

**ENTERTAINMENT CENTER COMMUNITY FACILITIES DISTRICT
REQUEST FOR BOARD ACTION**

Date: April 14, 2016

SUBJECT: Attornment and Agreement Northern Arizona Suns

SUBMITTING DEPARTMENT: District Management

PREPARED BY: Ivan Legler, District Counsel

AGENDA LOCATION: Comments/Communications , Consent , Work/Study ,
New Business , Public Hearing , Second Reading

ATTACHMENTS: a) Attornment and Agreement Relating to Lease & License Agreements

SUMMARY/BACKGROUND: The Entertainment Center Community Facilities District (ECCFD) Board is being asked to approve an “Attornment and Agreement” with Prescott Valley Events Center, LLC (PVEC LLC) and NBAZ, LLC in relation to the Lease Agreement dated December 21, 2006 between ECCFD (Lessor) and PVEC, LLC (Lessee) in relation to the Prescott Valley Events Center.

BACKGROUND: PVEC, LLC assumed direct management of the Events Center in late January 2015 after the liquidation bankruptcy of the prior manager, Global Entertainment Corporation (GEC). GEC had been the entity which first proposed bringing the Events Center to Prescott Valley back in April 2004 and had been part of forming PVEC, LLC with certain Fain entities in 2005. In May 2005, PVEC, LLC, GEC, the Fain entities and the Town of Prescott Valley (Town) entered into a development agreement to (among other things) provide for annual payment of certain transaction privilege taxes collected from the downtown area (and nearby areas) to help pay for private bonds issued to build the Events Center. After the Events Center was constructed and began operations in November 2006, the Town Council voted to form ECCFD to hold title to the Events Center and lease it back to PVEC, LLC for operation by GEC. When Events Center revenues were insufficient to help make bond payments beyond what the Town was paying under the development agreement, bondholders eventually filed litigation under federal and state securities law in late 2009. That litigation was not finally settled until September 2014 and GEC filed bankruptcy shortly thereafter. The Fain entities eventually obtained GEC’s interest in PVEC, LLC in the course of GEC’s bankruptcy.

Because Events Center revenues were also insufficient to fully meet its operating expenses, PVEC, LLC filed its own reorganization bankruptcy in August 2015. It listed the Lease Agreement between itself and ECCFD as an executory contract (which it has not yet assumed or rejected). At present, no reorganization plan has been presented to the bankruptcy court. However, as the debtor-in-possession PVEC, LLC has had preliminary contacts with the bond trustee, the successor majority bondholder, and the Lessor (ECCFD)/development agreement party (Town) to discuss the outlines of such a plan.

In the meantime, PVEC, LLC has attempted to increase the number of profitable events at the Events Center and to secure one or more major tenants (the Sundogs having discontinued operation in August 2014). On March 21, 2016, the bankruptcy judge approved PVEC, LLC (Licensor) entering into this License Agreement with NBAZ, LLC (an affiliate of the Phoenix Suns basketball team, Licensee). Under the License Agreement, Licensee will conduct basketball games and practices in the Events Center involving its minor league team (renamed Northern Arizona Suns) which participates in the National Basketball Association Development League. The initial term is 5 years with two additional 5-year

options. There is a provision for early termination at the end of the first year. A minimum of 24 games will be played and 6 additional events held. Rent is \$5,000 per game or event (with a \$250 per game/event increase each year over 4 years) and \$200 per practice (unless the Events Center is already set up as a basketball-related event). Licensee is responsible for all costs of production for games or events and may upgrade the Events Center or equipment to meet League requirements (costs to be paid as mutually agreed). Licensee will be Licensor's exclusive sales agent for selling Events Center naming rights and for beer, liquor, and/or soft drink pouring rights. Licensor and Licensee will work together to sell additional permanent or fixed signage, and Licensor and Licensee will equally share total net compensation (less costs of production and commissions) on the naming and pouring rights. Licensor and Licensee will equally share revenues from signage sales originated by Licensor, but Licensee will receive 60% commission on signage sales originated by Licensee. Signage sale commissions may be adjusted if Licensor secures another major tenant. Licensee shall be the exclusive agent for selling advertising related to particular games or events and will retain all advertising revenues. Licensee will receive 40% of net concession revenues during games or events. Licensee will also receive all ticket revenue (less parking or facility fees) from games or events and 50% of any ticket convenience fees for single-event tickets. Licensee may sell merchandise, programs or novelties and keep 90% of the revenues (plus amounts needed to pay taxes and credit card commissions). Licensee will be provided year-round office space and locker room facilities. And, Licensee shall have exclusive right to sell tickets (except for Loge Box or Suite tickets) and receive all revenue from Loge Box or Suite tickets (except commissions for a lease agreement regarding the Loge Box or Suite).

In entering into the License Agreement, PVEC, LLC and NBAZ, LLC intend that it may continue even if the underlying Lease Agreement is ultimately rejected by PVEC, LLC in the bankruptcy process. Thus, they have agreed to enter into this "attornment" agreement with ECCFD whereby the parties (and any representative of PVEC, LLC's bankruptcy estate) will continue to abide by the terms of the License Agreement even if PVEC, LLC rejects the Lease Agreement in bankruptcy. Of course, the License Agreement may otherwise terminate in accordance with its own terms.

[Note: in order to expedite the filing of this Attornment and Agreement on Friday, April 8, 2016 in time for the formal announcement of the License Agreement on Tuesday, April 12, 2016, the District Manager signed the Attornment and Agreement on behalf of ECCFD. Since ECCFD follows the regulations of the Town Council (per its Resolution No. 2 dated December 21, 2006), the District Chairman should typically sign documents related to real property interests after authorization by the District Board. Therefore, the Attornment and Agreement is being presented to the ECCFD Board and Chairman to ratify the Manager's signature.]

OPTIONS ANALYSIS: District Board may approve the Attornment and Agreement (ratifying the District Manager's prior signature) OR decline to approve the Attornment and Agreement.

ACTION OPTION: Motion to approve the Attornment and Agreement Relating to Lease and License Agreements (thus ratifying the District Manager's prior signature), **OR** Motion not to approve the Attornment and Agreement. **VOTE.**

RECOMMENDATION: Staff recommends approving the Attornment and Agreement Relating to Lease and License Agreements.

FISCAL ANALYSIS: ECCFD was formed by the Town Council in 2006 to hold title to the Events Center (to help ensure that an ad valorem tax would not apply each year and, thereby, help the revenue picture of the Events Center. In turn, it leases the Events Center back to PVEC, LLC for operation. PVEC, LLC has continued to operate the Events Center under the lease during its bankruptcy. This

Attornment and Agreement will assist in ensuring that the Events Center may continue to be operated if PVEC, LLC eventually ceases to lease the facility as a result of its bankruptcy filing. In any final scenario, ECCFD and the Town have an interest in the Events Center continuing to operate and having such a tenant with strong name recognition is considered an important component of any scenario.

REVIEWED BY:

Entertainment Center CFD Treasurer _____

Entertainment Center CFD Clerk _____

Entertainment Center CFD District Counsel _____

Entertainment Center CFD Manager _____

BOARD ACTION:

Approved Denied Tabled/Deferred Assigned to _____