevelopment Agency of the City of  
Fresno, a California Public Body, Corporate and Politic, signers and sealers of the foregoing instrument,  
and acknowledged the same to be their free act and deed as such officers of such Public Body and the free  
act and deed of said Public Body before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires

ALL-PURPOSE ACKNOWLEDGEMENT

State of California. (

County of Fresno )

On 12/14/05 before me, Theresa Saldivar Notary Public,  
*Date Name and Title of Officer (i.e., Your Name, Notary Public)*

personally appeared Martene Murphy,  
*Name(s) of Document Signer(s)*

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(es) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Theresa Saldivar  
*Signature of Notary*



(Affix seal in the above blank space)

ALL-PURPOSE ACKNOWLEDGEMENT

State of California. (

County of Fresno )

On 12-15-2005 before me, Theresa Saldivar Notary Public,  
*Date Name and Title of Officer (i.e., Your Name, Notary Public)*

personally appeared Jon R. Ruiz,  
*Name(s) of Document Signer(s)*

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(es) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Theresa Saldivar  
*Signature of Notary*



(Affix seal in the above blank space)

## SUBORDINATION AGREEMENT

THIS AGREEMENT is entered into as of October 13, 2005, by and among Fresno Baseball Club, LLLP, a Delaware limited liability limited partnership ("Parent"), Fresno Baseball Club, LLC, a Delaware limited liability company ("FBC"), and the City of Fresno, a Municipal Corporation ("City").

### RECITALS

A. FBC may from time to time incur indebtedness to Parent, and FBC proposes to assume obligations to the City as further defined hereunder; and

B. City has indicated that it willing to permit the indebtedness to Parent under the Pledge Agreement dated as of October 13, 2005 by and among the Parent, FBC and the City (the "Pledge Agreement"). All capitalized terms not defined hereunder shall have the meaning set forth in the Pledge Agreement.

NOW, THEREFORE, as an inducement to City to permit FBC to incur such indebtedness to Parent under the Pledge Agreement and for other valuable consideration, the parties hereto agree as follows:

Section 1. INDEBTEDNESS SUBORDINATED. Parent subordinates all Indebtedness (including, without limitation, interest thereon which may accrue subsequent to FBC becoming subject to any state or federal debtor-relief statute) ("*Junior Debt*") to all Obligations now or at any time hereafter owing from FBC to City ("*Senior Debt*"). Parent irrevocably consents and directs that all Senior Debt shall be paid in full prior to FBC making any payment on any Junior Debt, except such payments as are expressly permitted by Section 3 of this Agreement. Parent will, and City is authorized in the name of Parent from time to time to, execute and file such financing statements and other documents as City may require in order to give notice to other persons and entities of the terms and provisions of this Agreement. As long as this Agreement is in effect, Parent will not take any action or initiate any proceedings, judicial or otherwise, to enforce Parent's rights or remedies with respect to any Junior Debt, including without limitation, any action to enforce remedies with respect to any collateral securing any Junior Debt or to obtain any judgment or prejudgment remedy against FBC or any such collateral.

Section 2. INDEBTEDNESS DEFINED. The word "Indebtedness" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of FBC heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether FBC may be liable individually or jointly with others, including without limitation, obligations and liabilities arising from notes, repurchase agreements and trust receipts.

Section 3. RESTRICTION OF PAYMENT OF JUNIOR DEBT; DISPOSITION OF PAYMENTS RECEIVED BY PARENT. FBC will not make, and Parent will not accept or receive, any payment or benefit in cash, by setoff or otherwise, directly or indirectly, on account of principal, interest or any other amounts owing on any Junior Debt, except such payments as are expressly permitted herein. FBC is permitted to make and Parent is permitted to receive payments due under any credit agreement, promissory note, or other loan agreement, if any, between FBC and Parent, now existing or created in the future (collectively, the "Credit Agreement"); provided however, that no payment under any such Credit Agreement shall be made by FBC, or received by Parent, after notice from City to Parent that a default, or any condition, event or act which with the giving of notice or the passage of time or both would constitute a default, has occurred under the terms of any Senior Debt. If any payment is made in violation of this Agreement, Parent shall promptly deliver the same to City in the form received, with any endorsement or assignment necessary for the transfer of such payment or amounts setoff from Parent to City, to be either (in City's sole discretion) held as cash collateral securing the Senior Debt or applied in reduction of the Senior Debt in such order as City shall determine, and until so delivered, Parent shall hold such payment in trust for and on behalf of, and as the property of, City.

Section 4. DISPOSITION OF EVIDENCE OF INDEBTEDNESS. If there is any existing promissory note or other evidence of any of the Junior Debt, or if any promissory note or other evidence of Indebtedness is executed at any time hereafter with respect thereto, then FBC and Parent will **mark the same with a legend** stating that it is subject to this Agreement, and if asked to do so, will deliver the same to City in the event of a default under the terms of any Senior Debt. Parent shall not, without City's prior written consent, assign, transfer, hypothecate or otherwise dispose of any claim it now has or may at any time hereafter have against FBC at any time that any Senior Debt remains outstanding and/or City remains committed to extend any credit to FBC.

Section 5. AGREEMENT TO BE CONTINUING; APPLIES TO FBC'S EXISTING INDEBTEDNESS AND ANY INDEBTEDNESS HEREAFTER ARISING. This Agreement shall be a continuing agreement and shall apply to any and all Indebtedness of FBC to City or Parent now existing or hereafter arising, including any Indebtedness arising under successive transactions, related or unrelated, and notwithstanding that from time to time all Indebtedness theretofore existing may have been paid in full.

Section 6. REPRESENTATIONS AND WARRANTIES; INFORMATION. FBC and Parent represent and warrant to City that: (a) no interest in the Junior Debt has been assigned or otherwise transferred to any person or entity; (b) payment of the Junior Debt has not been heretofore subordinated to any other creditor of FBC; and (c) Parent has the requisite power and authority to enter into and perform its obligations under this Agreement. Parent further represents and warrants to City that Parent has established adequate, independent means of obtaining from FBC on a continuing basis financial and other information pertaining to FBC's financial condition. Parent agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect Parent's risks hereunder, and Parent agrees that City shall have no obligation to disclose to Parent information or material about FBC which is acquired by City in any manner. City may, at City's sole option and without obligation

to do so, disclose to Parent any information or material relating to FBC which is acquired by City by any means, and FBC hereby agrees to and authorizes any such disclosure by City.

Section 7. TRANSFER OF ASSETS OR REORGANIZATION OF FBC. If any petition is filed or any proceeding is instituted by or against FBC under any provisions of the Bankruptcy Reform Act, Title 11 of the United States Code, or any other or similar law relating to bankruptcy, insolvency, reorganization or other relief for debtors, or generally affecting creditors' rights, or seeking the appointment of a receiver, trustee, custodian or liquidator of or for FBC or any of its assets, any payment or distribution of any of FBC's assets, whether in cash, securities or any other property, which would be payable or deliverable with respect to any Junior Debt, shall be paid or delivered to City until all Senior Debt is paid in full. Parent grants to City the right to enforce, collect and receive any such payment or distribution and to give releases or acquittances therefor, and Parent authorizes City as its attorney-in-fact to vote and prove the Junior Debt in any of the above-described proceedings or in any meeting of creditors of FBC relating thereto.

Section 8. OTHER AGREEMENTS; NO THIRD PARTY BENEFICIARIES. City shall have no direct or indirect obligations to Parent of any kind with respect to the manner or time in which City exercises (or refrains from exercising) any of its rights or remedies with respect to the Senior Debt, FBC or any of FBC's assets. Parent understands that there may be various agreements between City and FBC evidencing and governing the Senior Debt, and Parent acknowledges and agrees that such agreements are not intended to confer any benefits on Parent. Parent further acknowledges that City may administer the Senior Debt and any of City's agreements with FBC in any way City deems appropriate, without regard to Parent or the Junior Debt. Parent waives any right Parent might otherwise have to require a marshalling of any security held by City for all or any part of the Senior Debt or to direct or affect the manner or timing with which City enforces any of its security. Nothing in this Agreement shall impair or adversely affect any right, privilege, power or remedy of City with respect to the Senior Debt, FBC or any assets of FBC, including without limitation, City's right to: (a) waive, release or subordinate any of City's security or rights; (b) waive or ignore any defaults by FBC; or (c) restructure, renew, modify or supplement the Senior Debt, or any portion thereof, or any agreement with FBC relating to any Senior Debt. All rights, privileges, powers and remedies of City may be exercised from time to time by City without notice to or consent of Parent.

Section 9. BREACH OF AGREEMENT BY FBC OR PARENT. In the event of any breach of this Agreement by FBC or Parent, then and at any time thereafter City shall have the right to declare immediately due and payable all or any portion of the Senior Debt without presentment, demand, notice of nonperformance, protest, notice of protest or notice of dishonor, all of which are hereby expressly waived by FBC and Parent. No delay, failure or discontinuance of City in exercising any right, privilege, power or remedy hereunder shall be deemed a waiver of such right, privilege, power or remedy; nor shall any single or partial exercise of any such right, privilege, power or remedy preclude, waive or otherwise affect the further exercise thereof or the exercise of any other right, privilege, power or remedy. Any waiver, permit, consent or approval of any kind by City with respect to this Agreement must be in writing and shall be effective only to the extent set forth in such writing.

Section 10. LIQUIDATED DAMAGES. Inasmuch as the actual damages which could result from a breach by Parent of its duties under Section 3 hereof are uncertain and would be impractical or extremely difficult to fix, Parent shall pay to City, in the event of any such breach by Parent, as liquidated and agreed damages, and not as a penalty, all sums received by Parent in violation of this Agreement on account of the Junior Debt, which sums represent a reasonable endeavor to estimate a fair compensation for the foreseeable losses that might result from such a breach.

Section 11. COSTS, EXPENSES AND ATTORNEYS' FEES. If any party hereto institutes any arbitration or judicial or administrative action or proceeding to enforce any provisions of this Agreement, or alleging any breach of any provision hereof or seeking damages or any remedy, the losing party or parties shall pay to the prevailing party or parties all costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of such prevailing party's in-house counsel), expended or incurred by the prevailing party or parties in connection therewith, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by City or any other person) relating to FBC, Parent or any other person or entity.

Section 12. SUCCESSORS; ASSIGNS; AMENDMENT. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties. This Agreement may be amended or modified only in writing signed by all parties hereto.

Section 13. OBLIGATIONS JOINT AND SEVERAL; CONSTRUCTION. If this Agreement is executed by more than one Parent, it shall bind them jointly and severally. All words used herein in the singular shall be deemed to have been used in the plural where the context so requires.

Section 14. SEVERABILITY OF PROVISIONS. If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such waiver or other provision or any remaining provisions of this Agreement.

Section 15. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

**City:**

City of Fresno, a Municipal Corporation

By: [Signature]  
Its: Assistant City Manager

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

**Parent:**

Fresno Baseball Club, LLLP, a Delaware limited liability limited partnership

By: Fresno Baseball Club Management, LLC  
Its: General Partner

By: Cummings Baseball Group, LLC, a Delaware limited liability company  
Its: Managing Member

By: [Signature]  
Christopher P. Cummings  
Its: Managing Member

**FBC:**

Fresno Baseball Club, LLC

By: [Signature]  
Christopher P. Cummings  
Its: President

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

BY: [Signature]  
Chief ASSISTANT CITY ATTORNEY

ATTEST:  
REBECCA E. KLISCH, CMC  
CITY CLERK

By: [Signature]  
Deputy / Date: 10/13/05