



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

**SUBJECT: LEASE EXTENSION AND NAMING
RIGHTS FOR THE SAN JOSE
MUNICIPAL STADIUM**

DATE: November 22, 2021

Approved

Date

12/2/2021

COUNCIL DISTRICT: 7

RECOMMENDATION

- (a) Adopt a resolution:
- (1) Authorizing the City Manager to negotiate and execute an amendment to the Amended and Restated Lease between the City of San José and the San Jose Giants, d.b.a., Baseball Acquisition Company, Inc. (“BAC”), regarding the San Jose Municipal Stadium located at 588 E. Alma Avenue, including all ancillary documents necessitated by the amendment, to extend the existing lease for a period of five (5) years, with one option for BAC to extend the term for an additional five (5) years; and
 - (2) Approving the agreement between the Excite Credit Union and BAC, for the sponsorship of the San Jose Municipal Stadium, and the renaming of the San Jose Municipal Stadium to “Excite Ballpark, Home of the San Jose Giants” for a period of ten (10) years.

OUTCOME

Approval of the recommended actions extend the existing lease with BAC for a term of five (5) years, with an option to for an additional five (5) year term, for a cumulative total of ten (10) years to support the continuation of minor league baseball in San José. The agreement to name the stadium between BAC and Excite Credit Union dated October 1, 2021 (“Naming Rights Agreement”), would be approved and the San Jose Municipal Stadium would be named “Excite Ballpark, Home of the San Jose Giants” for a period of ten (10) years.

BACKGROUND

The San Jose Municipal Stadium was opened to the public in 1942. Since 1988, the stadium has been operated and managed by the BAC as the home to the San Jose Giants, an affiliate of the San Francisco Giants that plays in the Low-A West league. The stadium is also a host site for San Jose State Spartans baseball home games, concerts, and local High School baseball division championships. The BAC reports annual stadium usage of approximately 300,000 attendees.

The stadium has a capacity to seat 4,200 people, and occupies an approximately 12.6-acre portion of a 21-acre property that is shared between the San Jose Giants (BAC) and Solar4America Ice Rink (Sharks Ice), which is the practice facility for the San Jose Sharks National Hockey League team, and the site of the under-construction future home of the San Jose Barracuda American Hockey League hockey team, an affiliate of the San Jose Sharks, a 21-acre property that is shared between the San Jose Giants (BAC) and Solar4America Ice Rink (Sharks Ice), which is the practice facility for the San Jose Sharks National Hockey League team, and the site of the under-construction future home of the San Jose Barracuda American Hockey League hockey team, an affiliate of the San Jose Sharks.

ANALYSIS

On September 4th, 2019, the City and BAC executed a lease agreement with the final term expiring on December 31, 2021. The BAC has requested an extension of five (5) years, with the option to extend the term an additional five (5) years for cumulative total term of ten (10) years.

Lease Terms

Term: January 1, 2022 – December 31, 2027 (“Initial Term”). BAC will have an option to extend the term of the lease on the same terms and conditions for an additional five (5) year period following the expiration of the Initial Term upon written notice to the City at least one hundred eighty (180) prior to the expiration of the Initial Term.

Rent: \$20,000/ year or 1.1% of the annual gross receipts, whichever is greater.

Naming Rights Agreement: Naming Rights Agreement will provide a total of \$1,249,494 over a ten (10) year period.

Stadium Capital Reserve Fund: Prior to the recommended extension, all rent payments made by the BAC were received in the City’s Stadium Capital Reserve Fund. These funds were then used to reimburse BAC for capital improvements made to the facility. Beginning with the Initial Term, the Stadium Capital Reserve Fund will no longer be a City budgeted fund. Instead, both the rent payments and naming rights revenue will be deposited in an account controlled by BAC to fund capital improvements that require City approval before the improvements are made.

Assignment: No assignment of the lease is allowed without City Manager’s written authorization, not unreasonably withheld.

Maintenance and Operations: The responsibility of the BAC.

Structural Repair and Maintenance: The responsibility of the City.

Termination: A “Termination without Cause” provision allows either BAC or the City to terminate the agreement with three hundred sixty (360) day notice. Should the 360-day notice period end within the period of regularly scheduled San Jose Giants games, post regular season playoff or championship games, provided the San Jose Giants are contenders, then said termination shall go into effect seven (7) days after the last game is played.

Naming Rights Agreement

Per the current lease agreement, BAC can solicit and market naming rights opportunities for the Municipal Stadium. Any naming rights agreement that BAC enters into is subject to Council authorization. BAC and Excite Credit Union have entered into an agreement, dated October 1, 2021, to extend the current name of the Municipal Stadium, “Excite Ballpark, Home of the San Jose Giants” for ten (10) additional years. Should Council elect to authorize this agreement, it will provide \$1,249,494 in revenue for capital improvements to the ballpark over the next ten (10) years. Should Council elect to not authorize the Naming Rights Agreement, the current agreement and naming rights would expire at the end of the Giants 20/21 season and no revenue would be received beginning January 1, 2022.

Excite Credit Union, a member-owned financial cooperative, has been a strategic partner of the San Jose Giants for ten years and has been in business in San José for 68 years. Both the San Jose Giants and Excite Credit Union have a long history in San José that includes a focus on investing in and supporting the community.

CONCLUSION

Approval of the recommendations directs staff to complete negotiations and execution of an amendment to the Amended and Restated Lease between the City of San José and BAC to extend BAC’s tenure at the San Jose Municipal Stadium for up to ten years. Approval of the Naming Rights Agreement between Excite Credit Union and BAC will re-name the Municipal Stadium, “Excite Ballpark, Home of the San Jose Giants” and provide \$1,249,494 of revenue for capital improvements at the ballpark.

EVALUATION AND FOLLOW-UP

Staff will negotiate and execute an amendment to the Amended and Restated Lease between the City of San José and BAC, incorporating the Naming Rights Agreement between BAC and Excite Credit Union, attached as Attachment A.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the December 14, 2021 Council Meeting.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office, the Public Works Department, Planning, Building, & Code Enforcement, the City Attorney's Office, and the Finance Department.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

The lease structure directs all revenues generated from the BAC lease (1.1% of annual gross receipts) are reinvested in City-approved maintenance and repair of the facility. The lease extension will retain the revenue reporting requirements from BAC, requiring proof and description of revenues that are received pursuant to the agreement, and includes the additional naming rights money of \$1,249,494 paid over a ten (10) year period (\$124,949 annually).

Currently, BAC coordinates with the City's Public Works Department and the Arena Authority to recommend a capital improvement plan for use of lease payments deposited into the budgeted Stadium Capital Reserve Fund. Once the improvements are made, BAC is reimbursed for the cost of the work. Under the new agreement, the process is streamlined such that BAC deposits the rent payments and the naming rights revenue directly into an account controlled by BAC.

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The funds are then spent on improvements after they are approved by the Arena Authority and the City. This process maintains the same responsibility for oversight and reporting requirements but eliminates the additional processing time of budgeting the revenue in a City fund, receiving and recording the revenue, then processing the reimbursement for capital repairs previously paid for by BAC.

It is important to note that structural repairs remain the obligation of the City. Over the last five years, the General Fund has contributed \$570,000 for necessary structural rehabilitation and repairs, including replacement of sanitary sewer lines, perimeter fencing repairs, and pavement repairs.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

NANCI KLEIN

Director of Economic Development and
Cultural Affairs

Director of Real Estate

For questions, please contact Kevin Ice, Senior Manager, Real Estate Services, at (408) 535-8197.

Attachment A: Excite Naming Rights Agreement

Attachment A

San Jose Giants Sponsorship Agreement:

THIS SPONSORSHIP AGREEMENT (this “Agreement”), effective as of October 1, 2021 is made by and among PROGRESS SPORTS MANAGEMENT, L.P. dba San Jose Giants (the “San Jose Giants”) and EXCITE CREDIT UNION (“Sponsor”).

1. Term

- a) The term of this Agreement shall commence on January 1, 2022 and shall remain in effect thereafter until December 31, 2031 (the “Term”) unless earlier terminated pursuant to the terms of this Agreement.

2. Sponsorship Fee

- a) During the Term, Sponsor agrees to pay the San Jose Giants the amount of **One Million, Two Hundred Forty Nine Thousand, Four Hundred Ninety Four Dollars (\$1,249,494) (the “Sponsorship Fee”)**, which shall be paid in accordance with the schedule laid out below:

- i. January 1, 2022 - \$103,029
- ii. January 1, 2023 - \$108,180
- iii. January 1, 2024 - \$113,589
- iv. January 1, 2025 - \$118,133
- v. January 1, 2026 - \$122,858
- vi. January 1, 2027 - \$127,772
- vii. January 1, 2028 - \$132,883
- viii. January 1, 2029 - \$136,870
- ix. January 1, 2030 - \$140,976
- x. January 1, 2031 - \$145,205

3. Sponsorship Assets

In exchange for the Sponsorship Fee, Sponsor will be the naming rights partner for the ballpark located at 588 E. Alma Ave., San Jose, CA (the “Ballpark”) and receive the following sponsorship and promotional rights (hereinafter referred to as the “Sponsorship Rights”):

- i. The Ballpark shall be known as Excite Ballpark Home of the San Jose Giants
 - ii. Exterior Wrapping and Branding of the Ballpark as depicted on Exhibit A attached hereto
 - iii. Scoreboard Branding as depicted on Exhibit A attached hereto
 - iv. Branding on primary San Jose Giants collateral, PR communications, website and digital platforms, including but not limited to press releases, newsletters, ticketing and group brochures, ticket stock and SJGiants.com home page and webpages.
- b) The San Jose Giants shall bear the costs of production and installation of signage and other in-stadium assets. Sponsor bears all other costs associated with sponsorship agreement including any change or update to original artwork unless execution costs are mutually agreed upon as part of the agreement. All advertising/artwork to be used is subject to prior approval of the San Jose Giants.

4. Trademarks

- a) Rights: Sponsor shall have the right to promote the fact that Sponsor is a Proud Partner, Official or Exclusive Credit Union of the San Jose Giants. The San Jose Giants grant to Sponsor a non-exclusive, royalty free, fully-paid license to use the San Jose Giants Marks and Ballpark Marks in the Marketing Territory during the Term for the purpose of promoting Sponsor. Sponsor shall be entitled to use the San Jose Giants' Marks and the Ballpark Marks in any media except Interactive Media. From time to time throughout the Term, the San Jose Giants shall provide to Sponsor a style guide which shall set forth acceptable formats in which the San Jose Giants' Marks and the Ballpark Marks may be used, which may change from time to time (the "San Jose Giants' Style Guide"). Sponsor understands that its use of the San Jose Giants' Marks and the Ballpark Marks must comply with the San Jose Giants' Style Guide. In the event that the San Jose Giants notifies Sponsor that Sponsor is using any of the San Jose Giants' Marks or the Ballpark Marks in a manner that is contrary to the provisions of the San Jose Giants' Style Guide, Sponsor shall promptly cease such nonconforming use. The San Jose Giants may also determine that any material nonconforming use is a breach of this Agreement. Sponsor acknowledges that it will not obtain any rights or interests of ownership in the San Jose Giants' Marks or the Ballpark Marks by any use of them and the benefits of any such use (e.g. goodwill) shall inure to the benefit of the San Jose Giants. Sponsor's right to use the San Jose Giants Marks and the Ballpark Marks as provided herein may not be assigned or transferred at any time. Upon termination of this Agreement, Sponsor shall immediately cease use of the San Giants' Marks and the Ballpark Marks.
- b) Using Sponsor's Marks: For purposes of allowing the San Jose Giants to perform its obligations hereunder, Sponsor hereby grants to the San Jose Giants a non-exclusive royalty-free, fully-paid, sublicensable (as provided herein) license to use the Sponsor Marks identified on Exhibit B hereto during the Term for the purposes set forth in this Agreement. For purposes of clarity, the San Jose Giants shall have the right to sublicense the Sponsor Marks to all Authorized Sublicensees and such Authorized Sublicensees may sublicense such Sponsor Marks to their respective licensees and agents the use of the Sponsor Marks, as necessary, for promotional purposes in reference to the Ballpark and events and games held within the Ballpark, the San Jose Giants and the MLB PDL (as defined below) and its composite leagues; and for inclusion on merchandise and premiums as permitted by the PDL Rules (as defined herein) (such purposes, the "Sublicense Purposes"). For purposes of this Agreement, "Authorized Sublicensee" means MLB Professional Development Leagues, LLC ("MLB PDL"), Minor League Baseball, MLB Advanced Media, L.P., The Office of the Commissioner of Baseball, Major League Baseball Properties, Inc., and The MLB Network, LLC. The San Jose Giants and its Authorized Sublicensees acknowledge that they will not obtain any rights or interests of ownership in the Sponsor's Marks by any use of them and the benefits of any such use (e.g. goodwill) shall inure to the benefit of Sponsor. Upon termination of this Agreement and except as permitted herein, the San Jose Giants and its Authorized Sublicensees shall immediately cease use of the Sponsor's Marks.

- c) Ballpark Name and Logo. The San Jose Giants and Sponsor shall develop a logo or logos during the Term of a design or designs to be mutually and reasonably agreed upon between the San Jose Giants and Sponsor to be used as the logo(s) for the Ballpark (collectively, the "Ballpark Logo"). The Ballpark Logo shall include Sponsor's name, San Jose Giants' Marks and/or any other word, name, symbol, or device, or any combination thereof as mutually agreed upon by the parties in its design. The Ballpark Logo shall be owned by the San Jose Giants, provided that the San Jose Giants' ownership shall not extend to the elements of the Ballpark Logo that constitute Sponsor Marks (as depicted in Exhibit B, the "Sponsor Elements"), which shall be owned by Sponsor. Unless the parties mutually agree in writing, the parties agree that none of them shall, nor shall any of them permit any third party to, make any filing to register the Ballpark Logo, as a trademark or service mark or otherwise. The San Jose Giants shall also develop the stylization of the name Excite Ballpark Home of the San Jose Giants (the "Name"), to be mutually and reasonably agreed upon between and Sponsor. The Name shall be owned by Sponsor, provided that Sponsor's ownership shall not extend to the trade dress of the lettering that currently appears on the Ballpark or any other lettering that may appear in stylizations of the Name (excluding any such lettering that constitutes an indicia of origin of Sponsor), which trade dress shall be owned by the San Jose Giants. For purposes of clarity, neither party's ownership shall extend to elements that are in the public domain, the other party's Marks, or are proprietary to a third party. The parties acknowledge and agree that the Ballpark Logo and the Name will be substantially similar to the logo and the name depicted in Exhibit C attached hereto. During the Term of this Agreement, Sponsor hereby grants to the San Jose Giants a sublicenseable and royalty-free right and license to use the Sponsor Elements within the Ballpark Logo, and the Name, including Sponsor's name in connection therewith, in connection with performance of this Agreement, including to all Authorized Sublicensees in connection with the Sublicense Purposes.
- d) Sponsor further grants to the San Jose Giants, both during and after the Term, a royalty-free, worldwide license to use (and to sublicense others to use) its rights in the Ballpark Logo and the Name for historical uses (e.g., providing historical information and commentary and for literary, photographic, video, digital, or other documentary works that capture or discuss the Ballpark and/or its history) and to sublicense such rights to the Authorized Sublicensees as authorized under the PDL Documents (e.g., merchandise related to anniversary, retrospective or other historically related purposes). This Section 4.d will survive termination of this Agreement.

5. Exclusivity

- a) Exclusivity is granted to Sponsor in the following instances/categories. Nothing beyond what is outlined below will be construed as prohibiting or otherwise restricting the San Jose Giants from selling tickets, sponsorship, advertising, marketing or promotional rights of any kind to any person or entity for any product or services.

- i. Credit Unions**

 - A.** For the duration of the Term, Sponsor receives complete sponsorship, marketing, promotional and branding exclusivity to the Credit Union category. “Credit Union” means a member-owned financial cooperative that provides banking and other financial services to its members, but does not include traditional banks or other types of financial institutions. The San Jose Giants retain the rights to sell single, group, and/or season tickets in this category.
- ii. First Right - New Stadium Entitlement.** If at any time during the Term, the San Jose Giants intend to permanently relocate the playing site of the San Jose Giants’ home games to a facility other than the Ballpark (a “New Facility”), then the San Jose Giants shall provide Sponsor with written notice thereof and a written proposal for a new naming rights and sponsorship agreement for the New Facility. Thereafter, Sponsor, not later than thirty (30) business days following receipt by Sponsor of the written proposal, shall notify the San Jose Giants in writing if Sponsor elects to commence negotiations regarding the terms of such arrangement. If Sponsor does not notify the San Jose Giants in writing of its election within such thirty (30) business day period, the San Jose Giants shall be free to negotiate and enter into any agreement with any third party without future notice or obligation to Sponsor. If Sponsor provides such notification of its election within such thirty (30) business day period, the San Jose Giants shall negotiate in good faith exclusively with Sponsor for a period (the “New Facility Exclusive Negotiating Period”) of ninety (90) days from the date Sponsor sends the San Jose Giants notice electing to commence negotiations for a new naming rights and sponsorship agreement for the New Facility. If the parties are unable to reach mutual agreement on the terms and conditions of such new naming rights agreement during the New Facility Exclusive Negotiating Period, the San Jose Giants shall be free to negotiate and enter into any agreement with any third party without future notice or obligation to Sponsor. In any event, this Agreement shall automatically terminate upon a permanent relocation of the playing site of the San Jose Giant’s home games to a New Facility and the San Jose Giants will refund any prepaid unused Sponsorship Fees for the year in which the termination occurred.

6. Termination

- a)** Sponsor and the San Jose Giants each will have the opportunity to opt-out and terminate this Agreement without cause after five years (January 1, 2027). Notice of termination must be provided by written notice by January 1, 2026. If neither party opts-as set forth in this Section 6(a), this Agreement will remain in effect through the end of the Term unless otherwise terminated pursuant to other terms of this Agreement.
- b)** In addition to any other rights or remedies to which Sponsor and the San Jose Giants may be entitled at law or in equity, each shall have the right, at no cost or

liability to it or any Club (as defined below), or any PDL Entity or any MLB Entity, to terminate this Agreement if the other party breaches any representation or warranty made by such party in this Agreement, or fails to perform or comply with any other material term, agreement or covenant of this Agreement to be performed or observed by such party as and when performance or observance is due and such failure or breach continues for more than thirty (30) days after the nonbreaching party gives written notice thereof to the breaching party; provided, however, that if, by the nature of such representation, warranty, term, agreement or covenant, such failure or breach cannot reasonably be cured within such period of thirty (30) days, but is capable of cure, no termination right shall not exist as long as the breaching party commences with due diligence and dispatch to cure such failure or breach within such period of thirty (30) days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such failure or breach within such time period as may be reasonably necessary to effect such cure. For purposes of this Agreement, "MLB Entity" shall mean MLB Advanced Media, L.P., the Office of the Commissioner of Baseball ("BOC"), its Bureaus, Committees, Subcommittees and Councils, the Major League Baseball Clubs ("Clubs"), Major League Baseball Properties, Inc., The MLB Network, LLC, each of their parent, subsidiary, affiliated and related entities, any entity which, now or in the future, controls, is controlled by, or is under common control with the Clubs or the BOC and the owners, general and limited partners, shareholders, directors, officers, employees and agents of the foregoing entities.

- c) Sponsor and the San Jose Giants will each have the opportunity to terminate this Agreement if the San Jose Giants do not have a valid lease, license, permission, or other right to use and occupy the Ballpark for the purpose of staging San Jose Giants home games ("Use Rights"), provided that the San Jose Giants shall have a period of ninety (90) days from the expiration of its Use Rights to renew or extend such rights before Sponsor may exercise its termination right under this provision.

7. Assignment

- a) The rights granted to Sponsor in this sponsorship are not transferrable to any third party without prior written approval from the San Jose Giants.

8. Jurisdiction

- a) This Agreement and all acts, transactions, rights, and obligations pursuant to this Agreement shall be governed, construed, and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

9. Indemnity

- a) Except to the extent caused by the gross negligence or willful misconduct of the other party with respect to the claim or event in question, each party shall defend, indemnify and hold harmless the other party and the other party's owners, shareholders, members, partners, employees, agents, officers and directors (including, with respect to the San Jose Giants, the PDL Entities and Authorized Sublicensees)

(“Indemnitees”) from and against any and all third party claims, demands, damages, liabilities, costs and expenses, including reasonable attorneys’ fees and expenses (on an indemnity basis), arising out of or relating to the first party’s or its employees’ actions, omissions to act, negligence, unauthorized use of a third party’s intellectual property rights, violation of applicable law, breach of any representation, warranty or agreement with third parties or breach of any representation, warranty or covenant contained in this Agreement; provided, however, that the party seeking indemnification shall promptly notify the indemnifying party of any claim or litigation to which the indemnity set forth in this Section applies.

10. Force Majeure

- a) Each party to this agreement will be excused from performing its obligations if its performance is prevented by (1) fire, earthquake, act of God, pandemic, war, strike or other labor dispute, or other occurrence of a like nature beyond the party’s reasonable control or (2) any law, rule, or order stemming from economic controls, riot, hostilities, war, terrorist attacks, or similar conditions. These types of events will not be the result of financial difficulties or inabilities. Other than the payment of amounts due, if either party is delayed or hindered from performing its obligations, performance will be excused for the period of delay.

11. Insurance

- a) Sponsor shall, at its sole cost and expense, maintain in effect insurance as set forth on Exhibit D.

12. Dispute Resolution

- a) Any controversy, dispute or claim of whatever nature arising out of, in connection with, or in relation to the interpretation, performance or breach of this agreement, shall be settled at the request of any party to this agreement by final and binding arbitration conducted in the City and County of San Jose, California, administered by and in accordance with the Streamlined Arbitration Rules and Procedures of J.A.M.S. The arbitrator shall determine which is the prevailing party and shall include in the award that party’s reasonable attorneys’ fees and expenses and the costs and fees of arbitration, including the fees of J.A.M.S.

13. Compliance with Laws

- a) Each party shall comply in all respects with all applicable laws, rules, ordinances, orders, and regulations of any kind and other requirements of any government or public authority now in force or which may hereafter be in force in connection with its performance of its obligations hereunder.

14. Compliance with San Jose Giants Player Development License with Major League Baseball: Notwithstanding any other provision of this Agreement

- a) This Agreement and the rights, exclusivities and protections granted by the San Jose Giants to Sponsor hereunder shall, at the request of MLB Professional Development Leagues, LLC (“MLB PDL”), be subject to its review and written approval, and shall in all respects be subordinate to, and shall not prevent the issuance, entering into, or amendment of, any of the following, each as may be issued, entered into or amended from time to time (collectively, the “PDL”

- Documents”): (i) any present or future agreements or arrangements entered into by, or on behalf of MLB PDL and/or any of its respective present or future affiliates, assigns or successors (collectively, the “PDL Entities”) that are specifically related to or generally applicable to the player development league system including the PDL Clubs, including, without limitation, the player development license agreement entered into between the San Jose Giants and MLB PDL; and (ii) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or on behalf of, MLB PDL, any other PDL Entity and/or the Commissioner of Baseball that are specifically related to or generally applicable to the player development league system or one or more of the PDL Clubs. The issuance, entering into, amendment, or implementation of any of the PDL Documents shall be at no cost or liability to any PDL Entity or to any individual or entity related thereto.
- b) The territory within which Sponsor is granted rights hereunder is limited to, and nothing herein shall be construed as conferring on Sponsor rights in areas outside of, the Marketing Territory of the San Jose Giants, as established and amended from time to time pursuant to the PDL Documents.
 - c) No rights, exclusivities or obligations involving Interactive Media are conferred by this Agreement, except as specifically approved in writing by the applicable PDL Entity. For purposes of this provision, “Interactive Media” shall mean (i) the Internet or any other on-line system or computer network; (ii) any interactive wireless service, including, without limitation, any interactive microwave or cellular service; (iii) any interactive satellite service; (iv) any interactive broadcast television, broadcast radio or cable television service; and (v) any other medium of interactive communication now known or hereafter devised.
 - d) In addition to any other rights or remedies to which the San Jose Giants may be entitled at law or in equity, the San Jose Giants shall have the right, at no cost or liability to it or any other PDL Club, MLB Entity or any PDL Entity, to terminate this Agreement at any time Sponsor breaches its obligations under Paragraph 1, 2 or 3 above. The right to terminate shall be exercisable by delivering written notice to (Sponsor within 30 days after the (PDL Club) obtains actual knowledge that such breach has occurred and the effective date of such termination shall be no more than 30 days after the date such notice is given, as specified by the San Jose Giants in such notice.

15. Warranties

- a) **Mutual Warranties.** Each party represents and warrants that: (i) it has the requisite corporate power and authority and the right to enter into this Agreement and to perform its obligations hereunder and agrees to obtain all necessary consents, approvals, licenses and/or permits; and (ii) the individual signing this Agreement on its behalf is duly authorized to do so.
- b) **The San Jose Giants Warranties.** Without limiting the generality of the foregoing warranties, the San Jose Giants warrants and represents that (i) it has

the right and authority to contract for the Sponsorship Rights provided hereunder including but not limited to any permissions, consents, or approvals necessary from the PDL Entities, (ii) as of the effective date of this Agreement, all of the Sponsorship Rights and other benefits granted to Sponsor under this Agreement are within the scope of the San Jose Giants' powers such that it has the ability to grant such rights as described hereunder, and (iii) the entering into and performance by the San Jose Giants will not breach or violate the organization documents of the San Jose Giants or any provision of any indenture, mortgage, lien, lease, material agreement, order, judgment, or decree to which the San Jose Giants is a party or by which its assets or properties (including the Ballpark) are bound.

16. Notices

Except as otherwise expressly provided in this Agreement, notices, approvals, consents or other communications hereunder shall be in writing and shall be sent to the addresses set forth herein by (a) personal delivery, (b) certified mail, return receipt requested, (c) a nationally-recognized overnight delivery courier or (d) electronic mail. Except as otherwise expressly provided in this Agreement, notices shall be effective upon receipt; provided, however, that in the event a notice is mailed it shall be deemed to have been received on the third day after mailing or the next business day if sent via overnight delivery courier. The parties hereto may change the address as to which notices are to be sent by written notice in accordance with the terms of this paragraph.

Notice to the San Jose Giants:

San Jose Giants
588 E Alma Ave.
San Jose, CA 95112

Notice to Sponsor:

Excite Credit Union
265 Curtner Ave.
San Jose, CA 95125

17. Confidentiality

By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information shall be limited to the terms and pricing under this Agreement and any other material or information relating to the disclosing party's technology, business plans and affairs, financial, trade secrets, research and marketing or sales plans, or any other information that is either identified as confidential or, by its nature, should reasonably be treated as confidential. Each party agrees to maintain all Confidential Information in confidence to the same extent that it protects its own similar information of like nature but in no event less than a commercially reasonable degree of care and to use such Confidential Information only as permitted under this Agreement. A party's Confidential Information shall not include information that a party can demonstrate: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's

lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party without reference to the Confidential Information. The parties agree that, unless (x) required by court order or law (in which case the receiving party shall notify the disclosing party to enable the disclosing party to seek confidential treatment of any information so required to be disclosed and if disclosure is required after the disclosing party's attempt to prevent such disclosure, the receiving party agrees to disclose no more Confidential Information of the disclosing party than is reasonably necessary), (y) to its accountants, auditors, legal counsel, regulators, lenders, prospective lenders, investors, prospective investors, financial advisors, insurance advisors and underwriters who have a need to know such Confidential Information and agree to maintain the Confidential Information in accordance with all provisions of this Agreement or (z) in the case of the San Jose Giants only, to MLB or the other MLB Entities as required under the PDL Documents, they shall not make each other's Confidential Information available in any form to any unaffiliated third party for any purpose without the disclosing party's prior written consent. Each party agrees to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of this Agreement.

18. Miscellaneous

This Agreement may be executed in counterparts which, when signed by all parties, shall constitute a binding agreement. Counterparts signed by all parties and transmitted in PDF shall be treated as original counterparts and shall constitute a binding agreement. This Agreement may be signed electronically by the parties and each electronic signature shall constitute an original signature. Sponsor and the San Jose Giants are independent contractors, and nothing contained in this Agreement will be construed as establishing an employer-employee or other agency relationship, partnership, or joint venture between them. No delay of or omission in the exercise of any right, power or remedy accruing to any party under this Agreement or failure to insist upon strict compliance with the provisions of this Agreement by the other parties shall impair any such right, power or remedy, nor shall it be construed as a waiver of any future exercise of any right, power or remedy. Exhibits and schedules referred to in this Agreement are by such reference incorporated in this Agreement as if set forth in full and are made a part of this Agreement. The captions contained in this Agreement are inserted for convenience of reference only. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. Each party to this Agreement represents that it is a sophisticated commercial party capable of understanding all of the terms of this Agreement, that this Agreement has been prepared jointly by the parties and has been the subject of arms' length and careful negotiation, that each party has been given the opportunity independently to review this Agreement with legal counsel, and that each party enters into this Agreement with full knowledge of the terms of this Agreement. shall not in any way define or affect the meaning, construction, or scope of the provisions captioned. In case any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be severed from this Agreement. The validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. This

Agreement, including all Exhibits hereto, is the final, complete and exclusive statement and expression of the agreement among the parties hereto with relation to the subject matter of this Agreement, it being understood that there are no oral representations, understandings or agreements covering the same subject matter as this Agreement. This Agreement supersedes, and cannot be varied, contradicted or supplemented by evidence of, any prior or contemporaneous discussions, correspondence, or oral or written agreement of any kind. This Agreement may only be amended by a written agreement signed by the parties hereto and specifically referring to this Agreement, and rights contained hereunder shall not be waived unless in writing and signed by the party waiving such rights.

19. Definitions

Capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the following meanings:

- a) “Ballpark Marks” shall mean any logo, trade name, trademark, service mark, design, mascot, character, identification, symbol or other proprietary designs associated with the Ballpark that are in existence during the Term and which are owned, licensed or otherwise controlled by the San Jose Giants. Ballpark Marks shall not include the Ballpark Logo, the Name, or any other mark, symbol or design that incorporates any Sponsor Mark or any element of any Sponsor Mark, including the Sponsor Elements, or any other indicia of origin of Sponsor.
- b) “Marketing Territory” shall mean: Santa Clara County, California and the geographic area that is within one hundred (100) miles of the Ballpark located at 588 E Alma Ave, San Jose, CA.
- c) “San Jose Giants Marks” shall mean the San Jose Giants’ name, uniforms, and emblems and all trade names, trademarks, service marks, designs, logos, mascots, characters, identifications, symbols or other proprietary designs, associated with the San Jose Giants that are in existence during the Term and which are owned, licensed or otherwise controlled by the San Jose Giants. The San Jose Giants’ Marks shall not include the Ballpark Logo, the Name, or any other mark, symbol or design that incorporates any Sponsor Mark or any element of any Sponsor Mark, including the Sponsor Elements, or any other indicia of origin of Sponsor.
- d) “Sponsor Marks” shall mean Sponsor’s name and all trade names, trademarks, service marks, designs, logos, characters, identifications, symbols or other proprietary designs, associated with Sponsor that are in existence during the Term and which are owned, licensed or otherwise controlled by Sponsor.

[Signature Page to Follow]

* * *

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the day and year written below.

EXCITE CREDIT UNION

PROGRESS SPORTS MANAGEMENT, L.P.,
dba San Jose Giants

By _____

By _____

Dated: _____

Dated: _____

Exhibit A

Sponsorship Assets

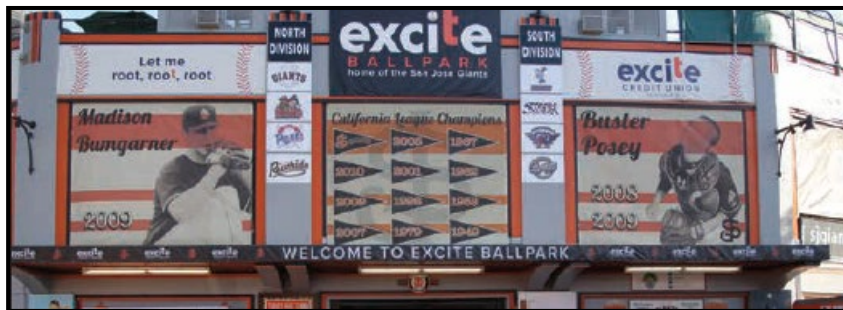


Exhibit B

Sponsor Elements



Official Credit Union of the San Jose Giants

Exhibit C

Ballpark Logo

excite
B A L L P A R K



Exhibit D

1.1 Insurance. Sponsor must obtain, and continuously maintain, at its own expense, and require each of its own subcontractors to obtain and maintain, the following insurance policies:

1.1.1 Workers' Compensation (or its equivalent in the country of Sponsor) in compliance with state statutory laws, covering employees, volunteers, temporary workers and leased workers including Employers' Liability with minimum limits of:

\$1,000,000 Each Accident;
\$1,000,000 Disease - Each Employee;
\$1,000,000 Disease - Policy Limit.

1.1.2 An Insurance Services Office (or its equivalent) occurrence based Commercial General Liability Insurance Policy, providing coverage for bodily injury and property damage and personal and advertising injury including contractual liability and products/completed operations liability coverage with minimum limits of:

\$300,000 Each Occurrence;
\$900,000 General Aggregate;

1.1.3 Umbrella Liability Insurance, in excess of 1 & 2 above, with minimum limits of:

\$15,000,000 Each Occurrence
\$45,000,000 General Aggregate

Umbrella policies must follow form of the underlying policies.

All insurance policies must be issued by an admitted insurance carrier with an A.M. Best rating of A or better. Progress Sports Management L.P. ("PSM"), Baseball Acquisition Company, Inc. ("BAC"), and each of their subsidiaries or affiliated entities, any entity which, now or in the future, controls, is controlled by, or is under common control with PSM or BAC, and its and their directors, officers and employees, including without limitation the Indemnitees ("Additional Insureds") must be named as Additional Insureds under the Commercial General Liability and Umbrella Liability Policies. All liability insurance policies must provide Cross Liability coverage (separation of insureds or severability of interest provisions). The Commercial General Liability policy shall include no third-party-over action exclusions or similar endorsements or limitations. Sponsor's liability policies shall include no exclusion for claims by employees of any of Sponsor's contractors, subcontractors, or independent contractors. Further, coverage for the Additional Insureds shall apply on a primary and non-contributory basis irrespective of any other insurance available to the Additional Insureds, whether collectible or not. No policy shall contain a self-insured retention. No policy shall contain a deductible in excess of \$50,000 and any/all deductibles shall be the sole responsibility of the Sponsor and shall not apply to PSM or BAC. All policies shall be endorsed to provide a waiver of subrogation in favor of the Additional Insureds. Sponsor

shall provide PSM with at least 30 days' written notice if any of the required policies are cancelled or not renewed. Upon request and no more than once per year, Sponsor shall furnish Progress Sports Management L.P. ("PSM") with certificates of insurance evidencing compliance with all insurance provisions noted above prior to the commencement of the Sponsorship and annually at least ten (10) days prior to the expiration of each required insurance policy. The insurance requirements set forth will in no way modify, reduce, or limit the indemnification herein made by Sponsor. Any actions, errors or omissions that may invalidate coverage for Sponsor shall not invalidate or prohibit coverage available to the Additional Insured Parties. Receipt by PSM of a certificate of insurance, endorsement or policy of insurance which is more restrictive than the contracted for insurance shall not be construed as a waiver or modification of the insurance requirements above or an implied agreement to modify same, nor is any verbal agreement to modify same permissible or binding.