

**NON-RELOCATION AND
CONTINUOUS OPERATION AGREEMENT**

THIS NON-RELOCATION AND CONTINUOUS OPERATION AGREEMENT (the "Agreement") is made and entered into as of this 3rd day of January 2001 ~~2000~~, by and between **THE FRESNO DIAMOND GROUP LLC**, a California limited liability company ("FDG"), Fresno Grizzlies, Inc., a California corporation, (the "Grizzlies"), Tucson Toros, Inc., an Arizona corporation (the "Toros," and together with FDG and the Grizzlies, the "FDG Entities") and **THE CITY OF FRESNO**, a municipal corporation established under the Constitution and laws of the State of California (the "City").

WHEREAS, the City, FDG and the Grizzlies have entered into a Stadium Sublease Agreement, dated the same date as this Agreement ("Stadium Sublease") providing for the sublease, operation, maintenance and continuous occupation of a 12,500 seat multi-purpose stadium (the "Stadium") on land generally described as the eleven (11) acre area generally bound by Tulare, Broadway/"H", and Inyo Streets and the Fulton/Broadway alley in the City of Fresno, California, (the "Site");

WHEREAS, in addition to this Agreement and the Stadium Sublease, the City has entered into a Parking Agreement and Assignment Agreement with FDG and a Pledge Agreement with FDG and the Grizzlies, that are dated the same date as this Agreement;

WHEREAS, pursuant to the Stadium Sublease, the City has agreed to enter into a sublease of the Stadium to FDG and the Grizzlies for a term of 30 years in accordance with the terms of the Stadium Sublease;

WHEREAS, the City intends to finance the Stadium through the issuance of municipal bonds by a Joint Powers Authority ("JPA"), wherein the City is a member of the JPA, for a term of 30 years;

WHEREAS, the City is willing to cause the issuance of Bonds by the JPA, if FDG and the Grizzlies agree, among other things, as a condition precedent to the City's obligations under this Agreement to continuously maintain and operate the Stadium as a home field for a AAA professional baseball team (the "AAA Professional Baseball Team") during the term of the Stadium Sublease; and

WHEREAS, in addition, the City is willing to enter into the Stadium Sublease with FDG and the Grizzlies if FDG and the Grizzlies secures its obligations to the City hereunder pursuant to a Pledge Agreement, substantially in the form of Exhibit "A" attached hereto.

NOW, THEREFORE, for valuable consideration and for the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I FDG AND GRIZZLIES COVENANTS

Section 1.1 Incorporation of Covenants of the Stadium Sublease Agreement. Until the end of the Term of this Agreement, which shall be the same term as defined within Section 3.1 of the Stadium Sublease or termination of this Agreement, FDG and the Grizzlies hereby covenants and warrants to the City all of FDG and Grizzlies' obligations and commitments set forth in the Stadium Sublease Agreement as if the same were set out in their entirety herein, notwithstanding the termination of the Stadium Sublease.

Section 1.2 Non-Relocation of AAA Baseball Team. During the Term of the Stadium Sublease as defined within Section 3.1 of the Stadium Sublease, THE GRIZZLIES ENTITIES shall cause a AAA Professional Baseball Team to play its Home Games at the Stadium. "Home Games" shall mean all games designated as being "home" (or similar phrase) games, in contrast to games designated as "away" or "visiting" (or similar phrase) games, including any post-season games, as scheduled on an annual basis pursuant to Rule 32(b) of the Baseball Rules or otherwise. THE GRIZZLIES ENTITIES shall use commercially reasonable efforts to cause the then resident AAA Professional Baseball Team to play as many exhibition games at the Stadium on an annual basis as is practicable. Initially, THE GRIZZLIES ENTITIES shall cause a AAA Professional Baseball Team called the "Fresno Grizzlies" to play its Home Games at the Stadium, such team currently being the AAA baseball franchise associated with a Major League Baseball Team.

Section 1.3 Continuous Operation of the Stadium. Throughout the Term, THE GRIZZLIES ENTITIES shall continually operate or cause the continuous operation of the Stadium. "Continuous operation" of the Stadium shall mean (i) the regular playing of all Home Games by a AAA Professional Baseball Team during each calendar season of AAA Professional Baseball (April through August each year) during the Term and (ii) and during each calendar off-season (September through March of each year) during the Term and, where practicable so as not to unreasonably disturb the playing of baseball, during the calendar season of a AAA Professional Baseball Team, use commercially reasonable efforts to schedule events consistent with other first-class state-of-art, multi-purpose, sports and entertainment venues, including, without limitation, concerts, sporting events, and other professional and amateur events (each, a "Special Event") (any prolonged break in baseball by reason of league-wide work stoppage (e.g., a minor league players' strike) shall be treated as an off-season).

Section 1.4 FDG and the Grizzlies' Covenant to Repair and Maintain the Stadium and Site. Throughout the Term, FDG and the Grizzlies shall maintain and

repair and shall promptly make (or cause others to make) all necessary or appropriate repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, reasonable wear and tear excepted in accordance with the Stadium Sublease Agreement. In addition, throughout the Term, FDG and the Grizzlies shall maintain (or cause others to maintain) the Stadium in a manner that is consistent with all applicable requirements imposed by the Baseball Rules of the Pacific Coast League.

Section 1.5 Prohibition Against Discrimination or Granting Preferential Treatment. During the performance of this Agreement, FDG and the Grizzlies agree as follows:

(a) FDG and the Grizzlies shall not discriminate against or grant preferential treatment to individuals or groups on the basis of sex, race, color, ethnicity, or national origin in employment, education, or contracting, except as provided by law.

(b) FDG and the Grizzlies shall comply with any and all applicable laws and regulations prohibiting discriminatory practices, which may include posting a notice of a nondiscrimination policy at the workplace, in the solicitation or advertisement for employment, or pursuant to any labor agreement.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of FDG and the Grizzlies. FDG and the Grizzlies hereby represent and warrant to the City that, as of the date hereof, the representations and warranties set forth in the Stadium Sublease are true, correct and complete in all material respects.

Section 2.2 Representations and Warranties of the City. The City hereby represents and warrants to FDG and the Grizzlies that, as of the date hereof, the representations and warranties set forth in the Stadium Sublease are true, correct and complete in all material respects.

ARTICLE III CERTAIN REVENUES

Section 3.1 Brick Campaigns. During the Term of this Agreement, FDG and the Grizzlies shall provide the City with at least 30 day advance notice of any Brick

Campaign it proposes to sponsor. The City agrees to cooperate with and support any Brick Campaign, provided that the City will not be obligated to advance or expend any funds in support of, or in connection with, any Brick Campaign. FDG and the Grizzlies shall be entitled to retain the revenues received on account of the Brick Campaigns.

FDG and the Grizzlies shall have the right to review and comment on design and specification criteria for the Stadium in accordance with the Stadium Sublease. FDG and the Grizzlies shall define the area within the design of the Stadium delegated to construction and laying of brick that are a result of the selling of bricks through the Brick Campaign. Construction and laying of the Brick Area shall be the responsibility of FDG and the Grizzlies at their cost and expense and shall be coordinated with City's construction manager and construction contractor consistent with the Stadium Sublease.

ARTICLE IV DEFAULTS AND REMEDIES

Section 4.1 Events of Default. No remedy conferred upon or reserved to the City hereby or now or hereafter existing at law or in equity or by statute, shall be exclusive but shall be cumulative with all others. Such remedies are not mutually exclusive and no election need be made among them, but any such remedy or any combination of such remedies may be pursued at the same time or from time to time so long as all amounts realized are properly applied and credited as provided herein. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the City. In the event of any waiver of an Event of Default hereunder, the parties shall be restored to their former positions and rights hereunder, but no such waiver shall extend to any other or subsequent Event of Default or impair any right arising as a result thereof. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice other than expressly required herein.

Section 4.2 Anticipatory Breach. At any time during the Term of this Agreement, FDG or the Grizzlies shall be deemed to have breached this Agreement if (i) FDG or the Grizzlies executes, or commences approval of its members of, a contract or agreement wherein the then resident AAA Professional Baseball Team is to play their Home Games at another location, (ii) submits any application to Major League Baseball, the Pacific Coast League or other league authority for the then resident AAA Professional Baseball Team to play their Home Games at another location, (iii) issues any announcement of its intention to do so, or (iv) solicits any other venue or stadium or owner thereof to move the team to such venue or stadium.

Section 4.3 Specific Performance. NOTWITHSTANDING ANY OF THE FOREGOING, FDG AND THE GRIZZLIES ACKNOWLEDGES THAT THE GAMES

PLAYED BY A AAA BASEBALL TEAM ARE UNIQUE AND PLAYED WITH PARTICULAR SKILL SUCH THAT THERE IS NO SUBSTITUTE, THEREFORE BASED ON THE FOREGOING, FDG AND THE GRIZZLIES ACKNOWLEDGE THAT THE DAMAGES SUFFERED BY THE CITY FOR A BREACH OF ANY OF THE COVENANTS HEREIN CANNOT BE ESTIMATED WITH ANY DEGREE OF CERTAINTY AND THAT THE MONETARY DAMAGES CANNOT FAIRLY AND ADEQUATELY COMPENSATE THE CITY FOR A BREACH OF SAID COVENANTS; THEREFORE, FDG AND THE GRIZZLIES AGREE THAT THE CITY SHALL HAVE THE RIGHT, IN ADDITION TO ANY OTHER APPLICABLE RIGHTS OR REMEDIES, TO COMPEL FDG AND THE GRIZZLIES TO COMPLY WITH THE AFORESAID COVENANTS BY APPROPRIATE SPECIFIC PERFORMANCE, INJUNCTIVE OR EQUITABLE PROCEEDINGS. ADDITIONALLY, ANY PROVISION OF LAW OR THIS AGREEMENT NOTWITHSTANDING, THE PARTIES ACKNOWLEDGE AND AGREE THAT IF THE CITY, FDG OR THE GRIZZLIES WERE TO FAIL TO OBSERVE OR TO PERFORM ANY OF THE MATERIAL PROVISIONS IN THIS AGREEMENT, THE AWARD OF DAMAGES ARISING FROM SUCH BREACH WOULD NOT BE AN ADEQUATE REMEDY, IN THAT THE SUBJECT MATTER OF THIS AGREEMENT IS UNIQUE, AND THE BREACH OF SUCH OBLIGATIONS CREATE IRREPARABLE HARM INCAPABLE OF CALCULATION BY MONETARY DAMAGES. THEREFORE, THE PARTIES ACKNOWLEDGE AND AGREE THAT EACH PARTY HAS THE ABSOLUTE RIGHT TO SPECIFIC PERFORMANCE, ANY OTHER INJUNCTIVE RELIEF, OR ANY OTHER COURT ORDER TO ENFORCE THE COVENANTS AND OBLIGATIONS UNDERTAKEN UNDER THIS AGREEMENT; AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, NO CURE PERIOD PROVIDED FOR IN THIS AGREEMENT SHALL BE A CONDITION TO THE RIGHT TO OBTAIN SUCH SPECIFIC PERFORMANCE, OTHER INJUNCTIVE RELIEF OR ANY COURT ORDER ENFORCING PERFORMANCE OF THIS AGREEMENT.

ARTICLE V INDEMNIFICATION

Section 5.1 Indemnification. FDG and the Grizzlies agree to indemnify the City, its officials, agents, employees, attorneys, consultants, volunteers or officers (each an "Indemnified Person") for any and all liabilities, obligations, fines, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (including reasonable attorneys' fees and expenses) of any kind or nature whatsoever (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) which may at any time be imposed on, incurred by or asserted against any Indemnified Party in any way relating to or arising out of this Agreement, the Stadium, the Site, the Stadium Sublease, the Bond Transaction Documents or any documents contemplated by or referred to in this Agreement or therein or the transactions contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof; provided, however, that FDG or the Grizzlies shall not be liable for any of the foregoing to the extent they arise from the City's gross negligence or willful misconduct. The City shall be fully justified in refusing to take or in continuing

to take any action hereunder unless it shall first be indemnified to its satisfaction by FDG or the Grizzlies against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The obligations of FDG or the Grizzlies under this Section 5.1 shall survive the payment and performance of the obligations under this Agreement, the termination of this Agreement, or FDG or the Grizzlies ceasing to be a party to this Agreement.

If FDG or the Grizzlies should subcontract all or any portion of the work to be performed under this Agreement, FDG or the Grizzlies shall require each subcontractor to indemnify, hold harmless and defend the City and each Indemnified Person in accordance with the terms of the preceding paragraph.

ARTICLE VI GENERAL

Section 6.1 Entire Understanding. This Agreement, the Pledge Agreement attached as Exhibit "A", the FDG Assignment Agreement, the Parking Agreement, the Stadium Sublease, all dated the same date as this Agreement, together with the other Bond Transaction Documents defined within the Stadium Sublease, express the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth herein or incorporated herein by reference. Neither this Agreement nor the other above defined documents may be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement or other documents and agreements defined in this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Agreement.

Section 6.2 Execution in Counterparts; One Instrument. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

Section 6.3 Notices. Unless other expressly specified or permitted by the terms hereof, all notices, consents or other communications required or permitted hereunder shall be deemed sufficiently given or served if given in writing, mailed by first class mail, postage prepaid (return receipt requested), overnight courier or facsimile transmission (where receipt of such facsimile transmission is confirmed by the recipient thereof and where a copy of such facsimile transmission is provided to the recipient via first class mail) and addressed as follows; notices shall be deemed effective upon receipt.

If to the City, addressed to:

City of Fresno
City Hall
2600 Fresno Street
Fresno, California 93721
Attn: City Manager

If to FDG or the Grizzlies, addressed to:

Fresno Diamond Group
700 Van Ness
Fresno, California 93721
Attn: General Manager/President

Each party may from time to time by notice in writing to the other designate a different address or addresses for notice hereunder.

Section 6.4 Further Assurances. Each party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by any other party in order to give full effect to this Agreement. Each party, in order to carry out this Agreement, shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

Section 6.5 Binding Effect. This Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions of the Stadium Sublease.

Section 6.6 Amendments. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by each of the parties hereto.

Section 6.7 Performance of Related Obligations. Each party shall enforce the provisions of and its respective rights under the documents defined within this Agreement to which it is a party and the Stadium Sublease, and duly perform its obligations thereunder in accordance therewith. No party will consent to or permit any rescission of or amendment to, or otherwise take any action in connection with, such other documents defined in this Agreement or the Stadium Sublease which would in any manner materially and adversely impair or affect the rights or obligations of the other party.

Section 6.8 Actions of the City in its Governmental Capacity. Nothing in this Agreement shall be interpreted as precluding the City from enforcing the provisions of Applicable Law or otherwise limiting the rights and obligations of the City in its governmental or regulatory capacity.

Section 6.9 Severability of Agreement. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

Section 6.10 Survival. Except as otherwise expressly provided in this Agreement, representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of this Agreement, shall survive until the City Bond's are paid in full.

Section 6.11 Ambiguities. Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

Section 6.12 Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

Section 6.13 Headings. The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

Section 6.14 Relationship of Parties. The City and FDG Entities are independent contracting parties and no relationship between them as employer and employee, partners, joint venturers or otherwise shall be created by this Agreement or any other documents defined within this Agreement. The City shall in no event be responsible or liable for the payment of any contributions or taxes for Social Security, Workmen's Compensation Insurance, Unemployment Insurance, or retirement benefits, pensions or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries or other remuneration paid to persons employed

by FDG or the Grizzlies for work performed under the terms of this Agreement and FDG and the Grizzlies shall notify all persons it pays remuneration or employs of same. Nothing in this Section 6.14 is intended to create any third party reliance between the City and any third party or FDG and the Grizzlies and any third party.

Section 6.15 Assignment. Neither party shall voluntarily or by operation of law assign, hypothecate, give, transfer, mortgage, sublet, license, or otherwise transfer or encumber all or part of its rights, duties, or other interests in this Agreement or the proceeds thereof (collectively, "Assignment"), without the other party's prior written consent. Any attempt to make an Assignment in violation of this provision shall be a material default under this Agreement and any Assignment in violation of this provision shall be null and void.

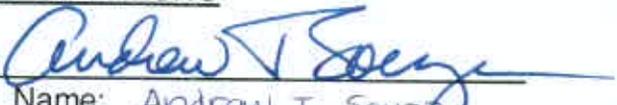
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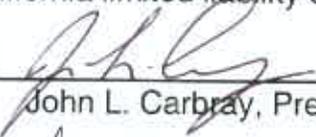
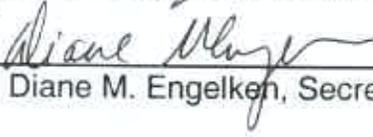
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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

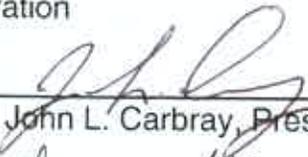
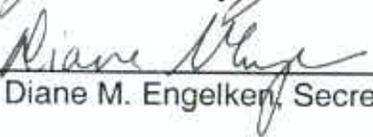
CITY OF FRESNO

By: 
Name: Andrew T. Souza
Title: Interim City Manager

THE FRESNO DIAMOND GROUP, LLC,
a California limited liability company

By: 
John L. Carbray, President
By: 
Diane M. Engelken, Secretary

FRESNO GRIZZLIES, INC., a California corporation

By: 
John L. Carbray, President
By: 
Diane M. Engelken, Secretary



TUCSON TOROS, INC. an Arizona corporation

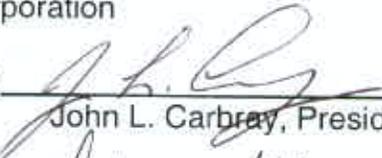
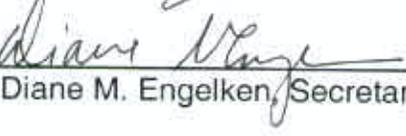
By: 
John L. Carbray, President
By: 
Diane M. Engelken, Secretary

EXHIBIT "A"

PLEDGE AGREEMENT (Fresno Grizzlies, Inc.)

This Pledge Agreement ("Agreement") is entered into by and between FRESNO GRIZZLIES, INC., a California corporation ("Owner"), the Fresno Diamond Group, LLC, a California limited liability company ("FDG"), and the City of Fresno, a Municipal Corporation ("Secured Party").

Owner, FDG and Secured Party hereby agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

1.1 **Additional Secured Property.** "Additional Secured Property" means any and all (i) additional capital stock or other equity securities of Tucson Toros, Inc., an Arizona corporation ("TTI"), whether certificated or uncertificated, (ii) warrants, options or other rights entitling Owner or FDG to acquire any interest in capital stock or other equity securities of TTI, (iii) securities, property, interest, dividends and other payments and distributions issued as an addition to, in redemption of, in renewal or exchange for, in substitution or upon conversion of, or otherwise on account of the Pledged Shares or such additional capital stock or other equity securities, and (iv) any membership or economic interest created in any subsidiary entity in accordance with Section 12 of this Agreement.

1.2 **Pledged Shares.** "Pledged Shares" means all of the issued and outstanding shares of capital stock, whether certificated or uncertificated, of TTI now owned by Owner or FDG, including the shares specifically described in Section 3.1.

1.3 **Secured Property.** "Secured Property" means (i) the Pledged Shares and Additional Secured Property, and (ii) all rights, interests and claims with respect to the Pledged Shares and Additional Secured Property, including under any and all related agreements, instruments and other documents. The Secured Property shall include all proceeds, including whatever is receivable or received when any of such property or proceeds of such property are sold, collected, exchanged or otherwise disposed of, whether voluntary or involuntary.

2. **Creation of Security Interest.** Owner and FDG, for a valuable consideration, receipt of which is hereby acknowledged, grants to Secured Party, and Secured Party accepts from Owner and FDG, a security interest under the provisions of the California Commercial Code in the Secured Property.

3. **Secured Property.**

3.1 **Assignment and Delivery - Pledged Shares.** Owner and FDG hereby assigns and delivers to Secured Party the Pledged Share consisting of Certificate No. 19

representing seven thousand nine hundred (7,900) shares of the Class A stock of TTI and Certificate No. 10 representing two thousand one hundred (2,100) shares of the Class B stock of TTI.

3.2 Delivery of Additional Secured Property. Except as provided in Section 3.6, if Owner or FDG becomes entitled to receive or receives any Additional Secured Property, Owner or FDG shall (i) accept any such Additional Secured Property as the agent for Secured Party, (ii) hold it in trust for Secured Party, (iii) segregate it from other property or funds of Owner or FDG, and (iv) deliver all Additional Secured Property and all certificates, instruments and other writings representing such Additional Secured Property immediately to or for the account of Secured Party, all in suitable form for transfer by delivery, or accompanied by duly executed instruments of transfer or assignment in blank, all in form or substance satisfactory to Secured Party.

3.3 Stock Power Forms. Concurrently with the execution of this Agreement, Owner and FDG shall endorse and deliver to Secured Party an irrevocable stock power form separate from the Pledged Shares. The irrevocable stock power shall be in the form attached hereto as Exhibit "A".

3.4 Proceeds. In the event Owner or FDG receives any proceeds of any Secured Property, Owner or FDG will hold such proceeds in trust on behalf of and for the benefit of Secured Party and will immediately deliver all such proceeds to Secured Party in the exact form received with all necessary or appropriate endorsements.

3.5 Full Performance. The Secured Property is to be held by Secured Party as security for the timely and full performance of the obligations set forth in Section 4 below. Owner, FDG or Secured Party shall not dispose of the Secured Property nor shall it be encumbered except as allowed in this Agreement. Upon full and timely performance of all obligations set forth in Section 4 below, Secured Party shall cause the Secured Property to be returned to Owner upon Owner making a written request therefor to Secured Party.

3.6 Dividends. As long as there is no duly given notice of default outstanding under this Agreement or any of the obligations secured by it, ordinary cash dividends payable on account of the Pledged Shares may be paid to Owner for Owner's own use and benefit. As long as Owner and FDG are not in default under this Agreement or any of the obligations secured by it, ordinary cash dividends shall not be considered Secured Property or Additional Secured Property.

4. Obligations Secured. This Agreement secures the following:

4.1 Stadium Agreements. All obligations of Owner and FDG under that certain 30-year Sublease for a AAA baseball stadium between Owner, FDG and Secured Party, dated the same date as this Agreement, (including but not limited to Owner's and FDG's obligation to pay Secured Party \$1,500,000.00 in annual rental payments for the term of the Sublease or as otherwise amended by the Parties therein), and Non-Relocation and Continuous Operation Agreement entered into between FDG, Owner, TTI, and Secured Party,

dated the same date as this Agreement.

4.2 Pledge Agreement. Performance by Owner and FDG of all covenants, conditions, and warranties made by Owner and FDG in this Agreement and in any collateral agreements entered into by Owner, FDG and the City in connection with the transaction or transactions which occasioned the execution of this Agreement. Collateral Agreements shall not include the Parking Agreement entered into between City and FDG dated the same date as this Agreement.

4.3 4.3 Indebtedness. The payment of all present and future indebtedness or performance of contractual obligations of Owner or FDG to Secured Party whether or not evidenced by the Sublease Agreement, or Non-Relocation and Continuous Operation Agreement. The term "indebtedness" is used in its most comprehensive sense and includes without limitation any and all advances, debts, obligations and liabilities now existing or made in the future however arising.

5. Owner and FDG's Covenants. Owner and FDG promise and agree:

5.1 Payments. To pay all amounts due on Owner and FDG's obligations described in Section 4 and any other provisions of this Agreement when the same shall be legally due and payable.

5.2 Expenses. To pay all expenses, including attorneys' fees, incurred by Secured Party in the perfection, preservation, realization, enforcement, and exercise of its rights under this Agreement.

5.3 Litigation. To give Secured Party notice of any litigation that may have a material adverse effect on the Secured Property or the business of Owner, FDG or TTI.

5.4 Transfer. Not to sell, lease, transfer, or otherwise dispose of the Secured Property.

5.5 Shareholder Agreements. Not to enter into any shareholder agreement, voting trust, proxy agreement or other agreement or understanding which affects or relates to the voting or giving of written consents with respect to any of the Secured Property.

5.6 Issuance of Additional Shares. Not to consent to or approve, or allow Owner, FDG or TTI to consent to or approve, the issuance to any person or entity of any additional shares of any class of capital stock of TTI, or of any securities convertible into or exchangeable for any such shares, or any warrants, options or other rights to purchase or otherwise acquire any such shares.

5.7 Liens. Not to permit liens on the Secured Property. For purposes of this Agreement, "lien" means any security interest, mortgage, pledge, lien, attachment, claim, charge, encumbrance, or agreement retaining title covering, on or affecting the Secured

Property other than the Pledge Agreement between FDG and Owner dated October 21, 1997.

5.8 **Default.** To notify Secured Party promptly of any default, potential default, or any development that might have a material adverse effect on the Secured Property.

5.9 **Distributions.** To deliver promptly to Secured Party all certificates received in a split or distribution of, or issuance of stock dividends on, the Secured Property.

5.10 **Business of Owner and TTI.** As to the business conducted by Owner and TTI (for purposes of this Section 5.10 only), collectively referred to as "Owner":

5.10.1 To ensure that Owner's business is conducted efficiently and without voluntary interruption.

5.10.2 To ensure that all necessary action is taken to preserve all rights, privileges and franchises held by Owner.

5.10.3 To ensure that Owner's business property is kept in good repair.

6. **Owner and FDG's Warranties and Representations.** Owner and FDG warrants and represents as follows:

6.1 **Ownership.** Except as stated herein and for the security interest granted herein, Owner is the legal record owner and FDG has beneficial ownership of the Secured Property free from any lien and Owner has and will have good and marketable title to the Secured Property. Owner and FDG will defend the Secured Property against every claim or demand made upon it.

6.2 **Subordination Agreement.** Secured Party and FDG have each extended or will extend financial accommodations or will incur substantial financial commitments to Owner, and each has acquired or will acquire a security interest in collateral of Owner otherwise defined herein as Secured Property, whether now owned or in existence or acquired by the Owner in the future, as security for those financial accommodations and commitments. FDG has physically received possession of the Secured Property from Owner and perfected its security interest in accordance with that pledge agreement between FDG and Owner, dated October 21, 1997. FDG agrees herein, upon the Effective Date of this Agreement to physically deliver the Secured Property and any Additional Secured Property to Secured Party and agrees that Secured Party's security interest is perfected therein. It is understood by the Owner, FDG and Secured Party that Secured Party is unwilling to extend to Owner financial accommodations or commitments that will be secured by a security interest in the Secured Property, unless FDG subordinates to Secured Party any right it may presently have acquired from Owner, third parties, (including but not limited to John Carbray, an individual and John Carbray Living Trust), or acquired in the future in the Secured Property and to physically deliver that Secured Property to Secured Party. THEREFORE FDG subordinates to Secured Party all rights it may now have or acquire in the future in any of the

Secured Property regardless of the manner in which such rights may arise and agrees that the rights of Secured Party in and to the Secured Property are superior to any rights of FDG asserted in the Secured Property, despite the prior delivery of the Secured Property by Owner or any third party to FDG. FDG and Owner shall further deliver the Secured Property to Secured Party upon the Effective Date of this Agreement.

6.3 **Valid Obligation.** This Agreement is a valid and binding obligation of Owner and FDG. The Agreement creates a security interest enforceable against the Secured Property in which Owner and FDG now has rights, and will create a security interest enforceable against the Secured Property when Owner and FDG later acquires those rights.

6.4 **No Breach.** 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 Owner or FDG or any agreement to which Owner or FDG is a party; or (ii) result in the creation of a lien against the Secured Property except that created by this Agreement. There exists no event or omission that is or would be a default under this Agreement, except for the passage of time or the giving of notice.

7. **Voting Rights.** All voting rights of the Pledged Shares shall be vested in Owner as long as there is no duly given notice of default outstanding under this Agreement. Except for that matter described in Section 12, prior to Owner's voting of the Pledged Shares for the following purposes, Owner shall obtain and file with the Secretary of Owner the Secured Party's written consent, which shall be given at Secured Party's sole discretion to do the following:

7.1 To merge, consolidate or dissolve TTI;

7.2 To sell all, or substantially all, of the assets of TTI, or

7.3 To do anything which would have the effect of impairing the position or interest of Secured Party with respect to the Secured Property or which would alter the voting rights with respect to the stock of Owner or TTI, or be inconsistent with or violate any provisions of this Agreement.

8. **Default.** Owner is in default under this Agreement upon the happening of any of the following:

8.1 **Failure to Perform.** The failure of Owner or FDG to pay or perform any obligation, covenant or liability contained or referred to in this Agreement or in any collateral agreement entered into by Owner or FDG in connection with the transaction or transactions which occasioned the execution of this Agreement, whether when due, at stated maturity, on accelerated maturity, or otherwise; or the failure of performance of any obligation, covenant or liability contained or referred to in the agreements specified in Section 4;

8.2 **Misrepresentation.** If a warranty, representation, or statement made or furnished by Owner or FDG to Secured Party contains or will contain any untrue statement

of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein misleading, whether or not any such statement or omission is intentional;

8.3 **Liens.** The creation of any lien on the Secured Property, or the making of any levy, seizure or attachment thereon other than the Pledge Agreement between Owner and FDG dated, October 21, 1997;

8.4 **Termination of Business.** The suspension, termination or liquidation of the business of Owner, FDG or TTI;

8.5 **Termination of Existence/Insolvency.** Death, dissolution, termination of existence, insolvency or business failure of Owner or FDG, appointment of a receiver of all or part of Owner's or FDG's assets, Owner's or FDG's assignment for the benefit of creditors, or the commencement of a proceeding under a bankruptcy or insolvency law by or against Owner or FDG; or similar events or actions affecting or pertaining to TTI.

9. **Remedies.** Upon default under this Agreement, Secured Party may, at the time of default or any time thereafter, declare Owner and FDG in default of the Sublease Agreement, Parking and Non-relocation and Continuous Operation Agreements and Secured Party shall have all of the remedies of a secured party under the California Commercial Code, the Sublease Agreement, the Parking Agreement and the Non-relocation and Continuous Operation Agreement or any other applicable law or statute, as amended from time to time. Furthermore, upon any default, Secured Party may:

9.1 **Performance of Obligations.** Perform any of Owner or FDG's obligations under this Agreement for Owner or FDG's account. Any money expended or obligations incurred in doing so, including reasonable attorneys' fees and interest at the highest rate permitted by law, will be charged to Owner or FDG and added to the obligation secured by this Agreement.

9.2 **Conveyance to Secured Party.** At its option and upon ten (10) days prior written notice to Owner, take possession of, and title to, and register the Secured Property, or any part of it, in Secured Party's name or in the name of its nominees; collect and enforce payment with respect to the Secured Property; exercise all rights, options, and privileges with respect to the Secured Property, and deliver it in that connection to any appropriate person or agency. Further Secured Party shall have the immediate right to vote the Secured Property as Owner or FDG's proxy, that proxy to be irrevocable until this Agreement is terminated. Except as otherwise limited in this Agreement, until such default, Owner's right to vote the Secured Property will not be impaired by this Agreement.

9.3 **Sale.** Conduct a commercially reasonable private sale or other disposition of the Secured Property, although a higher price might have been obtained for the public sale under the Securities Act of 1933, as amended, or in compliance with any other applicable laws or regulations. Secured Party's notice of the time and place of public sale of the Secured Property, or the time on or after which a private sale or other disposition of the

Secured Property will be made, is reasonable if sent to Owner in the manner for giving notice at least ten (10) days before the public or private sale. Owner, FDG and Secured Party agree that this shall constitute reasonable notice. Any sale of the Secured Property shall be held at such time or times and at such place or places as Secured Party may determine in the exercise of Secured Party's reasonable discretion. Secured party may bid and purchase at any sale under this Agreement and shall also have the rights provided in Section 9505 of the California Commercial Code. The Secured Property may, upon completion of any sale or transfer, be endorsed by Secured Party as required to transfer the Secured Property on the books of Owner and Owner and FDG hereby constitute and appoint Secured Party as Owner and FDG's attorney in fact to do so.

9.4 Proceeds of Sale. The net cash proceeds of any sale or disposition of the Secured Property shall be applied by Secured Party first, to the reasonable costs and expenses (including reasonable attorneys' fees) of holding, processing and preparing for the sale, transfer or delivery of the Secured Property; and second, to the satisfaction of all Owner and FDG's obligations under the Sublease, Parking and Non-Relocation and Continuous Operation Agreement in such order and manner as Secured Party in its sole discretion may determine. Any surplus may be paid to the order of Owner. In the event that the proceeds of any sale are insufficient to fully discharge the obligation to Secured Party, including interest, Owner and FDG shall remain liable to Secured Party for any deficiency.

9.5 Execution of Documents. Secured Party may require Owner and FDG to execute all documents and instruments on Secured Party's request that Secured Party considers necessary or advisable to exercise its rights under this Agreement.

9.6 Role of Major League Baseball.

9.6.1 Owner and FDG represent and warrant to Secured Party that: Owner's and FDG's execution and performance of this Agreement has been approved by the President of the Minor League Association, the National Association of Professional Baseball Leagues, Inc., and by the Pacific Coast Baseball League, Inc. to grant a security interest of a "Control Interest," as defined by Rule 36 of the Professional Baseball Agreement, in a Minor League Club.

9.6.2 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 "Rules"). 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 Rules, in such Club is subject to the prior review and approval of the President of the National Association of Professional Baseball Leagues, Inc. and 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 a Control Interest in the Club would be required for any foreclosure, sale or transfer of the Secured Property to a third party as well as to the Secured Party. Secured Party shall immediately notify the President of the National Association of Professional Baseball Leagues, Inc. and the Baseball Office of the Commissioner of any

event of default under the indebtedness secured by this Agreement. Secured Party acknowledges that any temporary or permanent management of the Secured Property by the Secured Party or any receiver or trustee shall be subject to the prior approval of 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 Debtor to the Secured Party under any credit agreement and the rights of Secured Party thereunder which, in either case, are not inconsistent with the provisions of this Section. Any requirement for Secured Party with this Section or this Agreement which requires 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 Parties security interest in the Franchise shall be at the sole and absolute expense of Owner and FDG.

10. **Release of Owner or FDG.** Without notice to Owner or FDG, Secured Party may release Owner or FDG, or any endorser, guarantor, or any other collateral security given to secure the obligations of Owner or FDG.

11. **Termination.** This Agreement will terminate when Owner and FDG completes performance of all obligations to Secured Party, including, without limitation, the termination of the Sublease Agreement, Parking and Non-relocation and Continuous Operation Agreements for reasons other than a default or breach by Owner or FDG, and Owner or FDG has notified Secured Party in writing of the termination.

12. **Right of FDG to Purchase the Franchise**

12.1 **The Baseball Franchise.** TTI is the owner of a franchise for a AAA baseball team ("the Franchise") in the Pacific Coast League of Professional Baseball Clubs, Inc., ("PCL"). The ownership of the Franchise give TTI the right to operate a professional baseball team as a member of the PCL.

12.2 **The License of the Franchise to FDG.** TTI does not operate the Franchise. It has granted to FDG an exclusive right and license to possess, use and operate the Franchise pursuant to the terms of that certain Exclusive License Agreement dated October 21, 1997, (the "License Agreement"), a true and conformed copy of which has been provided by FDG to the Secured Party.

12.3 **Option to Purchase the Franchise.** TTI has granted to FDG the option to purchase the Franchise pursuant to an Option Agreement dated October 21, 1997, ("the Option Agreement"), a true and conformed copy of which has been provided by FDG to Secured Party.

12.4 FDG's Right to Purchase the Franchise. FDG shall have the right to exercise its option to purchase the Franchise from TTI in accordance with the Option Agreement, if all of the following requirements are met:

a. The approvals of the PCL, the National Association, and the Office of the Commissioner required by Sections 7.2, 7.3 and 7.4 of the Option Agreement have been obtained.

b. The person to whom the Franchise is transferred by TTI, upon the exercise of the Option by FDG, is a limited liability company, organized under the laws of California, having FDG as its sole member and sole manager (the "Subsidiary").

c. FDG pledges to the Secured Party all membership and economic interests in the Subsidiary as substituted security in place of the Pledged Shares by a Pledge Agreement and Security Agreement in a form satisfactory to the Secured Party.

d. The Subsidiary and FDG enter into a License Agreement with respect to the Franchise that is identical in all material respects with the License Agreement described in Section 12.2, except that the licensor shall be the Subsidiary and that FDG and the Subsidiary may fix the Compensation payable under Section 4 of the License Agreement to by any amount that they, in their sole and absolute discretion, determine to be proper. It is understood and agreed that the provisions of Section 4.3 of this Security Agreement shall be as fully applicable to any License Agreement between FDG and the Subsidiary as to the License Agreement between FDG and TTI.

e. Neither FDG nor Owner is in material default of any of their respective obligations under the Stadium Agreements described in Section 4.1.

f. FDG has given its written approval of the Articles of Incorporation and the Operating Agreement for the Subsidiary. FDG shall submit its proposed form for the Articles of Organization and Operating Agreement for the Subsidiary to the Secured Party for its review and approval. Secured Party shall promptly give its written approval or promptly give its written disapproval. If the Secured Party disapproves of either or both such documents, its disapproval shall set out the specific additions or deletions which, if made to the disapproved document or documents, would result in the Secured Party's approval thereof. The Secured Party shall not require any additions or deletions to be made to the Operating Agreement or Articles of Organization that are not reasonably required to protect the security interest of the Secured Party in all membership and economic interests in the Subsidiary, consistent with this Pledge Agreement.

g. FDG and Owner agree that Subsidiary, FDG and Owner shall enter into any agreements or execute and deliver any documents or instruments on Secured Party's request necessary for Secured Party to attach and perfect its security interest in Subsidiary or any membership and economic interests in the Subsidiary or to exercise any of its rights under this Agreement.

13. **Secured Party's Care and Delivery of Secured Property.** Secured Party's obligations with respect to the Secured Property in its possession shall be strictly limited to the duty to exercise reasonable care in the custody and preservation of such Secured Property, and such duty shall not include any obligation to ascertain or to initiate any action with respect to or to inform Owner, FDG or any other third party of maturity dates, conversion, call, or exchange rights, or offers to purchase the Secured Property, or any similar matters, notwithstanding the Secured Party's knowledge of the same. Secured Party shall have no duty to take any steps necessary to preserve the rights of Owner, FDG or any other third party against prior parties, or to initiate any action to protect against the possibility of a decline in the market value of the Secured Property. Secured Party shall not be obligated to take any actions with respect to the Secured Property requested by Owner, FDG or others unless such request is made in writing, and the Secured Party determines, in its sole discretion, that the requested actions would not unreasonably jeopardize the value of the Secured Property as security for the indebtedness. Secured Party may at any time deliver the Secured Property, or any part thereof, to Owner, and the receipt thereof by the Owner shall be a complete and full acquittance for the Secured Property so delivered, and Secured Party shall thereafter be discharged from any liability or responsibility therefor.

14. **Exclusive License Agreement**

TTI and FDG have entered into an Exclusive License Agreement, dated October 21, 1997, (the "License Agreement") wherein TTI has granted FDG an exclusive worldwide right and license to possess, use and operate the Franchise, together with player development contracts, protected territorial rights, and all approvals, rights and any other entitlements necessary, or in any way related, to the use and operation of the Franchise. In the event that Secured Party shall exercise any rights that it may have under this Agreement, including but not limited to foreclosure of the Secured Property or Additional Secured Property, FDG, subject to the Rules, shall immediately terminate any interest it has or may have in the future to the License Agreement or any license agreement created in accordance with Section 12 of this Agreement and shall thereafter have no further interest in accordance with that License Agreement or any other license agreement related to the Secured Property or Additional Secured Property. Further, Secured Party shall not be subject to any rights of FDG created under that License Agreement or any other license agreement. If FDG shall transfer any interest that it has or may have in the future to the License Agreement or any license agreement created under Section 12 of this Agreement, FDG shall assure that the agreement which transfers the license interest shall be subject to the same limitations and restrictions contained within this Section and said agreement shall contain similar language to this Section which would require the same obligation to terminate the license agreement in the event that Secured Party should foreclose on the Secured Property or Additional Secured Property in accordance with this Agreement.

15. **General Provisions.**

15.1 **Further Assurances.** Owner and FDG shall, from time to time upon the request of Secured Party, execute and deliver any instruments or documents, or undertake

any acts, that may be deemed necessary or advisable by Secured Party to implement or carry out the purposes of this Agreement.

15.2 Notices. All notices, requests, demands, instructions or other communications to be given to any party hereunder shall be in writing and shall be deemed to have been duly given (i) on the date of service if personally served on the party to whom notice is to be given; (ii) within forty-eight (48) hours after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, return receipt requested; (iii) within twenty-four (24) hours after being deposited with a recognized private courier service (e.g., Federal Express), if delivered by a private courier service to the party to whom notice is to be given, all charges prepaid; or (iv) when sent, if given by telex or telecopy. Any such communication sent by telex or telecopy must be confirmed within twenty-four (24) hours by letter mailed or delivered in accordance with this Section. All notices shall be properly addressed to the party receiving notice as follows:

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If to the Owner to:

Fresno Grizzlies, Inc.
1231 N Street
Fresno, California 93721
Attention: President

If to Secured Party to:

City of Fresno
2600 Fresno Street
Fresno, California 93721
Attention: City Manager

The addresses for purposes of this Section may be changed by giving written notice of such change.

15.3 Partial Invalidity. Any covenant, agreement, condition or other provision of this Agreement, or any portion thereof, which shall prove to be invalid, void or illegal shall not affect the remaining portions of the Agreement, or any part thereof, and this Agreement shall be construed as if any such covenant, agreement, condition or provision had not been inserted, but only as long as the rights, obligations and duties of a party are not materially altered thereby.

15.4 Attorney's Fees. If either party files any action or brings any proceeding against any other party arising out of this Agreement, or is made a party to any action or proceeding relating to this Agreement brought by any person or entity, then as between the

parties hereto, the prevailing party shall be entitled to recover as an element of its costs of suit and not as damages, reasonable attorney's fees to be fixed by the court. The prevailing party shall be a party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorney's fees. No sum for attorney's fees shall be counted when calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorney's fees.

15.5 **Waiver.** No waiver of any term of this Agreement or performance hereunder shall be effective unless in writing and signed by the party affected thereby. No waiver by a party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided for in this Agreement, or at law or in equity, shall not prevent the exercise by that party of any other remedy provided in this Agreement, or at law or in equity.

15.6 **Governing Law.** This Agreement has been delivered in the State of California and the parties agree that it shall be construed in accordance with the laws of that state, which laws shall govern the Agreement's interpretation and effect.

15.7 **Successors in Interest.** All rights and obligations of Owner, FDG and Secured Party shall inure to the benefit of and be binding upon their heirs, executors, administrators, successors and assigns. If there be more than one party obligated to Secured Party, their obligations hereunder shall be joint and several.

15.8 **Effective Date.** The effective date of this Agreement is _____, 2000.

Dated: _____, 2000.

Secured Party:

City of Fresno, a Municipal Corporation

By: _____

Its: _____

By: _____

Its: _____

Owner:

Fresno Grizzlies, Inc., a
California corporation

By: _____

John L. Carbray, President

By: _____

Diane M. Engelken, Secretary

FDG

Fresno Diamond Group, a California
limited liability company

By: _____

John L. Carbray, President

By: _____

Diane M. Engelken, Secretary

Exhibit "A"

IRREVOCABLE STOCK POWER
(Fresno Grizzlies, Inc.)

FOR VALUE RECEIVED, the undersigned does hereby assign and transfer to the City of Fresno, a municipal corporation, as Secured Party under that certain Pledge Agreement of even date herewith between FRESNO GRIZZLIES, INC., as Owner, and the CITY OF FRESNO, as Secured Party, all the undersigned's right, title and interest in the following shares of the capital stock of TUCON TOROS, INC., an Arizona corporation:

| <u>Class/Series of Stock</u> | <u>Certificate No.</u> | <u>No. of Shares</u> |
|------------------------------|------------------------|----------------------|
| Class A | 19 | 7,900 |
| Class B | 10 | 2,100 |

The undersigned does hereby irrevocably constitute and appoint _____ attorney to transfer such stock on the books of the company, with full power of substitution in the premises.

Dated: _____, 2000.

FRESNO GRIZZLIES, INC., a
California corporation

By: _____
John L. Carbray, President

By: _____
Diane Engelken, Secretary