

2014-10-07-1602 NP

SECOND AMENDMENT TO
EVENTS CENTER BALL PARK LICENSE AGREEMENT

BETWEEN THE CITY OF STOCKTON
AND
7th INNING STRETCH, LLC

THIS SECOND AMENDMENT TO EVENTS CENTER BALL PARK LICENSE AGREEMENT (the "Second Amendment") is made and effective as of Nov 5, 2014, by and between THE CITY OF STOCKTON ("City") and 7th INNING STRETCH, LLC ("Licensee"). City and Licensee are sometimes collectively referred to herein as the "Parties" and singularly as a "Party".

RECITALS

A. City and Licensee executed the Events Center Ball Park License Agreement dated as of March 2, 2004, as amended by The Amendment to License Agreement ("Amendment") dated September 12, 2006, and Clarification of Stadium/North Lot Agreement dated June 9, 2008 (collectively the "License"), pursuant to which the City provided Licensee a license to use the Ball Park on the terms set forth therein; and

B. City and Licensee have agreed to amend the License as set forth below, which amendments shall be applicable to any renewal and/or extension of the License.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The above Recitals are incorporated herein and deemed a part of this Amendment. Capitalized terms used but not otherwise herein defined are used as defined in the License.

2. Effective Date. This Amendment is contingent upon the approval of this Amendment by the following entities: (1) the City Council of the City of Stockton; (2) Central Parking District/Parking Authority; (3) the California League; (4) Minor League Baseball; and (5) the formal approval of the Plan of Adjustment by the Bankruptcy Court. Once all of the foregoing approvals have been received, this Amendment shall become effective automatically and immediately on the earlier of the following to occur (the "Effective Date"): (1) March 2, 2015; or (2) the date of the formal approval of the Plan of Adjustment by the Bankruptcy Court.

3. Additional Fees. The following shall be added to the License as Section 7.2(e):

(e) Additional Fees. Beginning in 2015, the eleventh year of the License, Licensee shall pay to City One Thousand and 00/100 Dollars (\$1,000.00) ("Additional Fee") per Stockton Ports' regular season game, except such Additional Fee shall not be charged or paid for (i) exhibition games involving the Sacramento River Cats or other minor league baseball teams, University of the Pacific or Delta College; or (ii) Stockton Ports post-season Home Games. The Additional Fee shall be charged and paid for exhibitions involving any Major League Baseball team, All-Star players, foreign or domestic national or Olympic teams, and similar exhibitions.

4. Facility Fee.

(i) As of the Effective Date, the first five sentences of Section 6.1 of the License are deleted and replaced with the following:

Beginning in 2015, the eleventh year of the License, Licensee shall deposit into the Ball Park Fund the amounts as set forth in the table below (the "Facility Fee"), for each Ports Event ticket sold (whether full price or discounted, including the Park Packers Buy-Outs for tickets actually redeemed), Group Sales, Fundraisers (for tickets actually redeemed), Two-for Tuesdays and Buy One, Get One Free Programs as more completely described on Exhibit G attached to the License. The Licensee shall deposit into the Ball Park Fund one-half of the Facility Fee then in effect for each ticket sold under the Sunday Family Dollar Days promotion described on Exhibit G attached to the License.

Period	Facility Fee
Lease Year 11 of the License Agreement through Lease Year 16 of the License	\$2.00
Lease Year 17 of the License Agreement through Lease Year 21 of the License	\$2.25
Lease Year 22 of the License Agreement through Lease Year 25 of the License	\$2.50
Lease Year 26 of the License Agreement through Lease Year 27 of the License Agreement (if First Option to Extend is exercised)	\$2.50
Lease Year 28 of the License Agreement through Lease Year 30 of the License Agreement (if First Option to Extend is exercised)	\$2.75
Lease Year 31 of the License Agreement through Lease Year 32 of the License Agreement (if First Option to Extend is exercised)	\$2.75
Lease Year 33 of the License Agreement through the expiration of the License Agreement (if the Second Option to Extend is exercised)	\$3.00

(ii) As of the Effective Date, the definition of "Facility Fee" in Exhibit A to the License shall be deleted and replaced with the following:

"Facility Fee" see Section 6.1.

5. Naming Rights. As of the Effective Date, Sections 6.2(a) and (b) of the License are hereby deleted in their entirety and replaced with the following:

- (a) The City shall receive ninety percent (90%) of such proceeds (which shall not include revenue from any advertising or Ports inventory rights), which proceeds shall be deposited into the Ball Park Fund to be used in the manner and in the timeframe set forth in Article 7; and
- (b) Licensee shall receive ten percent (10%) of such proceeds (which shall not include revenue from any advertising or Ports inventory right). City shall provide Licensee's portion of the proceeds from the Ball Park Naming Rights Agreement within fifteen (15) days of City's receipt of such funds in the manner and within the timeframe set forth in the Ball Park Naming Rights Agreement.

6. Ten Events.

- (i) As of the Effective Date, the definition of "Ten Events" in Exhibit A to the License shall be deleted and replaced with the following:

"Thirty Five Events" means the thirty five (35) annual events that the Licensee may hold at the Ball Park inside or outside the Baseball Season.

- (ii) As of the Effective Date, all references in the License to "Ten Events" shall be deleted and replaced with "Thirty Five Events". The Thirty Five events shall consist of the following:

- A. The twenty (20) annual events that Licensee is currently authorized to hold at the Ball Park inside or outside the Baseball Season, pursuant to the terms of the License, and
- B. The fifteen (15) additional events Licensee is authorized to hold pursuant to this Second Amendment. These additional fifteen events shall be on a cost neutral basis to the City. The Parties, including a City representative, shall meet annually and work in good faith to estimate and mutually agree upon an expense reimbursement schedule for Licensee's use of the Ball Park for such additional fifteen (15) events.

7. Parking.

(a) Beginning in 2015, the eleventh year of the License, Licensee shall be entitled to use and operate the West Parking Lot and retain all proceeds generated by the parking fees charged to patrons of the West Lot Parking Lot, as depicted on Exhibit A to the Amendment dated September 12, 2006, for all Ports Events and up to fifty (50) days per year for Non-Ports Events. Licensee shall give the City written notice of the dates it elects to use and operate the West Parking Lot at least thirty (30) days prior to each Non-Ports Event date.

(b) Exhibit D – Public Parking Facilities Plan is hereby amended to delete all references to the "Public Parking Garage Project" and Licensee's rights with respect thereto.

8. Limited Rent Offset.

(a) Notwithstanding the City's responsibility for the maintenance and repair of the Ball Park, including the field playing surface, the Licensee shall have the right to exercise "self-help" remedies and offset its rent payments to the City to a maximum of \$10,000 during each Baseball Season if the City or Ball Park Operator fails to timely take action or alleviate or mitigate an Emergency or respond to a time sensitive repair or maintenance request by Licensee from meeting the operational standards imposed under the License.

(b) For each exercise by the Licensee of its rights under this Section 8, the Licensee shall provide to the City a report signed by an authorized representative of the Licensee detailing the reasons for and the amount of the rent offset.

(c) Licensee's indemnity obligations under Section 12.4 of the License Agreement shall apply to any liability incurred by the City and the Ball Park Operator in connection with or as a result of faulty, inadequate or substandard repairs and maintenance performed by the Licensee pursuant to this Section 8.

(d) The rights of the Licensee under this Section 8 shall not be exercisable if the Licensee is then in default under this License Agreement.

9. Mutual Release.

(a) The City hereby releases and discharges all claims, demands, causes of action of any type and nature, known or unknown, liquidated or unliquidated, at law or in equity that the City has, had or may have against Licensee and its members, officers, directors, managers, employees and agents, for all actions and failures to act under or related to the License Agreement which occurred prior to the date this Second Amendment is executed.

(b) Licensee hereby releases and discharges all claims, demands, causes of action of any type and nature, known or unknown, liquidated or unliquidated, at law or in equity that Licensee has, had or may have against the City and its officers, directors, managers, employees and agents, including the Ball Park Operator, for all actions and failures to act under or related to the License Agreement which occurred prior to the date this Second Amendment is executed.

10. General. Except as amended by this Amendment, all the terms, conditions and covenants of the License are valid and are hereby ratified and confirmed, Any inconsistencies between this Second Amendment and the License shall be governed by this Second Amendment. This Second Amendment may be executed in any number of counterparts, each of which shall be considered an original, and all of which shall be deemed one and the same instrument. The License, as amended by this Second Amendment, contains the entire agreement of the Parties with respect to the matters covered and no other prior promises, negotiations or discussions oral or written made by any party or its employees, officers or agents shall be valid and binding.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to be effective as of the Effective Date.

“Licensee”

7th INNING STRETCH, LLC

By: Pat Filippi

Name: Pat Filippone

Its: President

“City”

CITY OF STOCKTON,

A charter city

By: Laurie Montes

Name: Laurie Montes

Its: Rep. City Manger

ATTEST:

for

CLERK OF THE CITY OF STOCKTON

By: [Signature]



APPROVED AS TO FORM AND CONTENT

By

[Signature]
City Attorney