

I. Pursuant to CEQA, the City (in its capacity as “lead agency”) has prepared, reviewed, and certified that certain Final Environmental Impact Report. The Final Environmental Impact Report has served as the environmental documentation for the Stadium Authority’s consideration and approval of this Agreement and the transactions contemplated by this Agreement.

J. On February 22, 2011, the Stadium Authority and the Agency entered into the Cooperation Agreement to Assist Publicly-Owned Stadium, and the parties re-executed such agreement with clarifying amendments on February 28, 2011 (collectively, the “Cooperation Agreement”), pursuant to which the Agency agreed to assist the Stadium Authority in funding the Development Costs of the Project.

K. On March 21, 2011, the Stadium Authority, the Agency and Stadco entered into the Predevelopment Funding Agreement (“Predevelopment Funding Agreement”), pursuant to which the parties thereto established a process for the reimbursement for payment of certain predevelopment costs relating to the Make-Ready Work from Net Tax Increment.

L. On April 5, 2011, the Stadium Authority and Stadco entered into the Naming Rights Marketing Agreement (“Naming Rights Marketing Agreement”) pursuant to which the Stadium Authority granted Stadco the exclusive right and responsibility to market the Stadium Naming Rights on behalf of the Stadium Authority.

M. On July 5, 2011, the Stadium Authority and Stadco entered into the Agreement Regarding Stadium Design (“Stadium Design Agreement”), pursuant to which the Stadium Authority authorized Stadco to proceed with Design Development Documents and other Stadium design work on behalf of the Stadium Authority in advance of the execution of this Agreement, and to more specifically provide for the reimbursement of Stadco for certain Stadium design costs from the Development Fund. The Stadium Design Agreement is superseded by this Agreement and is hereby terminated and shall be of no further force or effect as of the Effective Date.

N. On July 15, 2011, the Stadium Authority and Stadco entered into the Stadium Marketing and Loan Agreement, pursuant to which Stadco agrees to supervise Legends’ performance under the Legends SBL Agreement, coordinate the SBL marketing program with Stadco’s marketing of Suites at the Stadium, and loan the Stadium Authority amounts due to Legends under the Legends SBL Agreement.

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

ARTICLE 1.
DEFINITIONS

Section 1.1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

“Action or Proceeding” means any proceeding, arbitration or other alternative resolution process, Governmental Authority investigation, hearing, audit, appeal, administrative proceeding or judicial proceeding, including (a) litigation (including trial and appellate litigation, bankruptcy litigation, administrative proceedings, and hearings at all levels); (b) action by any Party to enforce any rights and remedies under, or to terminate, this Agreement; or (c) appraisal, arbitration, or mediation process or proceeding, whether or not identified as adversarial.

“Advance Documentation” means legal documentation, such as a loan agreement, promissory note and security agreement, evidencing the amount and repayment terms of any Stadco Advance, in form approved by the Stadium Authority and the parties thereto.

“Advance Interest Rate” means annual compound interest applied to the Stadco Advances at an annual fixed rate equal to the lower of the rate on 30-year BB-rated corporate bonds (determined as set forth in the Advance Documentation) or eight and one-half percent (8½%).

“Affiliate” means any Person which directly or indirectly through one or more intermediaries, (a) Controls, or (b) is Controlled by, or (c) is under Common Control with, another Person.

“Agency” means the Redevelopment Agency of the City of Santa Clara, a public body corporate and politic.

“Agency Administrative Costs” is defined in the Cooperation Agreement.

“Agency Contribution” means funds that have been or will be contributed or pledged to the Project by the Agency pursuant to the Cooperation Agreement and the Predevelopment Funding Agreement, which includes the Agency Upfront Contribution.

“Agency Upfront Contribution” is defined in Section 8.1(a).

“Agreement” means this Disposition and Development Agreement (Stadium Lease).

“A.L.T.A.” means American Land Title Association.

“Architect” means Howard, Needles, Tammen, & Bergendoff California Architects, P.C., a California corporation.

“Assumption Agreement” is defined in Section 18.6.

“Attorneys’ Fees and Costs” means any and all reasonable attorneys’ fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute

resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

“Board” means the governing body of the Stadium Authority.

“Building Permit” means a demolition, grading, excavation, foundation or other building permit issued by the City for the construction of the Stadium.

“Business Day” means any day of the year that is not a Saturday, Sunday, Legal Holiday or a day on which commercial banks are not required or authorized to close in Santa Clara County, California.

“CEQA” means the California Environmental Quality Act enacted by Public Resources Code, Section 21000, et seq., together with the implementing guidelines set forth in California Code of Regulations, title 14, Section 15000 et seq., as each may be amended from time to time.

“Certificate of Completion” is described in Section 14.1 and substantially in the form of the attached Exhibit D.

“CFD” is defined in Section 10.1.

“CFD Bonds” is defined in Section 10.2.

“CFD Infrastructure” means the public facilities to be financed by CFD Bonds proceeds and constructed by the Stadium Authority as described in the CFD Reimbursement Agreement.

“CFD Reimbursement Agreement” means that agreement entered into by and between the CFD and the Stadium Authority pursuant to which, among other things, the CFD shall pay or reimburse the costs of the CFD Infrastructure.

“CFD Tax” is defined in Section 10.1.

“City” means the City of Santa Clara, a municipal corporation.

“Close of Escrow” means the close of escrow for the execution of the Stadium Lease by the Stadium Authority and Stadco as provided in Article 12.

“Commencement Date” is defined in the Lease Summary, or following execution by the Parties, the Stadium Lease.

“Commencement of Construction” means the commencement of physical work by the Design-Build Contractor in the construction of the Project under a Building Permit in accordance with this Agreement. Commencement of Construction shall not include the construction of the Make-Ready Work.

“Common Control” means that two or more Persons are Controlled by the same other Person.

“Complete”, “Completed” or “Completion” is defined in Section 14.1(c).

“Concession Operating Agreement” means the agreement, a form of which is attached as an exhibit to the Pre-Opening Services Contract, to be entered into by the Concessionaire and Managementco pursuant to which the Concessionaire will provide concession services to the Stadium.

“Concessionaire” means Volume Services, Inc., or such other Person selected pursuant to the Stadium Lease to provide concession services to the Stadium.

“Consequential Damages” means any indirect damages, including, but not limited to, special, incidental, consequential or exemplary damages.

“Construction Agency Agreement” means the agreement, substantially in the form of Exhibit M attached to this Agreement, to be entered into by the Stadium Authority and the Construction Agent pursuant to which the Construction Agent will direct and manage the design and construction of the Stadium.

“Construction Agent” means Stadco, or its Affiliate approved by the Stadium Authority, acting in its capacity as construction agent under the Construction Agency Agreement.

“Construction Contract” means any of the Design-Build Agreement, a Separate Construction Contract or the Make-Ready Work Construction Contract. “Construction Contracts” means more than one Construction Contract.

“Control” means (a) direct or indirect management or control of the managing member or members in the case of a limited liability company; (b) direct or indirect management or control of the managing general partner or general partners in the case of a partnership, and (c) (i) boards of directors that overlap by more than fifty percent (50%) of their directors, or (ii) direct or indirect control of a majority of the directors in the case of a corporation. Controlled has a correlative meaning.

“Convention Center” means the Santa Clara Trade and Convention Center Complex.

“Cooperation Agreement” is defined in Recital J.

“Cost Overrun Commitment” means the written agreement acceptable to the Stadium Authority to be delivered at Close of Escrow pursuant to which Stadco commits to pay each Cost Overrun.

“Cost Overrun” is defined in Section 6.5.

“Deferred Items” is defined in Section 14.1(b).

“Deferred Maturity Date” is defined in Section 8.5

“Design-Build Agreement” means the contract or contracts for the design and construction of the Project to be entered into by the Stadium Authority with the Design-Build Contractor, substantially in the form of the attached Exhibit C.

“Design-Build Contractor” means TDJV or such other general contractor as approved by the Stadium Authority.

“Design Development Documents” means the drawings and narrative documents delineating structural dimensions, site features and elevations, the building core, materials and colors, and landscaping. The Design Development Documents shall fix and describe all design features, as well as the size, character, and quality of the entire Project as to architectural, structural systems.

“Development Costs” means costs incurred by the Stadium Authority in connection with the site preparation, design, entitlement, construction, marketing, financing, and development of the Improvements, consistent with the Scope of Development and this Agreement, subject to the limitations set forth herein.

(a) Included Items. Subject to the deductions and exclusions set forth in subsection (b) below, Stadium Development Costs shall consist of the following:

(i) Pre-DDA Costs. The Parties agree that the Pre-DDA Costs constitute Development Costs.

(ii) Pre-Development Costs. Predevelopment costs and closing costs in connection with the Close of Escrow incurred by the Stadium Authority from the Effective Date to and including the Close of Escrow, on account of the following, in accordance with the approved Final Development Budget, including, without duplication, but not limited to:

(1) fees and expenses for design, architectural and engineering, preconstruction and project management services, construction staking, materials testing, inspection, consulting and other similar professional services, including, without limitation, Stadco’s Stadium Design Work Product purchase price as described in Section 5.16 of this Agreement;

(2) costs of marketing of Stadium Naming Rights and SBLs, including costs initially paid by Stadco and reimbursed by the Stadium Authority; and

(3) Make-Ready Work costs, including reimbursement by the Stadium Authority to Stadco of the Make-Ready Deposit other than the Initial Make-Ready Work Funds.

(iii) Post-Closing Costs. All “direct” and “indirect” costs of development of the Improvements incurred by the Stadium Authority, including, without duplication, amounts paid or payable from and after the Close of Escrow until the date of the first Stadium Event in the Stadium and completion of the Deferred Items, in accordance with the Final Development Budget:

- (1) amounts due to the Design-Build Contractor under the Design-Build Agreement, and any Separate Contractor under a Separate Construction Contract;
- (2) investigation and remediation of Hazardous Materials required by any Governmental Authority;
- (3) costs of insurance premiums in accordance with the approved Insurance Program;
- (4) promotional, marketing and advertising expenses for Non-NFL Events incurred prior to the Commencement Date;
- (5) financing costs in connection with loans or other financing methods, including (A) interest and other charges on secured or unsecured construction financing and on line of credit and gap financing and other types of credit; standby fees, hedging fees, bond insurance premiums, discounts, fees for letters of credit, accommodation fees, contingency fees, guarantee fees and all other fees and payments however denominated and commissions in connection with such financing, and (B) other costs incurred in connection with the creation and implementation of such financing, such as brokers' fees, legal fees, appraisers' fees and trustees' fees and expenses in connection with any of the foregoing, but excluding repayment of any portion of the principal amount borrowed;
- (6) accounting, legal fees and expenses and costs of consultants and Stadium Authority staff (whether staff is directly employed by the Stadium Authority or through a contract for services with the City or other entity) incurred with respect to periods prior to Completion or in connection with the initial leasing or financing of the Improvements and included in the approved Final Development Budget;
- (7) capital expenditures required for public safety for the first year of Stadium operations, including the cost of equipment that is reasonably necessary for dedicated use at the Stadium only;
- (8) Make-Ready Work costs; and
- (9) costs of marketing of Stadium Naming Rights and SBLs, including costs initially paid by Stadco and reimbursed by the Stadium Authority; and

(b) Excluded Items. Notwithstanding the foregoing, any costs incurred to design or construct Tenant Improvements and any costs not included in the Final Development Budget shall be excluded from the calculation of Development Costs.

“Development Fees” means the development fees to be paid to the City in connection with the construction of the Project as set forth in the attached Exhibit E.

“Development Fund” is defined in Section 6.4.

“Effective Date” is defined in Section 20.28.

“Eligible CFD Expenditures” means expenditures from CFD Bonds proceeds and the CFD Tax revenue authorized by the Mello-Roos Act.

“Entitlements” means, collectively, any zoning approvals, conditional use permit and any other discretionary approvals or permits required by any Regulatory Agency for the Commencement of Construction of the Project, including but not limited to a planned development zoning amendment, the vacation of Centennial Boulevard south of Tasman Boulevard. “Entitlements” do not include the Building Permit.

“Environmentally Dangerous Area” is defined in Section 12.7.

“Escrow” is defined in Section 12.1.

“Executive Director” means the Executive Director of the Stadium Authority.

“Extended Close of Escrow” is defined in Section 12.5(b).

“Facility Rent” shall mean the fixed rent for the Stadium paid to the Stadium Authority by Stadco, as described in the Stadium Lease Summary, or following execution by the Parties, the Stadium Lease.

“Final Construction Documents” means the construction documents based on the GMP Set, approved by the City in connection with the issuance of the Building Permit.

“Final Development Budget” means the budget approved by the Stadium Authority pursuant to Section 6.2(c) setting forth the estimated Development Costs.

“Final Environmental Impact Report” means that certain Final Environmental Impact Report, 49ers Santa Clara Stadium Project dated December 8, 2009, for the transactions contemplated by this Agreement, following conduct of a duly noticed public hearing culminating in the adoption of Resolution No. 09 7679 on December 8, 2009.

“Final Financing Plan” means the detailed plan approved by the Stadium Authority pursuant to Section 6.3 identifying the funding sources for the payment of the Total Development Costs set forth in the Final Development Budget.

“Fiscal Year” means each twelve month period, commencing on July 1st and ending on June 30th of each calendar year.

“Force Majeure” is defined in Section 20.8(a).

“Funding Agreement” means that agreement to be entered into by and among the Stadium Authority, Stadco, and any lender providing financing for the development of the Stadium identified in the Final Financing Plan, governing the deposit and disbursement of the funds for the payment of Total Development Costs set forth in the Final Development Budget.

“GMP” means the guaranteed maximum price determined pursuant to the Design-Build Agreement.

“GMP Set” means the drawings, specifications and other documents that form the basis for the Initial Guaranteed Maximum Price established pursuant to the Design-Build Agreement, which documents shall fix and describe all design features, including, sustainable design features, as well as the size, character, and quality of the entire Stadium as to architectural, civil and structural components and mechanical, electrical, plumbing and fire protection systems, structural dimensions, elevations, materials and colors, landscaping, and other features reasonably required by the Stadium Authority, all of the foregoing as reasonably required to define the scope of the Design-Build Contractor’s obligations under the Design-Build Agreement.

“Governmental Authority” means any federal, state, local or foreign governmental entity, authority or agency, Regulatory Authority, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), and any arbitrator to whom a dispute has been presented under applicable laws or by agreement of the Parties with an interest in such dispute.

“Ground Lease” means that certain ground lease between the City and the Stadium Authority for the ground lease of the Stadium Site to the Stadium Authority by the City.

“Ground Lease Non-Disturbance Agreement” is defined in Section 3.6.

“Hazardous Materials” is defined in the Lease Summary, or following execution by the Parties, the Stadium Lease.

“Improvement Agreement” is defined in Section 4.5.

“Improvements” means all physical construction on and off the Stadium Site as described in the Scope of Development (including, but not limited to the Stadium and CFD Infrastructure).

“Initial Guaranteed Maximum Price” or “IGMP” means the initial guaranteed maximum price determined pursuant to the Design-Build Agreement.

“Initial Make-Ready Work Funds” is defined in the Section 4.4.

“Insurance Program” is defined in Section 13.3.

“Joint Escrow Instructions” is defined in Section 12.1.

“Joint Powers Agreement” is the agreement dated as of February 22, 2011, which agreement establishes the Stadium Authority, originally entered into by and between the City and the Agency, as subsequently amended by that certain First Amendment to the Joint Exercise of Powers Agreement dated June 28, 2011 to add the Bayshore North Project Enhancement

Authority as a party, and as it may be amended from time to time subject to the terms of Section 2.4 of this Agreement.

“Law” means federal, state or local law, ordinance, rule, regulation or order of any Governmental or quasi-Governmental Authority, or any license, permit or other governmental approval.

“LEED” is defined in Section 5.4.

“LEED Accredited Professional” means a person certified as such by the U.S. Green Building Council.

“Legal Holiday” means any day, other than a Saturday or Sunday, on which the City’s administrative offices are closed for business.

“Legends” means Legends Premium Sales, LLC.

“Line of Credit Agreement” means the agreement between the Stadium Authority and Managementco described in Section 16.2 and which incorporates the terms of the Line of Credit Agreement Summary.

“Line of Credit Agreement Summary” means the summary of material terms of the Line of Credit Agreement set forth in the attached Exhibit O.

“Litigation Force Majeure” is defined in Section 20.8(b).

“Logical Evolution” is defined in Section 5.5.

“Loss” is defined in Section 12.7(b).

“Make-Ready Deposit” is defined in Section 4.4.

“Make-Ready Work” means work in the area of the Stadium Site required to prepare the Stadium Site for construction and to satisfy conditions to the Subdivision Map, as generally described in the Predevelopment Funding Agreement and as more specifically set forth in the Make-Ready Work Construction Contract and the Improvement Agreement.

“Make-Ready Work Agency Agreement” means the agreement to be entered into by the Stadium Authority and the Make-Ready Work Construction Agent pursuant to which Stadco will direct and manage the construction of the Make-Ready Work as described in Section 4.2(f).

“Make-Ready Work Construction Agent” means Stadco, or its Affiliate approved by the Stadium Authority, acting in its capacity as construction agent under the Make-Ready Work Agency Agreement.

“Make-Ready Work Construction Contract” is defined in Section 4.2(h).

“Make-Ready Work Contractor” means the general contractor that enters into one or more contracts approved by the Stadium Authority and Stadco for the construction of the Make-Ready Work.

“Make-Ready Work License” means an encroachment permit or license agreement granted to the Stadium Authority by the City authorizing access to City property as necessary to construct the Make-Ready Work.

“Managementco” is defined in Section 16.1.

“Maturity Date” is defined in Section 7.4.

“Mello-Roos Act” is defined in Section 10.1.

“Memorandum of Agreement” means the memorandum of this Agreement suitable for recordation in the Official Records, and substantially in the form of Exhibit K.

“Memorandum of Ground Lease” means the memorandum of the Ground Lease suitable for recordation in the Official Records.

“Memorandum of Stadium Lease” means the memorandum of the Stadium Lease suitable for recordation in the Official Records.

“Memorandum of Team Sublease” means the memorandum of Team sublease suitable for recordation in the Official Records.

“Mitigation Measures and Conditions of Approval” means those mitigation measures relating to the Project as described in the attached Exhibit L, and any other relevant conditions imposed through the Entitlements.

“Mortgagee” means a Tenant Mortgagee or Landlord Mortgagee, as applicable, as each such term is defined in the Stadium Lease Summary, or following execution by the Parties, the Stadium Lease.

“Naming Rights Marketing Agreement” is defined in Recital L.

“Net Tax Increment” means Tax Increment, generated in the Redevelopment Project Area for the then current Fiscal Year net of the following amounts: (a) amounts required to be set aside in the Low and Moderate Income Housing Fund pursuant to California Health & Safety Code Section 33334.3; (b) existing debt service payments on the 1992 North Bayshore Redevelopment Project Area Tax Allocation Bonds, the 1999 North Bayshore Redevelopment Project Area Tax Allocation Bonds, the 2002 North Bayshore Redevelopment Project Area Tax Allocation Bonds, and the 2003 North Bayshore Redevelopment Project Area Tax Allocation Bonds, (c) payments on the following City/Agency Reimbursement Agreements: Reimbursement Agreement dated as of July 1988, Reimbursement Agreement dated as of March 1, 1989, Reimbursement Agreement dated as of June 30, 1998; Reimbursement Agreement dated as of

2002, (d) pass-through payments to local taxing agencies as required by Health & Safety Code Section 33607.5, Health & Safety Code Section 33676 or any successor legislation (e) other State mandated payments, including, without limitation, the County of Santa Clara Administration Fee, as appropriate, payments to the Education Revenue Augmentation Fund and Supplemental Education Revenue Augmentation Fund (or such successor replacement funds as may be enacted), but not including any State-mandated payments to taxing entities made directly or indirectly by any successor entity to the Agency, (f) debt service on one or more new tax allocation bond issuances resulting in net bond proceeds of Twenty Five Million Dollars (\$25,000,000) for future Agency projects other than the Stadium; and (g) Agency Administrative Costs, escalated by four percent (4%) annually, commencing on July 1, 2009 and continuing on each July 1st thereafter.

“NFL” means the National Football League.

“NFL Events” is defined in the Lease Summary, or following execution by the Parties, the Stadium Lease.

“NFL Games” is defined in the Lease Summary or following execution by the Parties, the Stadium Lease.

“Non-NFL Events” is defined in the Lease Summary, or following execution by the Parties, the Stadium Lease.

“Non-Relocation Agreement” means an agreement, or the agreements, among the City, the Stadium Authority and the Team pursuant to which the Team will commit, conditioned on the Completion of the Stadium, to play in the Stadium not less than one preseason game each year (so long as there are at least two scheduled preseason home games in that year) and all of its regular season and post-season home games for the forty (40) years term of the Stadium Lease and the Team Sublease, except as may be prescribed by the NFL or as may otherwise agreed upon by the Team, 49ers Stadium Company and the Stadium Authority (for example, during reconstruction in the event of a casualty).

“Official Records” means, with reference to the recordation of documents, the Official Records of the County of Santa Clara.

“Outside Closing Date” means December 31, 2014, subject to extension pursuant to Section 3.1(c) of this Agreement.

“Party” means the Stadium Authority or Stadco, as applicable.

“Permitted Exceptions” means the exceptions to title with respect to the Stadium Site set forth in the attached Exhibit F.

“Person” or “Persons” means any individual, partnership, joint venture, corporation, limited liability company, limited liability partnership, trust or other entity, private or public with the power and authority to act and conduct business on its own behalf.

“Pre-DDA Costs” means Development Costs, originally incurred on behalf of the Stadium Authority prior to the execution of this Agreement, by Stadco, the City, the Agency and the Stadium Authority, which are included in the Preliminary Development Budget and shall be included in the Final Development Budget.

“Pre-Opening Services Contract” means the Pre-Opening Services Contract-Concessions dated as of July 5, 2011, by and between the Stadium Authority, Stadco and the Concessionaire.

“Predevelopment Funding Agreement” is defined in Recital K.

“Preliminary Development Budget” means the preliminary development budget attached as Exhibit G.

“Preliminary Financing Plan” means the preliminary Financing Plan attached as Exhibit H.

“Premises” is defined in the Stadium Lease Summary, or following execution by the Parties, the Stadium Lease.

“Procurement Plan” means the Subcontractor Selection and Procurement Plan approved by the Board on July 5, 2011, as the same may be amended from time to time, or any substitute subcontracting competitive bid process adopted by the Board pursuant to California Government Code Section 6532.

“Professional Efforts” means the degree of care and skill and effort expected of managers supervising and managing the design, development and construction of comparable stadium projects consistent with sound business practices.

“Project” means the development of the Improvements.

“Project Documents” means the Schematic Design Drawings, the Design Development Documents, the GMP Set, the Construction Documents, the Make-Ready Work plans and specifications, and the Separate Contract plans and specifications.

“Public Records Act” is defined in Section 20.26.

“Public Safety Agreement” means the agreement entered into among the Stadium Authority, Stadco and the City pursuant to which the City will be reimbursed for public safety costs, which obligation shall bind Stadco as tenant, or any subsequent tenant, under the Stadium Lease, all as more specifically set forth in the Ground Lease and the Stadium Lease.

“Public Works Director” means the City employee designated by the City as the Public Works Director.

“Records” is defined in Section 15.1.

“Redevelopment Plan” means the Redevelopment Plan for the Bayshore North Project dated August 22, 1973, adopted by the City Council of the City of Santa Clara on December 28, 1973, as such plan has been amended from time to time.

“Redevelopment Project Area” means that certain Bayshore North Redevelopment Project Area established by the Agency pursuant to the Redevelopment Plan, as such area has been amended from time to time.

“Regulatory Agency” means any governmental agency or political subdivision having jurisdiction over the Stadium Site or construction of the Improvements.

“Related Agreements” means the Ground Lease, the Stadium Lease, the Team Sublease and the Stadium Authority Financing Documents.

“Released Parties” is defined in Section 12.7(b).

“Rent Schedule” means a schedule of the Facility Rent that would be payable by Stadco each year during the term of the Stadium Lease. The Rent Schedule will include a formula or standard for the determination or adjustment of the Facility Rent as of the closing of the Takeout Financing such that the Facility Rent, together with other amounts payable by Stadco under the Stadium Lease and other revenues of the Stadium Authority will provide the Stadium Authority with funds required to pay rent payable by the Stadium Authority under the Ground Lease, the Stadium Authority's operating and maintenance expenses of the Stadium and debt service on the Takeout Financing.

“Responsible Party” and “Responsible Parties” are defined in Section 13.2.

“Responsible Party Contract” and “Responsible Party Contracts” are defined in Section 13.2.

“SBL Revenue” means all revenues from the sale of SBLs.

“Schedule of Performance” means the schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the disposition of a leasehold interest in the Premises to Stadco and the construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit I.

“Schematic Design Drawings” means the schematic drawings for the Stadium previously submitted to the City, excerpts from which were approved by the City Council on November 9, 2010, by its Resolution No. 10-7784.

“Scope of Development” means the narrative description of the Project attached as Exhibit J.

“Security Financing Interest” means any mortgage, deed of trust, or other reasonable method of security.

“Separate Construction Contract” means a construction contract entered into by the Stadium Authority (or, with respect to Tenant Improvements, by Stadco) and a Separate Contractor pursuant to this Agreement for construction of one or more components of the Separate Construction Work.

“Separate Contractor” means a contractor performing Separate Construction Work pursuant to a Separate Construction Contract.

“Separate Construction Work” is defined in Section 5.12.

“Site Plan” means the map attached to this Agreement as Exhibit A.

“Stadco” means Forty Niners Stadium, LLC, a Delaware limited liability company.

“Stadco Advances” means collectively Stadco Agency Advance and the Stadco CFD Advance.

“Stadco Agency Advance” is defined in Section 8.2.

“Stadco CFD Advance” is defined in Section 8.3.

“Stadco Design Professionals” means design professionals, other than the Architect, retained by Stadco to perform Stadium design work, including the preparation of the Schematic Design Drawings, the Design Development Documents, the GMP Set and the plans and specifications for the Make-Ready Work.

“Stadco Event of Default” is defined in Section 19.3(a).

“Stadco Purchase Commitment” is defined in Section 8.5.

“Stadco’s Stadium Design Work Product” means Stadco’s right, title and interest in the Schematic Design Drawings, the Design Development Documents and the GMP Set, and any other permits, entitlements or work products relating to the Stadium design, including, but not limited to the Final Environmental Impact Report, the Pre-Opening Services Contract and the Stadium design related preconstruction services provided by TDJV.

“Stadium” means a stadium to be constructed on the Stadium Site suitable for NFL games, with a permanent seating capacity of up to 68,500 seats (with the possibility for expansion to approximately 75,000 seats for larger events such as an NFL Super Bowl), landscaping and infrastructure, all as more fully set forth in the Scope of Development.

“Stadium Authority” means the Stadium Authority of Santa Clara, a California joint powers authority.

“Stadium Authority Event of Default” is defined in Section 19.2(a).

“Stadium Authority Exclusive Facilities” is defined in the Stadium Lease Summary, or following execution by the Parties, the Stadium Lease.

“Stadium Authority Financing” means any financing by the Stadium Authority the proceeds of which are used to fund the Development Costs of the Stadium, as more particularly described in the Final Financing Plan, including without limitation, the proceeds of the Subordinated Loan or any other financing used to pay Development Costs that is supported by a pledge by the Stadium Authority of Stadium Naming Rights Revenue, SBL Revenue, and/or rent payable under the Stadium Lease and/or any other revenues of the Stadium Authority.

“Stadium Authority Financing Documents” means the documents entered into by the Stadium Authority to document a Stadium Authority Financing, including indentures, loan agreements, promissory notes, and security agreements.

“Stadium Authority Sources” means all funding sources available to the Stadium Authority to pay Development Costs, as and to the extent set forth in the Final Financing Plan. Stadium Authority Sources will include the proceeds of the Stadium Authority Financing and, to the extent available to pay Development Costs, may also include the Agency Contribution, CFD reimbursements, Stadco Advances, Stadium Naming Rights Revenue, SBL Revenue, and/or rent payable under the Stadium Lease.

“Stadium Builders Licenses” and “SBLs” means licenses issued to patrons by the Stadium Authority for the right to purchase season tickets for the Team’s home games at the Stadium and a preferential right to purchase tickets for Non-NFL Events.

“Stadium Design Agreement” is defined in Recital M.

“Stadium Events” is defined in the Stadium Lease Summary, or following execution by the Parties, the Stadium Lease.

“Stadium Lease” means the lease agreement between the Stadium Authority and Stadco, which incorporates the terms of the Stadium Lease Summary in substantial form.

“Stadium Lease Non-Disturbance Agreement” is defined in Section 3.6.

“Stadium Lease Summary” means the summary of material terms of the Stadium Lease set forth in the attached Exhibit B.

“Stadium Management Agreement” means the agreement entered into between the Stadium Authority, Stadco and Managementco which shall describe the rights and obligations of the parties thereto with respect to each other in connection with the management and operation of the Stadium.

“Stadium Naming Rights” means the right of a Person to designate the name of the Stadium, and certain attendant rights, including, without limitation, such signage, access and other Stadium-related rights.

“Stadium Naming Rights Agreement” means an agreement to be entered into by and between the Stadium Authority and one or more Persons with respect to the sale of the Stadium Naming Rights.

“Stadium Naming Rights Revenue” means all revenues from the sale of Stadium Naming Rights pursuant to the Stadium Naming Rights Agreement.

“Stadium Site” means the premises, including the land upon which the Stadium shall be located, that shall be leased from the City to the Stadium Authority under the Ground Lease, as generally depicted in the Site Plan.

“State” means the State of California.

“Subdivision Map” means that certain final map of the Stadium Site based on the preliminary parcel map approved by the City.

“Subordinated Loan” means the loan to the Stadium Authority by Stadco as further described in Section 8.4.

“Subordinated Loan Documents” shall mean the documents executed by the Stadium Authority and Stadco evidencing the Subordinated Loan, including without limitation, a promissory note, loan agreement and such other documents as may be reasonably required to effectuate the Subordinated Loan.

“Substantial Completion” is defined in the Design-Build Agreement.

“Suites” is defined in the Lease Summary, or following execution by the Parties, the Stadium Lease.

“Summary of Parking Rights” means the Summary of Parking Rights on City Owned Properties, attached as Exhibit N, summarizing the rights of the Stadium Authority and Stadco to use certain publicly-owned parking parcels for parking, which rights shall be appurtenant to the interests of the Stadium Authority under the Ground Lease and the interest of Stadco under the Stadium Lease.

“Takeout Financing” means a financing by the Stadium Authority to extend, renew, replace, refund or refinance any Stadium Authority Financing.

“Tax Increment” means that portion of taxes levied upon taxable property in the Redevelopment Project Area which is allocated to and paid into a special fund of the Agency pursuant to Article 6 of Chapter 6 (commencing with Section 33670) of the Community Redevelopment Law and Section 16 of Article XVI of the Constitution of the State of California, including all subventions or payment in lieu of business inventory subventions received by the Agency.

“TDJV” means Turner/Devcon Joint Venture, which is a joint venture of Turner Construction and Devcon Construction.

“Team” means the San Francisco Forty Niners, Limited, a California limited partnership.

“Team Make-Ready Work License” is defined in Section 4.2(b).

“Team Sublease” means the sublease between Stadco and the Team for the subleasing of the Stadium by the Team.

“Tenant Improvements” means improvements within the Stadium that are designated pursuant to the Stadium Lease to be owned by, and constructed at the cost of Stadco or its subtenants.

“Tenant Improvement Costs” means the costs incurred by Stadco in connection with the design, construction, marketing, financing, and development of the Tenant Improvements.

“Term” is defined in Section 2.1.

“Title Company” means Chicago Title Company, or any other Title Company selected by the Parties to issue the title policies and administer the Escrow as required by this Agreement.

“Title Defect” is defined in Section 12.5(b).

“TOT” means the transient occupancy tax imposed by the City on hotel occupancy in the City.

“Total Development Costs” means the sum of Development Costs and Tenant Improvement Costs.

“Total Development Costs Statement” is defined in the Construction Agency Agreement.

“Training Facility ” means the premises under the Training Facility Lease, including the Team’s headquarters and training facility at 4949 Centennial Boulevard, Santa Clara, California.

“Training Facility Lease ” means that certain Lease Agreement between the Team and the City for the Training Facility originally entered into as of February 12, 1987, as amended.

“Training Facility Lease Amendment” means an amendment to the Training Facility Lease, in form satisfactory to the Team and the City, extending its term to be co-terminus with the Stadium Lease, adjusting the leased premises to exclude certain property included in the Stadium Site, and modifying other non-economic terms to be coordinated with the Stadium Lease.

“Transfer” is defined in Section 18.1.

“Wrap-Up” is defined in Section 13.3.