July 28, 2009

TO: Mayor and City Council

FROM: J. Gordon Palmer, Jr., City Manager

SUBJECT: SPORTS TEAM LEASE FOR STOCKTON COUGARS 2009-2010 TEAM SEASON

RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing the City Manager to execute a lease with Cabernet Sports Entertainment, Inc. to operate a Professional Arena Soccer League Franchise at the Stockton Arena/Stockton Events Center and take all actions appropriate to carry out the purpose and intent of this resolution.

Summary

This resolution will provide a one-year (2009-2010 Team Season) lease agreement by Cabernet Sports Entertainment, Inc. with one (1) year mutual option to renew. The lease will provide operating agreements, facility charges and revenue sharing agreements for this regular soccer season.

DISCUSSION

Background

On March 2, 2004, the City of Stockton and American Pro Sports approved a team lease for the Stockton Events Center Arena for an indoor soccer team (California Cougars). On August 29, 2006, the City of Stockton consented to the assignment of Lease from American Pro Sports to Major Indoor Soccer League when the team interest was purchased by Thunder Investments, LLC. The lease for California Cougars with Major Indoor Soccer League expired at the end of the 2007-2008 Team Season when the ownership of the California Cougars did not renew the lease. On July 29, 2008 Stockton Cougars, LLC was approved for a one-year lease for the 2008/2009 lease which expired at the end of the season.

Present Situation

Cabernet Sports Entertainment, Inc. now holds the ownership of California Cougars indoor soccer league interest with a Professional Arena Soccer League Franchise. The new ownership has returned the team name back to California Cougars from Stockton Cougars. The new lease with the California Cougars Indoor Soccer Team will continue to maximize the Stockton Events Center for Sporting Events.
SPORTS TEAM LEASE FOR STOCKTON COUGARS 2008-2009 TEAM SEASON

The operating guidelines and facility charges are in line with practices provided in similar arenas throughout California. The Team will pay rent of $4,000 per game day and pay for production costs. The revenue sharing agreement includes sponsorship, and club seat sales splits with the Team. The Team receives 100% merchandise sales. The revenue sharing excludes suite sales as well as concessions/catering. The City will provide a pass through convenience fee of $1.00 per ticket to the Team. This agreement will allow the Team to play 10 regular team games and up to 4 playoff games at the arena, control the team costs, and guarantee the City will not subsidize the sport team game day operations. The Cougars are committed to providing goodwill community events for the youth of Stockton. The Lease is included as Exhibit A.

Notification

The City Charter requires the Publication of a notice to lease City property. Therefore, a “Notice of Intention to Lease City Property” has been published at least ten days prior to the Council action. This notification is included as Exhibit B.

FINANCIAL SUMMARY

The fiscal impact of this new contract will protect the City’s operating fund for the 2009-2010 Team Season through the control of expenses and sharing game revenue/convenience fee.

Respectfully submitted,

J. GORDON PALMER, JR.
CITY MANAGER

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Resolution No. __________

STOCKTON CITY COUNCIL

RESOLUTION APPROVING THE 2009/2010 SPORTS TEAM LEASE FOR THE STOCKTON EVENTS CENTER ARENA PROFESSIONAL ARENA SOCCER LEAGUE WITH CABERNET SPORTS ENTERTAINMENT, INC.

In March 2004, the City and American Pro Sports, Inc., entered into a Team Lease Agreement for the Stockton Events Center Arena (Indoor Soccer Team) (the "Team Lease") that governs, among other things, the terms and assumptions regarding the revenue sharing for certain elements of the Stockton Cougars' home games held at the Stockton Arena; and

In August 2006, American Pro Sports, Inc., and the Major Indoor Soccer League, LLC, executed an Assignment of Lease concerning the Team Lease for the Stockton Events Center, and American Pro Sports, Inc., sold its interest in the indoor soccer team referred to in the Team Lease to Thunder Investments, LLC; and

The City and the Major Indoor Soccer League, Inc., executed an Amendment to the Team Lease regarding revenue sharing elements, as set forth in the First Amendment to Team Lease, for one regular season of home games for 2007/2008 and retroactive to November 10, 2007; Thunder Investment/The Major Indoor Soccer League lease for indoor soccer team expired at the end of the 2007/2008 team season; and

The Stockton Cougars, LLC, owned interest for Stockton Cougars, LLC, for a Professional Arena Soccer League franchise in Stockton for the 2008/2009 Season, and the season expired; and

It is in the best interest of the City to maximize the use of the Stockton Events Center Arena for events that bring large numbers of people to the facility; and

The City and Cabernet Sports Entertainment, Inc., (a Professional Arena Soccer League franchise) now desire to enter into a new Sports Team Lease at Stockton Events Center Arena for one regular season of home games for 2009/2010 with a one (1)-year mutual option term; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The Team Lease between the City of Stockton and Cabernet Sports Entertainment, Inc., is hereby approved.

City Atty
Review
Date July 22, 2009
2. The City Manager is authorized to execute the Team Lease, a copy of which is attached as Exhibit "A" and incorporated by this reference.

3. The City Manager is authorized to take whatever actions are appropriate and necessary to carry out the purpose and intent of the Resolution.

PASSED, APPROVED, and ADOPTED ________________________.

ANN JOHNSTON
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
2009 TEAM LEASE

FOR

STOCKTON EVENTS CENTER ARENA

(ARENA SOCCER TEAM)

BETWEEN

THE CITY OF STOCKTON

AND

CABERNET SPORTS ENTERTAINMENT, INC.
2009 TEAM LEASE FOR
STOCKTON EVENTS CENTER ARENA
(AREN A SOCCER TEAM)

This Lease (the "Lease") is made and entered into on July 14, 2009, by and
between the City of Stockton (the "City") and Cabernet Sports Entertainment, Inc., a
California corporation (the "Tenant"). The City and the Tenant are referred to
collectively as the "parties" and individually as a "party."

RECITALS

A. Capitalized terms used in this Lease, unless defined elsewhere in this
Lease, have the meanings set forth in the Glossary of Defined Terms attached to this
Lease as Exhibit "A."

B. The Tenant has been granted the right by the League to operate a
professional men's arena soccer team Stockton, California.

C. The Tenant desires to lease from the City, and the City desires to Lease to
the Tenant, the Arena for Team Events in accordance with the terms and conditions of
this Lease.

NOW THEREFORE, incorporating the above recitals herein, the parties hereby
agree as follows:

ARTICLE 1. BASIC LEASE PROVISIONS

Section 1.1 Lease For Team Events; Services and Facilities: "As Is"
Conveyance.

(a) Lease. In accordance with the terms and conditions of this Lease,
the City hereby leases to the Tenant, and the Tenant hereby leases from the City, the
Arena on the Team Event Dates throughout the Term, for the Tenant's use and
operation in fielding the Team and conducting Team Events. Notwithstanding the
foregoing, the City may make available those portions of the Arena not required
exclusively for the conduct of the Team Events (including, without limitation, general
public entrances and pedestrian corridors, meeting room and ballroom areas, catering
facilities, and administrative offices and locker facilities not leased to the Tenant under
this Lease) to other users and patrons of the Arena on the Team Event Dates so long
as such availability to other users and patrons does not materially impair the efficient
conduct of the Team Events on such Team Event Dates.

Except for the Locker Room Facilities as set forth in Section 1.1(b) and the
Team Administrative Office as set forth in Section 1.2, the Tenant shall have no right
under this Lease to use the Arena other than for Team Events on the Team Event
Dates.
(i) **Team Schedule.** The schedule for the Team Event Dates for the Initial Term shall be set in accordance with the Team Event Schedule and Related Policies set forth in the attached Exhibit “B.” The City, through the Manager, and the Tenant shall cooperate with each other and with the Other Arena Teams to set the Team Event Schedule for the Option Terms in accordance with the Arena booking policies and procedures then in effect.

In the event the Tenant has scheduled a Team Event at the Arena, in accordance with the Team Event Schedule and Related Policies attached as Exhibit “B,” and subsequently the Tenant desires to cancel such Tenant Event, then the Tenant shall immediately provide written notice of such cancellation of the Team Event to the Manager (the "Cancellation Notice"). If the Tenant delivers the Cancellation Notice to the Manager at least eight (8) weeks prior to the date of the Team Event, then the Manager shall cancel the date of the Team Event and the Tenant shall have no right to occupy or use the Arena on the date of the cancelled Team Event (the "Confirmed Cancellation Date"). Except as provided in Section 7.2, if the Tenant delivers the Cancellation Notice to the Manager less than eight (8) weeks prior to the date of the Team Event, then the Manager shall cancel the Team Event and the Tenant shall have no right to occupy or use the Arena on the Confirmed Cancellation Date. Upon the Manager’s cancellation of the Team Event on the Confirmed Cancellation Date, the Tenant shall pay to the Manager the Rent for such cancelled Team Event, less any rent actually collected for the Arena for such Confirmed Cancellation Date. In the event the Manager incurred costs and expenses directly related to the Tenant’s cancellation of the Team Event in excess of the Rent, the Tenant shall promptly reimburse the Manager for all such reasonable costs and expenses.

(b) **Locker Room Facilities.** The City shall provide to the Tenant the following dressing and related facilities (collectively, the "Locker Room Facilities"): 

(i) The home team locker room during the entire Team Season, except that the Tenant shall comply with City requests to temporarily vacate the Home Team Locker Facility (by moving all Team equipment to the storage area designated for the Team) during the Team Season for special events at the Arena.

(ii) An auxiliary locker room for the visiting team and separate dressing areas for referees and dance team on Team Event Dates; and

(iii) Trainer’s facilities, storage facilities, and laundry facilities during the entire Team Season, subject to sharing with the Other Arena Teams during any overlap between the Team Season and the seasons of operation of the Other Arena Teams.

The Tenant shall totally vacate the Locker Room Facilities at the end of the Team Season (which is defined to end three (3) days after the Team’s last game of the Team Season).
The Tenant acknowledges and agrees that the City will provide the Locker Room Facilities, which includes installed lockers, toilets and shower facilities, but that the Tenant shall be responsible at its sole cost for providing all other furniture, fixtures, and equipment that it deems necessary to make the Locker Room Facilities functional.

Improvements may be made to the Locker Room Facilities by the Tenant with the prior written approval of the City (and, except with respect to the Home Team Locker Facility, by the Other Arena Teams), and the costs of all such improvements made by the Tenant shall be the sole responsibility of the Tenant. The Tenant acknowledges that any improvements to the Locker Room Facilities which result in permanent or semi-permanent attachment to the floors, walls, or ceilings of the Locker Room Facilities will make such improvements fixtures and, at the end of the Term, such improvements will become property of the City. All improvements are to be approved, in writing, in advance by the City in its sole discretion and are subject to any reasonable conditions being desirable by the City including, but not limited to, the provision of labor and material bonds and insurance in connection with construction of such improvements.

(c) Other City-Provided Facilities and Services. The City, through its Manager, shall provide to the Tenant during or in connection with Team Events the services and facilities described in the attached Exhibit "$C." Staffing for the services described in Exhibit "$C" shall be the sole responsibility of the City, and shall be of a nature and at levels consistent with industry standards for comparably attended events of the nature of the Team Events in other similarly situated public arenas. The City shall be entitled to reimbursement for the services and facilities only to the extent described in Exhibit "$C."

The Tenant shall be responsible, at its sole cost, for providing all facilities, services and equipment necessary for conduct of the Team Events other than those expressly specified to be provided by the City under the terms of this Lease. The City, through its Manager, shall have the right to approve any agents, contractors or other persons employed by the Tenant (including, without limitation, security personnel) other than Team personnel. Such approval shall not to be unreasonably withheld. The Tenant shall use its best and reasonable efforts to cause all such persons retained or hired by the Tenant to comply with all applicable federal, state, and local laws and regulations, and with all rules and regulations established for the Arena by the Manager, on behalf of the City. The Tenant hereby assumes all risks and liability that may result from the failure by any such persons retained or hired by the Tenant to comply with such laws, rules and regulations, and any failure by such persons to comply with such laws, rules and regulations shall constitute a Tenant Event of Default if not cured within the time and in the manner set forth in Section 5.1(a).

(d) Box Office Facility and Ticket Sales. Except as otherwise provided below, the City, through its Manager or a reputable ticket service engaged by the Manager on the City's behalf (the "Ticket Service"), shall be solely responsible for and authorized to operate the box office at the Arena and arrange for and conduct the sale
of all tickets for Team Events, whether at the box office or through remote facility sales operations. The City, through its Manager or the Ticket Service, shall conduct all ticket sales operations in a commercially reasonable manner consistent with industry standards for sale of tickets to events at public arena facilities similar to the Arena. The City, through its Manager and the Ticket Service, shall reasonably cooperate with the Tenant regarding the sale of tickets for Team Events.

Notwithstanding the foregoing, the Tenant may separately control and perform the sale of season ticket packages and/or group ticket sales for Team Events. The City shall cause the Manager and the Ticket Service to cooperate with the Tenant and to facilitate the sale by the Tenant of season ticket packages and/or group ticket sales. The Tenant shall provide an accurate and complete report to the City of all season ticket packages sold and group ticket sales completed by the Tenant in a timely fashion so that the City, through its Manager, can adequately and timely perform all applicable functions under this Lease, including, without limitation, the determination and allocation to the City of the Facility Fee Revenue for each Team Event. Tenant may distribute up to One Thousand (1000) Complimentary Tickets per Team Event without a Facility Fee, as defined in Section 2.1(b), being charged. For all distributed Complimentary Tickets exceeding One Thousand (1,000), Tenant shall be charged the Facility Fee.

(e) "As Is" Conveyance; Acceptance of Arena. By taking possession of the Arena for Team Events as of the commencement of the Term, the Tenant will have acknowledged that the Arena has been inspected and approved by the League; that the Tenant has previously inspected the Arena and accepts the Arena "as is", and that the Arena is free of patently obvious conditions that violate this Lease.

Section 1.2 Lease of Team Administrative Offices. In addition to the lease of facilities described in Section 1.1, the City shall lease to the Tenant and the Tenant shall lease from the City the Team Administrative Office throughout the Term. The Team Administrative Office shall be provided to the Tenant at no cost to the Tenant other than the payment of Rent in accordance with Section 2.1. Tenant shall vacate Team Administrative Office within two (2) weeks following the completion of the Term described in Section 1.3.

Section 1.3 Term of Lease.

(a) Term. The term of this Lease (the "Term") shall commence upon the date of execution by both parties (the "Effective Date") and shall continue through and terminate at the end of one Team Season, thereby covering the Team Season of 2009-2010.

(b) Mutual Option Term.

(i) One-Year Mutual Option to Extend. Subject to the terms of this subsection (b), and subject to prior written approval by City, the Tenant may
exercise one (1) mutual option to renew this Lease, for a term of one (1) year, for the Team Season of 2010-11 ("Mutual Option Term").

(ii) No Default. To exercise any option to create a Mutual Option Term under this Lease, there shall exist no uncured Tenant Event of Default at the time of such exercise. In the event that an uncured Tenant Event of Default exists at the time the Tenant attempts to exercise the option to create a Mutual Option Term, such exercise shall be void and without any legal effect.

(iii) Exercise of Mutual Option. In order to exercise the option to create a Mutual Option Term under this Lease (and provided City has given its prior written approval), the Tenant shall advise the City in writing, by not later than the following dates, of the Tenant's intention to create a Mutual Option Term under this Lease:

(A) March 1, 2010, with respect to the Mutual Option Term for the 2010-11 Team Season;

The Rent for the Mutual Option Term shall be negotiated by the parties, but shall not be less than the amount set forth in Section 2.1.

(c) Survival of Provisions. The provisions of Sections 3.5, 3.9, 7.3 and 7.13(a) shall survive expiration or earlier termination of the Term, and shall remain in full force and effect.

ARTICLE 2. FINANCIAL PROVISIONS

Section 2.1 Rent and Facility Fee.

(a) Amount. In consideration for this Lease, the Tenant shall pay to the City as rent (the "Rent") the amount of Four Thousand Dollars ($4,000) per Team Event.

(b) Facility Fee. In addition to Rent, Tenant shall also pay a Facility Fee in an amount no higher than Two Dollars and Seventy Five Cents ($2.75) per ticket sold for each team Event.

(c) Payment of Rent. The Rent for each Team Event shall be retained by the City upon settlement of the Gross Gate Receipts for each Team Event as provided in Section 2.3(k). No Rent shall be charged by the City with respect to Team Events described in items (3) and (4) of the definition of Team Events set forth in Exhibit "A."

Section 2.2 Team Event Cost Reimbursement. In addition to the payment of Rent in accordance with Section 2.1, the Tenant shall pay the sum amounts set forth in subsections (a) and (b) below (such sum is referred to as the "Cost Reimbursement Amount") for and in connection with each Team Event:
(a) For the Extra Facilities and Services described in Part II of Exhibit "C," if any are requested by the Tenant in connection with a particular Team Event, the amounts specified in such Part II of Exhibit "C."

The Cost Reimbursement Amount for each Team Event shall be retained by the City upon settlement of the Gross Gate Receipts for each Team Event as provided in Section 2.3(k).

2.3 Revenue Generation and Allocations. This section describes the parties' rights and responsibilities with respect to generation of revenues in connection with the operation of the Arena and the conduct of the Team Events and sets forth the allocation of such revenues between the City and the Tenant.

(a) Ticket Revenue. The Team shall be allocated all Net Gate Receipts from each Team Event. The City shall be allocated the following amounts from and related to each Team Event: (i) the Rent; (ii) the Cost Reimbursement Amount; (iii) the Ticket Service Costs; and (iv) the Facility Fee Revenue.

(b) Naming Rights and Pouring Rights. Subject to compliance with applicable law, the City shall have the exclusive right to sell naming rights, pouring rights, and other commercial or product sponsorship rights with respect to the Arena and any components thereof, and shall be entitled to retain all revenue received in connection with the sale of such rights. The Arena and the various components thereof shall at all times be known by such name as designated by the City and shall not otherwise be designated by the Tenant or any agent of the Tenant in any manner or in any publication, Advertising or on any ticket, unless the City first consents to such other designation in its sole discretion. The City, through its Manager, shall provide the Tenant with guidelines with respect to protected naming rights, pouring rights, and other commercial or product sponsorship rights (including any limitations on competition by other brands in the operation of the Arena), and the Tenant shall adhere to and comply with such guidelines in the conduct of its business under this Lease (including refraining from promoting or entering into arrangements for the use and/or advertising of other brands to which competition limitations apply).

(c) Concession Services. The City, through its Manager or a reputable concessionaire engaged by the Manager on the City's behalf, shall have the exclusive right to operate the Concession Services at Team Events, and shall cause the Concessions Services to be operated at all Home Games. For each Team Event the City shall receive one hundred percent (100%) of the Concession Services Adjusted Gross Revenue.

(d) Team Merchandise. The City, through its Manager or a reputable merchandiser engaged by the Manager on the City's behalf, shall have the exclusive right to sell Team Merchandise at Team Events and at the Arena Store; provided, however, that the City, in its sole discretion, may grant the right to the Tenant to sell Team Merchandise through the Tenant's own vendors at designated Team Events. As
between the City and the Tenant, an amount equal to one hundred percent (100%) of the Team Merchandise Net Revenue shall be allocated and paid to the Tenant, and the balance of the Team Merchandise Net Revenue shall be allocated and paid to the City. Such amounts shall be paid to Tenant at the time of settlement pursuant to subsection (k) below. Notwithstanding the foregoing, if the City, in its sole discretion, grants the Tenant the right to sell Team Merchandise through the Tenant's own vendors at designated Team Events (a "Tenant Merchandising Right"), the Tenant shall pay and the City shall retain any mutually negotiated rights fee for such Tenant Merchandising Right, and the Tenant shall retain all revenues derived from the sale of Team Merchandise under such Tenant Merchandising Right.

(e) Advertising. Except as otherwise expressly provided in this subsection (e), the City shall have the exclusive right to sell Advertising, and shall be entitled to retain all revenue received in connection with the sale of such Advertising.

Notwithstanding the foregoing, the Tenant shall have the right to sell and shall be entitled to retain all revenue received in connection with City approved temporary Advertising placed in the Arena during Team Events related to temporary dasher board signage, temporary field surface signs or logos, program sales, Team equipment, reader boards, and temporary signage in other areas of the Arena as well as broadcasting rights (as further described in subsection (j) below). The Tenant may be allowed to sell video advertising on the scoreboard, consistent with guidelines provided by the City and Manager as may be amended from time to time.

All temporary signage permitted on the dasher boards and other areas of the Arena shall be installed by Manager prior to Team Events and removed promptly following Team Events. No permanent signage at the Arena shall be covered at any time by any temporary signage under the control of the Tenant. The temporary advertising shall not violate any exclusive advertising rights granted by the City to naming sponsors, beverage companies or other typical grantees of exclusive rights in the Arena.

Notwithstanding the foregoing, the Tenant may place City approved temporary signage over the permanent dasher board signage provided by the professional hockey team occupying the Arena, so long as the hockey team's permanent signage is left intact underneath the Tenant's temporary signage. The Tenant shall be responsible for replacing, at its sole cost, any of the hockey team dasher board signage that is damaged due to the Tenant's actions.

The Tenant may request that the City consider selling Advertising to a sponsor that has an established sponsorship arrangement with the Team (a "Team-Related Sponsor"). If the City, in the exercise of its commercially reasonable good faith judgment, determines that the sale of such Advertising is in the best financial interest of the Arena, and if a sale of Advertising at the Arena is thereafter completed with the Team-Related Sponsor, then the Tenant shall be entitled to a commission
equal to twenty percent (20%) of each installment of revenue received by the City from such sale of Advertising to the Team-Related Sponsor.

(f) Luxury Suites. The City shall have the exclusive right to market and sell lease rights or license rights of any nature and duration with respect to the Luxury Suites rights. One hundred percent (100%) of the Luxury Suites Lease or License Fee Revenue, shall be allocated to the City.

(g) Club Seats. Tenant shall cooperate with Manager to develop a Club Seat Marketing Program. If after program is set, Tenant agrees to the inclusion of tickets to some or all Team Events in a Club Seat Package, then the City shall open the Club Seat Area for Team Events for which tickets are included. The pricing of any Club Seat Package that includes the sale of tickets to some or all of the Team Events shall include:

(i) a component representing the value of any tickets to the Team Events provided in the Club Seat Package (the "Ticket Component"); and

(ii) a component representing the value of other specified rights to be provided in the Club Seat Package (such as, by way of illustration, access rights to limited areas of the Arena, catered food and beverage services, rights to purchase tickets to other events at the Arena, etc.) (the "Premium Component").

No Club Seat Package or Club Seat Marketing Program that includes the sale of tickets to some or all of the Team Events shall be effectuated unless and until the City and the Tenant have agreed upon the allocation of revenues from the sale of the Club Packages between the Ticket Component and the Premium Component. The revenues received from the sales of any Club Seat Package and Club Seat Marketing Program agreed to between the City and the Tenant pursuant to an Operating Memorandum shall be allocated as follows:

(A) the portion of such revenue that is allocable to the Ticket Component shall be deemed Gross Gate Receipts under this Lease; and

(B) the portion of such revenue that is allocable to the Premium Component (the "Club Seat Premium Component Revenue") shall not be deemed Gross Gate Receipts and shall be retained by the City.

(h) Catering Services. The City, through its Manager or a reputable caterer engaged by the Manager on the City’s behalf, shall have the exclusive right to operate the Catering Services at Team Events, and shall cause the Catering Services to be operated at all Home Games. One hundred percent (100%) of the revenue related to catering services shall be to the City.

(i) Parking. The City shall operate the Arena Parking Facilities generally in accordance with a traffic and parking management plan (the "TPMP") to be
prepared in accordance with this subsection (i) and the additional terms outlined in the attached Exhibit "D." As between the City and the Tenant, the City shall be entitled to all revenue received in connection with the Arena Parking Facilities, except as otherwise provided in Exhibit "D" with respect to the Tenant's right to revenues from the "Ballpark Parking Lot" in connection with the operation of such lot on Team Event Dates.

(j) **Broadcast and Television Operations.** The City shall provide television facilities and services to the Tenant for Team Events in the form and manner set forth in the attached Exhibit "C," and the Tenant shall pay the City the amount specified in Exhibit "C" for such facilities and services. The Tenant shall have the exclusive right to conduct or cause the conduct of television operations relating to or arising from the Team Events at its sole cost. The Tenant shall have the right to retain all revenue in connection with such broadcast and/or television operation.

(k) **Convenience Fee.** On behalf of the Team, City, through its Manager, shall collect a One Dollar ($1.00) convenience fee on all paid tickets that will be rebated to the team at settlement in accordance with subsection (l) below.

(l) **Settlement.** The Manager, on behalf of the City, shall collect and serve as the repository of all revenue with respect to each Team Event. Within three (3) days after each Team Event, the Manager shall complete the settlement of revenues for such Team Event by paying to the Tenant the portion of the revenues to which the Tenant is entitled and by providing the Tenant with a settlement statement in form and content consistent with standard industry practice for the settlement of event revenue.

2.4 **Tenant Accounting Records; Audit.** The Tenant shall maintain accurate accounting records and other written documentation pertaining to all revenue received by it which is required to be taken into account in allocating revenues between the City and the Tenant under this Lease. Such records and documentation may be kept at the Tenant's office in Manteca, California, during the term of this Lease, and for a period of three (3) years from the date of the final payment hereunder, and said records shall be made available to City Manager, or designee, upon reasonable request at any time during regular business hours.

Once every year during the Term of this Lease, the City or any designated agent or employee of the City shall be entitled to audit all the books, records and accounts of the Tenant pertaining to the Arena and its operations at the Arena exclusively for the purpose of ensuring that the appropriate amounts have been paid to the City pursuant to this Lease. Such audit shall be conducted during normal business hours upon seventy-two (72) hours notice at the principal place of business of the Tenant and other places where records are kept. Any audit undertaken under this section shall be completed within sixty (60) days of the commencement thereof, subject to extensions of time for any periods of delay due to no fault of the City or its auditors. If it shall be determined as a result of such audit that there has been an underpayment to the City under this Lease, such underpayment shall become immediately due and payable with
interest at the then applicable Local Agency Investment Fund interest rate, determined as of and accruing from the date that said payment(s) should have been made. In addition, if the underpayment shall be found to have understated payments due to the City by five percent (5%) or more of the actual payment due to the City, and the City is entitled to additional payments from the Tenant as a result thereof, then the Tenant shall pay, in addition to the interest charges referenced hereinabove, all of City's reasonable costs and expenses connected with any audit or review of Tenant's accounts and records. All such payments shall be paid within ten (10) days of receipt of written notice to the Tenant of such underpayment. If the Tenant disputes such findings, the parties agree to meet and confer for a period of thirty (30) days to resolve such dispute, and no payments for any disputed amounts shall be due during such meet and confer period.

2.5 City Accounting Records: Audit. The City shall maintain accurate accounting records and other written documentation pertaining to all revenue received by it which is required to be taken into account in allocating revenues between the City and the Tenant under this Lease. Such records and documentation shall be kept at the City's office during the term of this Lease, and for a period of three (3) years from the date of the final payment hereunder, and said records shall be made available to Tenant or its designee, upon reasonable request at any time during regular business hours.

Tenant or any designated agent or employee of the Tenant shall be entitled to audit all the books, records and accounts of the City pertaining to the Arena and its operations at the Arena exclusively for the purpose of ensuring that the appropriate amounts have been paid to the Tenant pursuant to this Lease. Such audit shall be conducted during normal business hours upon seventy-two (72) hours notice at the principal place of business of the City and other places where records are kept. Any audit undertaken under this section shall be completed within sixty (60) days of the commencement thereof, subject to extensions of time for any periods of delay due to no fault of the Tenant or its auditors. If it shall be determined as a result of such audit that there has been an underpayment to the Tenant under this Lease, such underpayment shall become immediately due and payable with interest at the then applicable Local Agency Investment Fund interest rate, determined as of and accruing from the date that said payment(s) should have been made. In addition, if the underpayment shall be found to have understated payments due to the City by five percent (5%) or more of the actual payment due to the Tenant, and the Tenant is entitled to additional payments from the City as a result thereof, then the City shall pay, in addition to the interest charges referenced hereinabove, all of Tenant's reasonable costs and expenses connected with any audit or review of the City's accounts and records. All such payments shall be paid within ten (10) days of receipt of written notice to the City of such underpayment. If the City disputes such findings, the parties agree to meet and confer for a period of thirty (30) days to resolve such dispute, and no payments for any disputed amounts shall be due during such meet and confer period.
ARTICLE 3. OPERATIONAL PROVISIONS

Section 3.1 Covenants Concerning Team. In consideration for the City's execution of this Lease, the Tenant covenants and agrees as follows:

(a) Ownership. The Tenant owns a membership interest in the League entitling the Tenant under the League Documents to operate the Team in the Arena as a full-fledged team member of the League throughout the Term.

(b) Continuous Use. Throughout the Term, the Tenant shall cause the Team to play all of its Home Games at the Arena, excluding non-League related exhibition games, and shall not take any action that would result, with the passage of time, in the failure to cause the Team to play all of its Home Games at the Arena.

(c) No Relocation of Team. During the Term, the Tenant shall not relocate the Team to any facility other than the Arena for Home Games nor shall the Tenant file an application or other formal request for relocation with the League (or any successor thereto) for approval to allow the Team to play any Home Game anywhere other than at the Arena; provided, however, that the Tenant may file an application or other formal request for a relocation of the Team to occur after the end of the Term.

(d) Maintain Good Standing of Team. During the Term, the Tenant shall maintain the Team as an arena soccer team of the character and standing required by the League Documents, and the League, and shall not do or suffer anything to be done which could cause the rights of the Team to be lost, impaired, or diminished in any material respect.

(e) Maintain Membership in League. During the Term, the Tenant shall cause the Team to maintain its membership in good standing in the League (or any successor thereto) under the League Documents.

(f) Maintain Territorial Rights. During the Term, the Tenant shall take all actions required to maintain its territorial rights under the League Documents as related to the Arena.

Section 3.2 Arena Operations Standard. Throughout the Term, the City shall cause the Arena to be operated and maintained in a commercially reasonable manner. For purposes of this section, "commercially reasonable" refers to the standard generally established by other owners and operators of sports and entertainment arenas in California comparable in quality to the Arena.

Section 3.3 City's Control of Arena. Subject to the terms of this Lease, and excluding the promotion of professional arena or indoor soccer games, the City shall retain the complete control of the operation, management and maintenance of the Arena, including, without limitation, the right to book and conduct other sports and
entertainment events consistent with the Team Event Schedule and Related Policies attached as Exhibit “B.”

Without limiting the generality of the foregoing grant of control to the City, the City reserves the exclusive right, at its sole cost and expense, to do the following, as long as such actions do not materially interfere with the Tenant’s ability to conduct Team Events at the Arena consistent with this Lease:

(a) Change, in any manner whatsoever, the number, appearance, dimension, and locations of Arena walks, buildings, landscaping, parking, and service areas.

(b) Regulate all traffic within and related to the Arena, including the Arena Parking Facilities.

(c) Promulgate, from time to time, reasonable rules and regulations regarding the use of Arena for the purpose of ensuring that Arena operations are in keeping with the community standards and the family atmosphere of Arena or to provide for public safety.

(d) Regulate the days and hours the Arena and various business operations within the Arena will be open to the public; provided, however, that the Arena box office shall be opened for business during hours that are comparable to the business hours maintained at box offices serving comparable public arenas; and provided, further, however, that the City shall establish and implement a system whereby authorized personnel of the Tenant and the Team shall have access to the Team Administrative Office at all times.

(e) Determine the size, number, quality, and type and identity of concessions, stores, businesses, and operations being conducted or undertaken at the Arena.

Notwithstanding anything to the contrary in this Lease, the City and its invitees shall be entitled to the exclusive use and occupancy during each Team Event of one (1) Luxury Suite. No Gross Gate Receipts shall be attributable to the City’s use and occupancy of the City Luxury Suite.

3.4 Manager. The City has designated the Manager to serve as, and the Tenant agrees and acknowledges that the Manager is, the City’s authorized representative for operation, management, and maintenance of the Arena, with authority to represent the City in performing the City’s duties and responsibilities and to exercise the City’s rights and authorities under this Lease. As the City’s authorized representative, the Manager is responsible, on behalf of the City, for the day-to-day operation, management, and maintenance of the Arena.
The Manager is under separate obligation to the City to regularly report to the City and to obtain input and decisions from the City regarding all matters arising in connection with the operation, management, and maintenance of the Arena and the performance of this Lease that requires City approval or action. All decisions and actions of the City under this Lease will be reported to the Tenant by the Manager on behalf of the City.

Subject to any separate agreement with the Manager, the City may change the entity and/or individual acting as the Manager, or delegate one or more specific operations, management, or maintenance functions to one or more specific other representative at any time with notice and without liability to the Tenant. Any Manager of the Arena is the beneficiary of all of the Tenant's obligations to the City under this Lease, including, without limitation, all releases and indemnities.

Section 3.5 Copyrighted Material. The Tenant warrants and covenants, in its own behalf and in the Team's and any applicable artist/performer's behalf, that all copyrighted material to be performed at Team Events has been or shall be duly licensed or authorized by the copyright owner or their representatives and that any and all royalty fees arising from the use of copyrighted material in the performance has been or shall be paid in full when due. The Tenant specifically agrees to fully indemnify and hold harmless the City, the Manager, and their respective agents and employees against any losses or liabilities relating to copyright or trademark violations or claims arising from Team Events or the Tenant's other use of the Arena. The indemnification provisions of this section shall survive the expiration of the Term and the termination of the Lease.

Section 3.6 Community Involvement. The Tenant shall reasonably seek and encourage the involvement and participation of the Team's players and coaches in civic endeavors such as a Team booster club, community projects, school appearances, developing of youth soccer, support of special needs children, television, press, and radio interviews, charities, and civic functions when reasonably requested.

Section 3.7 Insurance. The Tenant shall comply with the insurance requirements set forth in the attached Exhibit "E."

Section 3.8 Responsibility for Equipment and Acts: Lost Items. The Tenant assumes full responsibility for equipment brought or used by it and for the acts and conduct of players, officials, and all others participating in any Team Event. Lost articles of the public discovered by Tenant shall be given promptly to the Manager, who shall thereafter have full custody of such articles.

Section 3.9 Tenant's Employees and Agents. The Tenant agrees that its agents and employees involved in the preparation for, or presentation of, Team Events, shall not be considered employees or agents of the City for any purposes, including, but not limited to, worker's compensation. The Tenant further agrees that in the event of a claim for any benefits against the City made by one of the Tenant's employees, the Tenant shall indemnify, defend, and hold harmless the City from any and all damages
as an employer under the California Workers’ Compensation Insurance Act, and for any other damages arising out of or caused by the Tenant’s employees, agents, or independent contractors or companies claiming City benefits or workers' compensation coverage. The provisions of this section shall survive the expiration of the Term and the termination of the Lease.

Section 3.10 Hazardous Waste. The Tenant shall comply, in all material respects, with every applicable law and regulation regulating hazardous substances brought into the Arena by the Tenant and shall not cause to occur upon, in, or about the Arena, or use the Arena to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process hazardous substances, except in compliance with all applicable laws and regulations. The Tenant shall provide, upon request, the City with copies of all Material Safety Data Sheets (MSDS), environmentally related regulatory permits or approvals (including revisions or renewals), and any correspondence the Tenant receives from, or provides to, any governmental unit or agency in connection with the Tenant's handling of hazardous substances or the presence, or possible presence, of any hazardous substance in or about the Arena.

Section 3.11 No Claims. Nothing contained in this Lease shall create or justify any claim against the City by any person that the Tenant may have employed or with whom the Tenant may have contracted relative to the purchase of materials, supplies, or equipment, or the furnishing or the performance of any work or services with respect to the Tenant’s use and occupancy of the Arena.

ARTICLE 4. DAMAGE, DESTRUCTION, AND CONDEMNATION

Section 4.1 Damage and Destruction. In the event of any damage or destruction of the Arena that renders the Arena unusable, or in case of emergency, which in the City's reasonable discretion prevents the Arena from being used for Team Events, this Lease shall be suspended for such time until such damage or destruction has been repaired or until the emergency has passed, and the Tenant’s payments to the City shall also be suspended, unless the Tenant is entitled to receive reimbursement for such payments through business interruption insurance or some other form of insurance. During such period, the Tenant may play Home Games at a site other than the Arena.

If the City fails to begin to repair or restore the Arena, or if the emergency has not passed, within ninety (90) days following the date of such damage or destruction or emergency, this Lease, at the option of Tenant, shall terminate as of the date of such damage, destruction, or emergency.

If this Lease is terminated by the Tenant pursuant to this section, the Tenant waives its right to any other damages available at law, in equity, or pursuant to this Lease arising out of such termination. Further, if such damage or destruction or emergency is beyond the control of the City, the Tenant shall not be entitled to make a
claim or file a lawsuit against the City for the Tenant's inability to use and occupy the Arena; provided, however, that the Tenant may elect to terminate this Lease as set forth above based upon City's failure to timely repair or restore the Arena.

Section 4.2 Condemnation. If the whole or any substantial part of the Arena shall be taken by any paramount public authority under the power of eminent domain, then this Lease shall be terminated from the day when the possession of that part shall be taken for said public purpose.

All damages awarded for this taking with respect to the value of the Arena and the parcel upon which it is located shall belong to and be the property of City. Nothing herein shall preclude or prevent the Tenant from bringing an action or otherwise seeking to recover from the condemning public authority the value of its leasehold interest in this Lease, the loss of goodwill related to operation of the Team, or other similar damage to the Tenant attributable to such condemnation.

Section 4.3 Damage to Facilities by Tenant. The Tenant's employees and agents shall not damage the Arena or other City property and the Tenant shall, upon demand and at the Tenant's sole cost and expense, repair or replace any and all Arena property or other property damaged by its employees or agents, provided however, that property damaged during normal Team play shall not be considered damaged under this section and shall be considered normal wear and tear and shall be repaired or replaced by City at its sole cost and expense.

ARTICLE 5. DEFAULT AND REMEDIES

Section 5.1 Tenant Default.

(a) Tenant Event of Default. The following events each constitute a "Tenant Event of Default" and a basis for the City to take action against the Tenant:

(i) Dissolution of League. The dissolution, termination, or disbandment of the League or other official professional indoor or arena soccer league which may replace the League; or

(ii) Team Withdrawal from League or Relocation. The Tenant causes or permits the withdrawal or removal of the Team from the League or other official professional indoor or arena soccer league which may replace the League, or the Tenant causes or permits the relocation of the Team from the Arena; or

(iii) Failure to Pay. The failure by the Tenant to make any payment under this Lease when and if due, and the continuance of such failure for a period of ten (10) days after written notice thereof from the City to the Tenant; or

(iv) Failure to Use Arena. The failure by the Tenant to use and occupy the Arena for Team Events as set forth in this Lease, including, without
limitation, the failure of the Team to play one or more of its Home Games at the Arena; or

(v) Unauthorized Transfer. A Transfer occurs, either voluntarily or involuntarily, in violation of Section 7.6; or

(vi) Failure to Perform. The failure by the Tenant to observe or perform any material covenant, condition, or provision of this Lease not otherwise specifically mentioned in this subsection (a), where such failure continues for thirty (30) days after written notice from the City notifying the Tenant of such failure, provided, however, that if the nature of the Tenant’s failure is such that more than thirty (30) days are reasonably required to cure, then the Tenant shall not be in default if Tenant begins such cure within the thirty (30)-day period described above and thereafter diligently prosecutes such cure to completion; or

(vii) Misrepresentation. Any representation or warranty of the Tenant contained in this Lease proves to have been incorrect in any material and adverse respect when made; or

(viii) Suspension; Dissolution. The Tenant, or the Team, shall have voluntarily suspended its business or, the Tenant shall have been dissolved or terminated; or

(ix) Other Defaults. (A) The making by the Tenant of any general assignment or general arrangement for the benefit of creditors; (B) the filing by or against the Tenant of a petition to have the Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Tenant, the same is dismissed within sixty (60) days); (C) the taking of any action at the corporate level by the Tenant to authorize any of the foregoing actions on behalf of the Tenant; or (D) the appointment of a trustee or receiver to take possession of the Tenant’s interest in this Lease, where such seizure is not discharged within sixty (60) days.

(b) City Remedies In General. Subject to the limitations on termination set forth in subsection (c) below, if a Tenant Event of Default shall occur, the City at any time thereafter may give a written termination notice to Tenant, and on the date specified in such notice (which shall be not less than the time required by applicable law or as otherwise provided in this Lease and which may be the day of the notice for defaults under subsections (a)(i), (ii), (iv), (vii), or (viii) above), the Tenant’s right to possession shall terminate and this Lease shall terminate, unless on or before such date all arrears of sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of the City hereunder, of which Tenant has been given notice in accordance with subsection (a) above shall have been paid by Tenant and all other breaches of this Lease by Tenant at the time existing, of which Tenant has been given notice in accordance with subsection (a) above shall have been cured. In the event the City terminates this Lease pursuant to the provisions of this section or in the event the
League causes the completion of a Tenant Assignment of this Lease in accordance with subsection (c) below and this Lease remains in effect, the City may pursue all remedies available at law or in equity against the Tenant, including (i) recovering of money damages (which shall consist of all actual damages, but in any event shall be not less than the sum of all Rent that would have been due for Team Events during the balance of the Team Season had the Lease not been terminated), and/or (ii) specific performance. The remedies provided for in this Lease are in addition to any other remedies available to City at law or in equity by statute or otherwise. Notwithstanding anything herein to the contrary, the City shall not be entitled to any remedy other than termination of this Lease by reason of a Tenant Event of Default described in subsection 5.1(a)(i).

(c) Specific Performance Remedy.

NOTWITHSTANDING ANY OF THE FOREGOING, THE TENANT ACKNOWLEDGES THAT THE GAMES PLAYED BY THE TEAM ARE UNIQUE AND PLAYED WITH PARTICULAR SKILL SUCH THAT THERE IS NO SUBSTITUTE THEREFOR. BASED ON THE FOREGOING, THE TENANT ACKNOWLEDGES THAT THE DAMAGES SUFFERED BY THE CITY FOR ANY EVENT OF DEFAULT HEREUNDER CANNOT BE ESTIMATED WITH ANY DEGREE OF CERTAINTY AND THAT MONETARY DAMAGES CANNOT FAIRLY AND ADEQUATELY COMPENSATE THE CITY FOR A BREACH OF SAID COVENANTS; THEREFORE, THE TENANT AGREES THAT THE CITY SHALL HAVE THE RIGHT, IN ADDITION TO ANY OTHER APPLICABLE RIGHTS OR REMEDIES, TO COMPEL THE TENANT TO COMPLY WITH THE AFORESAID COVENANTS BY APPROPRIATE SPECIFIC PERFORMANCE, INJUNCTIVE OR EQUITABLE PROCEEDINGS WITHOUT POSTING ANY BOND. ADDITIONALLY, ANY PROVISION OF LAW OR THIS LEASE TO THE CONTRARY NOTWITHSTANDING, THE PARTIES ACKNOWLEDGE AND AGREE THAT IF THE TENANT WAS TO FAIL TO OBSERVE OR TO PERFORM ANY OF THE MATERIAL PROVISIONS IN THIS LEASE, THE AWARD OF DAMAGES ARISING FROM SUCH EVENT OF DEFAULT WOULD NOT BE AN ADEQUATE REMEDY, IN THAT THE SUBJECT MATTER OF THIS LEASE IS UNIQUE, AND THE BREACH OF SUCH OBLIGATIONS CREATE IRREPARABLE HARM INCAPABLE OF CALCULATION BY MONETARY DAMAGES. THEREFORE, THE PARTIES ACKNOWLEDGE AND AGREE THAT THE CITY HAS THE ABSOLUTE RIGHT TO SPECIFIC PERFORMANCE, ANY OTHER INJUNCTIVE RELIEF, OR ANY OTHER COURT ORDER TO ENFORCE THE COVENANTS AND OBLIGATIONS UNDERTAKEN BY THE TENANT UNDER THIS LEASE; AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS LEASE, NO CURE PERIOD SHALL BE A CONDITION TO THE RIGHT TO OBTAIN SUCH SPECIFIC PERFORMANCE, OTHER INJUNCTIVE RELIEF OR ANY COURT ORDER ENFORCING PERFORMANCE OF THIS LEASE.
Section 5.2 City Default.

(a) City Event of Default. The following events each constitute a "City Event of Default" and a basis for the Tenant to take action against the City:

(i) Failure to Pay. The failure by the City to make any payment under this Lease when and if due and the continuance of such failure for a period of ten (10) days after written notice thereof from the Tenant to the City; or

(ii) Failure to Perform. The failure by the City to observe or perform any material covenant, condition, or provision of this Lease not otherwise specifically mentioned in this subsection (a), where such failure continues for thirty (30) days after written notice from the Tenant notifying the City of such failure, provided, however, that if the nature of the City's failure is such that more than thirty (30) days are reasonably required to cure, then the City shall not be in default if it begins such cure within the thirty (30)-day period described above and thereafter diligently prosecutes such cure to completion; or

(iii) Misrepresentation. Any representation or warranty of the City contained in this Lease proves to have been incorrect in any material and adverse respect when made.

(b) Tenant Remedies. On the occurrence of any City Event of Default, the Tenant shall be entitled to any remedy available by law, including (i) terminating this Lease, (ii) recovering of money damages, and/or (iii) specific performance. The remedies provided for in this Lease are in addition to any other remedies available to Tenant at law or in equity by statute or otherwise.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

Section 6.1 Representations and Warranties of Tenant. The Tenant hereby represents and warrants to the City as follows:

(a) Due Organization and Existence. The Tenant is a duly organized, validly existing California corporation, and is in good standing under the laws of the State of California and has the power and authority to carry on its business as now being conducted.

(b) Approvals. Except as previously obtained, no consent, approval, order or authorization of, or registration declaration or filing is required in connection with the execution and delivery of this Lease by the Tenant.

(c) Authority of Tenant. The Tenant has full power and authority to execute and deliver this Lease and to accept the property contemplated hereunder, to execute and deliver all other documents or instruments executed and delivered, or to be
executed and delivered, pursuant to this Lease, and to perform and observe the terms and provisions of all of the above.

(d) Authority of Persons Executing Documents. This Lease and all other documents or instruments executed and delivered, or to be executed and delivered by the Tenant, pursuant to this Lease have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Tenant, and all actions required under the Tenant's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease, have been duly taken (to the extent such actions are required as of the date of execution and delivery of the above-named documents).

(e) Valid Binding Agreement. This Lease constitutes a legal, valid, and binding obligation of the Tenant enforceable by and against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and general principles of equity.

(f) No Breach of Law or Agreement. Neither the execution nor delivery of this Lease by the Tenant or of any other documents or instruments executed and delivered, or to be executed or delivered by the Tenant, pursuant to this Lease, nor the performance by the Tenant of any provision, condition, covenant, or other term hereof or thereof, will conflict with or result in a breach of any statute, rule, or regulation, or any judgment, decree, or order of any court, board, commission, or agency whatsoever binding on the Tenant, or any provision of the organizational documents of the Tenant, or will conflict with or constitute a breach of or a default under any restriction, agreement, or instrument to which Tenant is a party.

(g) Pending Proceedings. The Tenant is not in default under any law or regulation or under any order of any court, board, commission, or agency whatsoever, and there are no claims, actions, suits, or proceedings pending or, to the knowledge of the Tenant, threatened against or affecting the Tenant or the Team at law or in equity, before or by any court, board, commission, or agency whatsoever which might, if determined adversely to Tenant, materially and adversely affect the Tenant's ability to perform its obligations under this Lease.

(h) League Documents. The terms and provisions of this Lease do not violate any League Documents to which the Tenant or the Team is a party or subject to.

Section 6.2 Representations and Warranties of City. The City represents, covenants, and warrants to the Tenant as follows:

(a) Due Organization and Existence. The City is a charter city and has the power to enter into this Lease.
(b) Approvals. Except as previously obtained, no consent, approval, order or authorization of, or registration declaration or filing is required in connection with the execution and delivery of this Lease by the City.

(c) Authority of City. The City has full power and authority to execute and deliver this Lease and to accept the property contemplated hereunder, to execute and deliver all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease, and to perform and observe the terms and provisions of all of the above.

(d) Authority of Persons Executing Documents. This Lease and all other documents or instruments executed and delivered, or to be executed and delivered by the City, pursuant to this Lease have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the City, and all actions required under the City's organizational documents and applicable governing law for the authorization, execution, delivery, and performance of this Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease, have been duly taken (to the extent such actions are required as of the date of execution and delivery of the above-named documents).

(e) Valid Binding Agreement. This Lease constitutes a legal, valid, and binding obligation of the City enforceable by and against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and general principles of equity.

ARTICLE 7. GENERAL PROVISIONS

Section 7.1 Notices, Demands, and Communications. Formal notices, requests for consents, demands, and communications between the City and the Tenant shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered by facsimile transmission, or delivered personally, to the principal office of the parties as follows:

City: c/o International Facilities Group, LLC
1372 Shermer Road
Northbrook, Illinois 60062
Attn: Stockton Arena Manager
Fax: 847-509-3715
With a copy to: City of Stockton  
405 North El Dorado Street  
Stockton, California 95202  
Attn: City Manager  
Fax: 209-937-8904

With a copy to: City of Stockton  
Office of City Attorney  
425 North El Dorado Street  
Stockton, California 95202  
Fax: 209-937-8898

Tenant: Cabernet Sports Entertainment, Inc.  
Fred Walke, President  
6474 Patterson Pass Road Livermore, CA 94550

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 7.2 **Excused Delay.** In addition to specific provisions of this Lease, performance by either party shall not be deemed to be in default where delays or defaults are due to war; insurrection; acts of terrorism; epidemics; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; energy shortages; energy rationing; discovery of previously unknown Hazardous Materials or archeological or historical resources; lack of transportation; court order preventing action; pending litigation that presents a material financial risk to a party if it proceeds with action under this Lease while the outcome of such litigation is pending; delays in processing approvals caused by any governmental entity; or any other similar causes (other than lack of funds of Tenant) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days of receipt of the notice. In no event shall the City or the Tenant be required to agree to cumulative delays in excess of sixty (60) days.

Section 7.3 **Indemnification.**

(a) **By Tenant.** The Tenant shall indemnify, defend and hold the City, the City's council members, the Manager, and the City's and the Manager's respective officers, employees, agents, successors and assigns harmless against all claims made against it and expenses (including reasonable attorneys' fees) which arise out of or in
connection with the Tenant’s use and occupancy of the Arena, except to the extent such claim arises from the grossly negligent or willful misconduct of the City or the Manager.

(b) **By City.** The City shall indemnify, defend and hold the Tenant, its officers, managers, members, employees, players, agents, successors and assigns harmless against all claims made against it and expenses (including reasonable attorneys’ fees) which arise out of or in connection with the City’s use and occupancy of the Arena, except to the extent such claim arises from the grossly negligent or willful misconduct of the Tenant.

(c) **Survival.** The provisions of this section shall survive the expiration of the Term and the termination of the Lease.

Section 7.4 **Relationship of Parties.** Nothing contained in this Lease shall be interpreted or understood by either of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and the Tenant or its agents, employees or contractors. The Tenant has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Lease. The Tenant shall be solely responsible for its own acts and those of its agents and employees.

Section 7.5 **Waivers.** Any waiver by the City of any obligation or condition in this Lease must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of the Tenant or to pursue any remedy allowed under this Lease or applicable law. Any extension of time granted to the Tenant to perform any obligation under this Lease shall not operate as a waiver or release from any of its obligations under this Lease. Consent by the City to any act or omission by the Tenant shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City’s written consent to future waivers.

Section 7.6 **No Transfers without City Consent.** The Tenant shall not Transfer this Lease without the City’s prior written consent, which shall not be unreasonably withheld or delayed and which shall be given if the transferee possesses financial capability and management expertise reasonably sufficient to operate the Team and perform the obligations of the Tenant under this Lease.

Section 7.7 **Binding Effect.** The rights and obligations of this Lease shall inure to the benefit of, and be binding upon, the parties to the Lease and their heirs, administrators, executors, personal representatives, successors, and assigns.

Section 7.8 **Entire Agreement; Amendments.** This Lease constitutes the entire understanding and agreement of the parties with respect to the matters set forth herein, and supersedes any prior written or oral statement and understandings. The parties
may amend this Lease only by means of a writing signed by the parties expressly stating its intention to amend this Lease.

Section 7.9 Interpretation. Each reference in this Lease to this Lease, or any other agreement, plan, or document shall refer to the named agreement, plan or document as such agreement, plan or document may be amended from time to time. Statutory references include any amendments to or renumbering of the referenced statutes.

As used in this Lease, the singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

Any titles of the sections or subsections of this Lease are inserted for convenience of reference only and shall be disregarded in interpreting any of the Lease terms and provisions.

Section 7.10 Non-Liability of Individuals. No member, official, employee or agent of the City shall be personally liable to the Tenant in the event of any default or breach by the City or for any amount which may become due to the Tenant or its successor or on any obligation under the terms of this Lease. No member, official, employee or agent of the Tenant shall be personally liable to the City in the event of any default or breach by the Tenant or for any amount which may become due to the City or its successor or on any obligation under the terms of this Lease.

Section 7.11 No Third Party Beneficiaries. There shall be no third party beneficiaries to this Lease with the exception of the rights created for the benefit of the Manager as described in Section 3.4.

Section 7.12 Applicable Law. This Lease shall be governed by California law.

Section 7.13 Legal Actions.

(a) Attorneys' Fees. In the event any legal action is commenced to interpret or to enforce the terms of this Lease or to collect damages as a result of any Tenant Event of Default or City Event of Default, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorneys' fees and costs incurred in such action (including any appeal of such action). The provisions of this subsection shall survive expiration of the Term or any earlier termination of this Lease.

(b) Third Party Litigation. In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Lease and/or the power of the City or the Tenant to enter into this Lease or perform its obligations hereunder, either the City or the Tenant may (but shall have no obligation to) defend such action. Upon commencement of any such action, the City and the Tenant shall meet in good faith and seek to establish a mutually acceptable method of defending such action.
(c) **Forum.** Any lawsuit pertaining to any matter arising under, or growing out of, this Lease shall be instituted in San Joaquin County, California.

Section 7.14 **Severability.** If any term of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.15 **Title of Parts and Sections.** Any titles of the sections or subsections of this Lease are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Lease provisions.

Section 7.16 **Multiple Originals: Counterparts.** This Lease may be executed in multiple original counterparts, each of which is deemed to be an original, and all such counterparts shall constitute one and the same instrument.

Section 7.17 **Other Necessary Acts.** Each party shall execute and deliver to the other parties all further instruments and documents as may be reasonably necessary to carry out this Lease in order to provide and secure to the parties the full and complete enjoyment of their rights hereunder.

Section 7.18 **Possessory Interest Tax.** The Tenant agrees and acknowledges that this Lease may create a possessory interest in the Arena subject to applicable possessory interest taxes or property taxes levied on such interest under California law. The Tenant shall have the right to contest in good faith, any such taxes or assessments. In the event it is determined by the appropriate body that such taxes are due, the Tenant shall immediately pay such taxes or assessments. If any such taxes or assessments are not paid when due, then the City may, in addition to any other remedy granted to the City under this Lease, withhold the amount of such unpaid taxes or assessments from the Net Gate Receipts otherwise payable to the Tenant, and apply the withheld amount toward the payment of such unpaid taxes and assessments.

Section 7.19 **Attached Exhibits.** The following exhibits are (or upon completion shall be) attached to and incorporated in this Lease by this reference:

- Exhibit “A” **Glossary of Defined Terms**
- Exhibit “B” **Team Event Schedule and Related Policies**
- Exhibit “C” **City-Provided Facilities and Services**
Exhibit "D" Specified Terms for the Transportation and Parking Management Plan

Exhibit "E" Insurance Requirements

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

ATTEST:

By: ________________________________
    KATHERINE GONG MEISSNER
    CITY CLERK

CITY OF STOCKTON, a charter city

By: ________________________________
    J. GORDON PALMER, Jr.
    CITY MANAGER

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: ________________________________
    CITY ATTORNEY

CABERNET SPORTS ENTERTAINMENT,
Inc., a California corporation

By: ________________________________
    FRED WALKE
    President
EXHIBIT “A”

GLOSSARY OF DEFINED TERMS

Unless the context otherwise requires, the following terms shall have the following respective meanings when used in this Lease. The following definitions are equally applicable both to the singular and plural forms and the feminine, masculine and neuter forms of the terms defined. Any agreement, instrument, or other document defined or referred to below shall include each amendment, modification and supplement thereto and waiver thereof entered into from time to time in compliance therewith. Any term defined below by reference to any agreement, instrument or other document shall have such meaning whether or not such agreement, instrument or other document is in effect.

All initially capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in this Lease to which this Glossary is attached. Exhibits referenced herein and not otherwise defined are exhibits to this Lease. Unless otherwise indicated, section references are to sections of this Lease.

"Advertising“ means all announcements, acknowledgements, banners, signs, panels, scoreboard panels, dasher board panels, showbills, promotional materials, handouts and promotional product sampling give-a-ways, and other printed material, audio or visual commercial messages displayed, announced or otherwise presented at the Arena, including, without limitation, video messages.

"Agency“ means the Redevelopment Agency of the City of Stockton, a public body, corporate and politic, established and organized pursuant to the California Community Redevelopment Law.

"Arena“ means that certain multipurpose indoor arena owned by the City within.

"Arena Parking Facilities“ means all of the parking facilities within or in the vicinity of the Arena that are owned and maintained by the City, the Agency, or the Stockton Central Parking District.

"Arena Store“ means the store contained in or in the vicinity of the Arena operated by the City, through its Manager or a reputable merchandiser engaged by the Manager on the City’s behalf, in which Team Merchandise, merchandise related to the Other Arena Teams, merchandise related to other Arena events, and other similar merchandise may be displayed and sold.

"Catering Services“ means the business of selling food, beverages and merchandise (exclusive of Team Merchandise) directly to patrons of the Club Seats and the Luxury Suites, at or in connection with Team Events.
"City" means the City of Stockton, a charter city of the State of California, acting through the City Council and the City Manager as designated in Section 7.16 of this Agreement.

"City Council" means the City Council of the City.

"City Event of Default" has the meaning set forth in Section 5.2(a).

"City Luxury Suite" means the Luxury Suite designated for exclusive use and occupancy by the City and its invitees.

"City Manager" means the City Manager of the City.

"Club Seats" means the approximately three hundred fifty (350) club seats and related lounge and comfort areas to be included in the Arena.

"Club Seat Premium Component Revenue" has the meaning set forth in Section 2.3(g).

"Complimentary Tickets" means any form of admission to a Team Event given free of monetary charge, including, but not limited to, admission provided to sponsors intended as in-kind compensation for services or products.

"Concession Services" means the business of selling food, beverages, and merchandise (exclusive of Team Merchandise and Catering Services) to patrons of the Arena, at or in connection with Team Events.

"Concession Services Adjusted Gross Revenue" means the total amount of cash receipts and credits derived from the Concession Services less all sales taxes attributable to the Concession Services.

"Core Facilities and Services" has the meaning set forth in Part I of Exhibit "C."

"Core Facilities and Services Payment" has the meaning set forth in Section 2.2(a).

"Cost Reimbursement Amount" has the meaning given in Section 2.2.

"Extra Facilities and Services" has the meaning set forth in Part II of Exhibit "C."

"Facility Fee Amount" means and shall equal the amount of up to Two Dollars and Seventy Five Cents ($2.75) on paid tickets.

"Facility Fee Revenue" for a given Team Event means the product of the Facility Fee Amount multiplied by the total attendance, including Paid Attendance and excluding Complimentary Tickets for such Team Event.
"Gross Gate Receipts" for a given Team Event means, except as otherwise provided below, the total of all amounts of cash, or its equivalent paid for admissions to such Team Event from any ticket purchaser or other attendee (including any ticket handling or processing fees or charges passed through to the ticket purchaser), as collected by the Tenant (with respect to season ticket or group ticket sales, if handled directly by Tenant), the City, the Manager, the Ticket Service, or any other City-authorized ticket sales representative. Gross Gate Receipts shall not include any Club Seat Premium Component Revenue or any Luxury Suite Lease or License Fee Revenue.

"Hazardous Materials" means any item or agent (biological, chemical, physical) which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.

"Home Games" means, collectively, Pre-Season Home Games, Regular Season Home Games, Playoff Home Games, and Special Event Home Games.

"Home Team Locker Facility" has the meaning set forth in Section 1.1(b).

"IFG" means International Facilities Group, LLC, or its affiliate approved by the City as the City’s initial Manager for the Arena.

"IFG Agreement" means the Facilities Management Agreement entered into by the City and IFG, dated as of March 2, 2004, providing for IFG to serve as the City’s Manager for the Arena and other specified City facilities.

"League" means the Professional Arena Soccer League.

"League Documents" means all rules, regulations, policies, procedures, guidelines, and other written documents of any nature governing the conduct of professional teams in the League.

"Lease" means this Lease.

"Locker Room Facilities" means the facilities within the Arena defined and described in Section 1.1(c).

"Luxury Suites" means the approximately 24 luxury suites (containing approximately 12 seats each) and related comfort areas.

"Luxury Suites Lease or License Fee Revenue" means all revenue received from the sale of annual or multi-year lease or license rights with the respect to the Luxury Suites.

"Manager" means IFG-Stockton, Inc., its permitted successors and assigns, or any successor or replacement entity hired by the City to operate, manage, and maintain the Arena on behalf of the City.
"Mutual Option Term" means the option term that may be exercised for this Lease, as further defined and described in Section 1.3(b).

"Net Gate Receipts" for a given Team Event means Gross Gate Receipts less:

(1) the Facility Fee Revenue; less

(2) all federal, state, and local governmental taxes and fees of any nature applicable to the Gross Gate Receipts, other than the Facility Fee Revenue; less

(3) all Ticket Service Costs; less

(4) the Rent; less

(5) the Cost Reimbursement Amount.

"Other Arena Teams" means the professional hockey team and the professional arena football team that play their respective home games in the Arena.

"Paid Attendance" for a given Team Event means, except as provided below, the total number of tickets or other forms of admission sold for such Team Event (whether full price or discounted). Paid Attendance shall not include tickets with respect to the standard number of seats in the Luxury Suites (anticipated to be twelve (12) seats per Luxury Suite), but shall include "standing room only" tickets sold with respect to the Luxury Suites above such standard number of seats.

"Playoff Home Games" means the League-sanctioned playoff games following the regular season and typically leading to the League championship played by the Team in which the Team acts as the host team for its opponent.

"Regular Season Home Games" means the League-sanctioned regular season games played by the Team in which the Team acts as the host team for its opponent.

"Rent" has the meaning set forth in Section 2.1(a).

"Special Event Home Games" means any League "all star" game, any game played at the Arena between the Team and its "major league" affiliate or other professional or amateur soccer team which is not a regular member of the League, or any other soccer game promoted by the Team with the permission of the City involving professional or amateur teams other than the Team.

"Team" means the professional men's arena soccer team to be operated by the Tenant with full rights to play professional arena soccer games within the League.

"Team Administrative Office" means the administrative office designated for use by the Team within the Arena, generally as described and shown in the Arena Program.
"Team Event Dates" means the dates (and time periods within each date) scheduled for conduct of the Team Events in accordance with the provisions of Section 1.1(b) and the Team Event Schedule and Related Policies attached as Exhibit B.

"Team Events" means, collectively, the following events to be conducted at the Arena on Team Event Dates consistent with the procedure for scheduling Arena events as set forth in Section 1.1(b) and the Team Schedule and Related Policies:

1. all Pre-Season Home Games, Regular Season Home Games, and Playoff Home Games of the Team during the Team Season;

2. subject to booking availability, Special Event Home Games within the Team Season to be promoted or organized by the Team with the City's permission;

3. regular practice sessions, excluding Training Camp, of the Team (A) on Team Event Dates, and (B) with not less than twenty-four (24) hours advance approval by the Manager, on such other dates during the Team Season on which the soccer playing surface is in place without special set-up and on which such practice can be accommodated consistent with the conduct of other events scheduled for use of the Arena on such dates (only house lighting will be provided for practices); and

4. subject to booking availability, one (1) non-Home Game event related to the Team Season to promote the Team, such as a "meet the team" promotion, a season ticket-holder party, an intra-squad scrimmage open to the general public without cost, or a youth clinic or camp.

"Team Merchandise" means all novelties, souvenirs, merchandise and programs related to the Team, affixed with the Team logo and sold at Team Events or at the Arena Store.

"Team Merchandise Net Revenue" means the total amount of cash receipts and credits derived from the sale of Team Merchandise at the Arena Store, less: (1) all sales taxes; and (2) all reasonably incurred costs of selling the Team Merchandise, including without limitation the costs of all labor and materials (including the wholesale cost of obtaining the Team Merchandise for sale), and any fees charged to the City by any merchandiser engaged to sell the Team Merchandise.

"Team Season" means the Team's annual season, commencing three (3) days prior to the date of the Team's first Pre-Season Home Game or Regular Season Home Game, as applicable, and ending three (3) days after the date of the Team's last Regular Season Home Game or Playoff Home Game, as applicable.

"Tenant" means Cabernet Sports Entertainment, Inc., a California corporation, or its successors and assigns as permitted pursuant to this Lease.

"Tenant Event of Default" has the meaning set forth in Section 5.1(a).
"Term" means the term of this Lease which, unless earlier terminated in accordance with the provisions of this Lease, shall consist of the Initial Term and any Option Term.

"Ticket Service" has the meaning set forth in Section 1.1(e).

"Ticket Service Costs" means the reasonable costs incurred by the City or the Manager in connection with the sale and processing of tickets and admissions related to Team Events, including, without limitation, ticket printing costs and any service, handling, or credit card charges or fees of any nature charged or collected by the Ticket Service or any other City-authorized ticket sales representative in connection with such sale and processing.

"TPMP" has the meaning set forth in Section 2.3(i).

"Transfer" means:

(1) Any total or partial sale, assignment or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to this Lease or any part thereof or any interest therein or any contract or agreement to do any of the same; or

(2) The subleasing of all or part of the Arena by the Tenant.

Notwithstanding the foregoing, a Transfer does not include an assignment of this Lease for security purposes.

"Weekend Period" means the period including Friday evening, Saturday afternoon and evening, and Sunday afternoon and evening.
EXHIBIT “B”

TEAM EVENT SCHEDULE AND RELATED POLICIES

Section 1. Team Event Dates for 2008-2010 Regular Season.
The following dates are held for use by Tenant for twelve (12) Team Events. Tenant
shall release or confirm all dates for Team Events no later than August 31st of each year
during the Term, or all dates held will be released.

Sunday, November 8, 2009
Thursday, November 19, 2009
Sunday, November 29, 2009
Friday, December 11, 2009
Saturday, December 19, 2009
Sunday, December 20, 2009
Saturday, January 2, 2010
Sunday, January 3, 2010
Saturday, January 30, 2010
Friday, February 5, 2010
Saturday, February 13, 2010
Thursday, February 25, 2010

Tenant’s final schedule shall not be announced publicly until the Manager has approved
the Arena dates for the Tenant Homes Games.

Section 2. Time of Games. For each Home Game, Tenant and the opposing team
shall entitled to the use and occupancy of the Arena beginning no less than two (2)
hours prior to the scheduled commencement of the Home Game and until one and one-
half (1½) hours after the completion of the Team’s Home Game. Tenant shall provide
the Manager reasonable notice of all planned incidental activities related to a Home
Game (including, but not limited to, Team-sponsored ceremonies or celebrations), but in
no instance less than seven (7) calendar days prior to the date of the Home Game.
Tenant agrees to adjust the start time of the scheduled Home Games to the extent
reasonably possible (and in accordance with applicable League rules and regulations)
so that the Manager may coordinate the Arena for other events, or other uses or needs
which may develop from time to time.
EXHIBIT C

CITY-PROVIDED FACILITIES AND SERVICES

1. **Core Facilities and Services.** The City, through its Manager, shall provide the following facilities and services (collectively, the "Core Facilities and Services") for each Team Event, unless the Tenant requests that any particular Core Facilities or Services not be provided. The City shall provide the Core Facilities and Services without charge to the Tenant (other than payment of Rent in accordance with Section 2.1).

   A. **Facilities.** The City, through its Manager, shall provide an arena soccer playing surface, dasher boards, goals, scoreboards, benches, penalty boxes, referee areas, scorers' table and other similar items meeting standard League requirements for the conduct of professional arena soccer games. Replacement or alteration of the Team logo on the playing surface shall be at Tenant's sole cost.

   B. **Services.** The City, through its Manager, shall provide air conditioning, heating, lighting, janitorial supplies, maintenance supplies and equipment, including electrical, gas, water & sewer utilities and other similar miscellaneous goods and services during each Team Event and during periods of set-up and tear-down of the facilities being provided for the Team Event. The City, through its Manager, shall provide personnel required to staff the Arena for each Team Event ("Arena Personnel"), including, but not limited to, event manager, facility technical director, utility technicians, ticket takers, ushers, peer group security, security personnel, first aid personnel, firemen, custodians, restroom attendants, changeover and set-up personnel for the facilities described in Part I.A above, clean-up personnel, and such other personnel as the Manager in its reasonable discretion shall deem required for the Team Event. The Arena Personnel shall be provided only by or through the Manager. Staffing for the Core Facilities and Services described in this Part I shall be the sole responsibility of the City, and shall be in amounts consistent with industry standards for comparably attended events of the nature of the Team Events in other similarly situated public arenas.

   C. **Public Address and Scoreboard.** The City, through its Manager, shall furnish the Arena public address and scoreboard systems on a non-exclusive basis for each Team Event. Such systems shall be operated according to rules and regulations established from time to time by the Manager, on behalf of the City, and the City shall at all times (except during the performance of a Team Event) have the right to use such systems without cost concurrently with the Tenant's use of such systems.

   D. **Maintenance and Quality Standard.** The City, through its Manager, shall cause the Core Facilities and Services described in this Part I to be provided to the Tenant, and shall cause the Arena to be operated and maintained in connection with all Team Events, in a commercially reasonable manner. For purposes of this section, "commercially reasonable" refers to the standard generally established by other owners and operators of sports and entertainment arenas in California comparable in quality to the Arena. If provision of any Core Facilities and Services is prevented due to any of
the causes listed in Section 7.2, or due to impossibility of obtaining materials, accidents, loss of power or other causes beyond the reasonable control of the City and the Manager, or during any period of repairing of equipment or apparatus, neither the City nor the Manager shall have any liability (including, without limitation, liability for consequential damages or loss of profits) for failing to provide such Core Facilities and Services due to such cause.

E. **Event Traffic Control.** The City shall provide sufficient police and other personnel required to provide traffic control for all Team Events in accordance with the TPMP. In no event shall the costs of any police or traffic control personnel be charged, directly or indirectly, to the Tenant during the Term.

F. **Large Screen Video System-Use.** If requested by the Tenant, the City, through its Manager, shall make available to the Tenant the use of the Arena’s large screen video system at no cost to the Tenant. The Tenant shall pay the costs of the large screen video system personnel utilized during Team Events, as provided below.

II. **Extra Facilities and Services.** At the Tenant’s request to the Manager, on behalf of the City, not less than forty-eight (48) hours prior to the scheduled start of a particular Team Event, the City, through its Manager, shall provide the following facilities and services (collectively, the “Extra Facilities and Services”) for the specified Team Event. The Tenant shall pay the City the amounts specified below for the provision of Extra Facilities and Services for each applicable Team Event, as provided in Section 2.2 and 2.3(a).

A. **Large Screen Video System-Personnel.** If requested by the Tenant, the City, through its Manager, shall make available to the Tenant the use of the Arena’s large screen video system as set forth above. The Tenant shall pay the City the costs of the large screen video system personnel.

B. **Telephone Service.** If requested by the Tenant, the City, through its Manager, shall provide telephone service at locations requested by the Tenant. The Tenant shall pay the City for all installation, service, equipment, long distance, toll and repair charges made with respect to such telephone service in accordance with a per line charge established by the City from time to time.

C. **Broadcast and Television Service Personnel.** If requested by the Tenant, the City, through its Manager, shall provide the personnel necessary to assist the Tenant, or its agents, to plug into the existing in-Arena broadcast cable wiring. The Tenant shall pay the City for all reasonable charges for such personnel for each Team Event.

D. **Rental Equipment.** If requested by the Tenant, the City, through its Manager, will rent equipment necessary for a specified Team Event. The Tenant shall pay the City all rental charges, delivery and pick up charges and any damages or loss charges made with respect to such equipment rental, unless such damages or losses
arise from any gross negligence or willful misconduct on the part of the City, the Manager, or their respective agents, representatives or employees.

E. Production Services. If requested by the Tenant, the City, through its Manager, will provide personnel necessary to assist the Tenant with production staff to be used during Team Events as provided in Sections 2.2 and 2.3. Such staff may include sound system operators, engineers, electricians, scoreboard operators, stage hands, forklift operators, video directors, switchers, computer graphics technicians and audio and video technicians.

III. Box Office and Ticket Sales Service. The City, through its Manager or a reputable ticket service engaged by the Manager on the City's behalf, shall provide the box office and ticket sales services for Team Events as fully set forth in Section 1.1(e). The Ticket Service Costs for such services shall be deducted from Gross Gate Receipts and paid to the City as provided in Section 2.3(a).
EXHIBIT D

SPECIFIED TERMS FOR THE TRANSPORTATION AND PARKING MANAGEMENT PLAN

Definitions:

The parking lot west of the Ballpark: “Ballpark Parking Lot”
The parking garage north of the Arena: “Public Parking Garage”
The baseball team tenant of the Ballpark: “Ports”

Other definitions as set forth in Exhibit A of this Lease.

Terms To Be Included in TPMP:

Ballpark Parking Lot

- Lot controlled by City Central Parking District ("District") on a daily basis with fifteen (15) spaces reserved for Ports use. Costs are responsibility of the District and revenues are the property of the District (except for Home Game parking as provided below)
- For Home Games, lot reserved from two (2) hours before each Home Game until one (1) hour after the end of the Home Game for Tenant/Team parking, except for fifteen (15) spaces reserved for Ports use
- Tenant will coordinate with District to ensure that all spaces, except for fifteen (15) spaces reserved for Ports use, are available in lot two (2) hours prior to Home Game
- Tenant will receive all revenue from Home Games parking, subject to any cost reimbursement to District for costs of services if District operates the lot for the Home Games (estimated to be about ten percent (10%) of the gross parking revenue). If District insurance permits, Tenant can operate the lot during Home Games, except that fifteen (15) spaces are reserved for Ports use. District and Tenant will work cooperatively in operation of lot during Home Games.

Public Parking Garage

- Garage is operated by District at all times with all costs the responsibility of the District and revenues the property of the District
- Tenant may purchase spaces in Garage for Home Games VIP parking at market rate
- Tenant has opportunity to purchase daily and monthly parking passes in Garage at market rate to accommodate employee and team parking

Police Personnel

- City to provide adequate police supervision on days of Team Events at no cost to the Tenant.
EXHIBIT "E"

INSURANCE REQUIREMENTS

Tenant shall procure and maintain for the duration of the Term insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Tenant, its agents, representatives or employees.

A. Minimum Limits of Insurance

Tenant shall maintain insurance limits not less than:

1. General liability: One Million Dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage, combined single limit and One Million Dollars ($1,000,000) aggregate limit, with a Four Million Dollar ($4,000,000)-umbrella policy limit. Such liability insurance shall be adjusted every five (5) years in accordance with increase in the CPI to the extent such readjusted amount of insurance is commercially and reasonably available.

2. Automobile Liability: One Million Dollars ($1,000,000) per accident for bodily injury and property damage.

3. Workers' Compensation: As required by State law.

B. Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by the City.

C. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. City, the Agency, and their officers, officials, employees, and volunteers are to be covered as additional insured on general liability and automobile liability policies as respects: liability out of activities performed by or on behalf of Tenant; premises owned, occupied or used by Tenant; and automobiles owned, leased, hired or borrowed by Tenant. The coverage shall contain no special limitations on the scope of protection afforded to the City, the Agency, and their officers, officials, employees or volunteers.
2. For any claims related to the Team Events, Tenant's insurance coverage shall be primary insurance as respects City, the Agency, and their officers, officials, employees and volunteers.

3. Any insurance or self-insurance maintained by City, the Agency, and their officers, officials, employees or volunteers shall be excess of Tenant's insurance and shall not contribute to it.

4. Any failure to comply with the reporting or other provisions of the policies shall not affect coverage provided to City, the Agency, and their officers, officials, employees or volunteers.

5. Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

D. **Subcontractors**

Before permitting any subcontractors to perform work under this Lease, Tenant shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by Tenant as may be applied to each subcontractor's work.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers that are admitted insurance carriers in the State of California, or must otherwise be approved by the City.

F. **Verification of Coverage**

Tenant shall furnish City with original endorsements of effective coverage for policies on which City is included as an additional insured as required by this Exhibit, and shall furnish original certificates of insurance for all other required policies. The endorsements are to be signed by the person authorized by the insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences.

Upon request, Tenant shall furnish City a certified copy of any or all policies of insurance covering the work required under this Lease.