

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Stadco's Initials: _____

(d) The provisions of this Section 12.7 shall survive the termination of this Agreement.

ARTICLE 13.
CONSTRUCTION OF THE STADIUM

Section 13.1. Commencement and Completion of Construction. Following the Close of Escrow, pursuant to the terms of the Design-Build Agreement, and through the Construction Agent, the Stadium Authority shall cause the Design-Build Contractor to:

(a) commence and diligently prosecute to Completion the construction of the Project in accordance with the terms of this Agreement and within the time set forth in the Schedule of Performance; and

(b) construct the Project (i) pursuant to the Design-Build Agreement, which among other things, shall require the Design-Build Contractor to deliver payment and performance bonds, pay prevailing rates of wages and comply with local sales and use tax law, and (ii) in accordance with the GMP Set, the approved Final Construction Documents, and the terms and conditions of all applicable City and other Governmental Authority approvals.

Section 13.2. Limitation of Liability.

(a) Notwithstanding the provisions of Section 19.2(b), the Stadium Authority's liability to Stadco for Project construction defects or the failure to comply with the requirements of Section 13.1 arising from or in connection with the failure of the Design-Build Contractor, or other design professionals, the Make-Ready Work Contractor, any Separate Contractor, other contractors or subcontractors in connection with the construction of the Project (each a "Responsible Party" and collectively, the "Responsible Parties") to comply with their obligations under the Design-Build Agreement or any other contract with the Stadium Authority or contract pursuant to which the Stadium Authority has rights to enforce obligations of any such Responsible Party (each such contract, a "Responsible Party Contract" , and collectively, the "Responsible Party Contracts") shall be limited to the following: (a) funds obtained from each such Responsible Party and its surety in connection with the Stadium Authority's diligent enforcement of such Responsible Party's Responsible Party Contract, including, without limitation the enforcement of all warranties in connection with the Responsible Party Contracts; (b) at the request of Stadco, the conveyance, transfer and assignment to Stadco of the non-exclusive right to enforce jointly or severally (i) any and all respective obligations of any Person under any Responsible Party Contract, including, but not limited to any and all representations,

covenants and warranties thereunder; and (ii) any and all rights the Stadium Authority may have under the Design-Build Agreement and any other Responsible Party Contract identified by Stadco to require the Design-Build Contractor or applicable Responsible Party to correct, or pay for the correction of, any such non-compliance; (c) at the request of Stadco, cooperation, consultation and coordination with Stadco in either Party's prosecution of claims under the Design-Build Agreement or any Responsible Party Contract; and (d) the Stadium Authority's prompt notification of Stadco in writing of any default by any Person under a Responsible Party Contract and of the remedy or course of action sought by the Stadium Authority or to be taken by the Stadium Authority in response to such default. The provisions of this Section 13.2(a) shall survive the termination of this Agreement.

(b) At Stadco's recommendation, the Design-Build Agreement may provide that the Design-Build Contractor would be entitled, in certain circumstances, to an incentive fee if the work under the Design-Build Agreement is Substantially Completed (as defined in the Design-Build Agreement) prior to July 31 of the calendar year in which the Stadium is scheduled to be Substantially Completed. Substantial Completion by July 31 will allow Stadco to prepare the Stadium for the upcoming NFL Season, and to assure that the Stadium is available for the NFL pre-season and regular season games. As substantially all of the benefits resulting from the Design-Build Contractor achieving Substantial Completion between August 1 of the calendar year in which the Stadium is scheduled to be Substantially Completed and January 31 of the following year would accrue to Stadco and the Team, Stadco agrees that if such incentive fee is payable to the Design-Build Contractor, Stadco will pay to the Stadium Authority, prior to the date any incentive fee is due to the Design-Build Contractor, an amount equal to such incentive fee as bonus rent under the Stadium Lease.

(c) At Stadco's recommendation, the Design-Build Agreement provides that the Design-Build Contractor would be responsible, in certain circumstances, for liquidated damages if the work under the Design-Build Agreement is not Substantially Completed by the date required under the Design-Build Agreement, including liquidated damages for each San Francisco 49ers NFL regular season home game originally scheduled by the NFL that is not played because the work was not Substantially Complete. Without limiting the generality of Section 13.2(a) above, Stadco and the Stadium Authority agree that substantially all of the damages resulting from the failure of the Design-Build Contractor to achieve Substantial Completion between August 1 of the calendar year in which the Stadium is scheduled to be Substantially Completed and January 31 of the following year will be suffered by Stadco and the Team, and in compensation for such damages, the Stadium Authority, upon Stadco's request, shall assign to Stadco any and all such liquidated damages received by the Stadium Authority from the Design-Build Contractor and any and all rights or claims to receive such liquidated damages from the Design-Build Contractor.

Section 13.3. Insurance. Prior to the Close of Escrow, the Stadium Authority and Stadco, working with the Stadium Authority's insurance brokerage firm, shall develop a comprehensive owner's insurance program that will cover the insurance needs of the Project (the "Insurance Program"). The Insurance Program may include, but not be limited to: Worker's Compensation, Employer's Liability, Commercial General Liability, Excess Coverage (all of the

foregoing to be secured on a wrap-up (“Wrap-Up”) basis), Builder’s Risk (or Inland Marine) Property Insurance (including in transit property coverage), Professional Liability Insurance (including Owners Protective Professional Insurance), environmental coverage such as clean-up, cost cap or pollution and remediation legal liability insurance, and such other policies and coverages deemed appropriate by the Stadium Authority and Stadco. Stadco, the Design-Build Contractor and its eligible subcontractors, the Separate Contractors and their eligible subcontractors, and other eligible contractors of the Stadium Authority shall participate in the Insurance Program in accordance with the terms thereof, as may be incorporated, or further specified in the Design-Build Agreement or other Project-related agreements with the Stadium Authority or Construction Agent, as applicable.

(a) Stadco shall cause the design professionals preparing Stadco’s Stadium Design Work Product to procure and maintain appropriate levels of insurance coverage, and the Construction Agent and Stadco shall comply with the insurance coverage required by any other agreements entered into between Stadco and either the Stadium Authority, or the City with respect to the Stadium Site, including, without limitation, the Construction Agency Agreement.

(b) From the Close of Escrow, until Completion, the Construction Agent, on behalf of the Stadium Authority, shall use Professional Efforts to cause the Design-Build Contractor and its subcontractors, the Separate Contractors and their subcontractors and applicable consultants to participate in any Wrap-Up put in place by the Stadium Authority pursuant to the Insurance Program and to procure and maintain at least the type and level of insurance coverage set forth in the Design-Build Agreement. Notwithstanding any of the foregoing to the contrary, contractors and subcontractors performing Make-Ready Work shall not be subject to the Insurance Program, but shall maintain insurance as provided in the Make-Ready Work Construction Contract.

(c) After the Completion, Stadco and the Stadium Authority shall obtain and maintain insurance as shall be set forth in the Stadium Lease.

ARTICLE 14.
CERTIFICATE OF COMPLETION

Section 14.1. Certificate of Completion.

(a) Issuance Process.

(i) After the Completion of construction of the Improvements in accordance with all the provisions of this Agreement, either Party may make a written request to conduct a final inspection of the Completed Improvements and for the Parties to jointly execute and issue a Certificate of Completion. The Party in receipt of such request shall act upon such request within thirty (30) days of receipt.

(ii) The issuance of the Certificate of Completion shall not relieve Stadco, or any other Person from any and all requirements or conditions of any approval or