

**DRAFT**  
**December 2, 2011**

**DISPOSITION AND DEVELOPMENT AGREEMENT  
(STADIUM LEASE)**

**BY AND BETWEEN THE  
SANTA CLARA STADIUM AUTHORITY  
AND  
FORTY NINERS STADIUM, LLC**

**DATED AS OF \_\_\_\_\_, 2011**

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**DISPOSITION AND DEVELOPMENT AGREEMENT (STADIUM LEASE)**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (STADIUM LEASE) (this "Agreement") is made as of December \_\_, 2011, by and between the Santa Clara Stadium Authority, a California joint powers authority and Forty Niners Stadium, LLC, a Delaware limited liability company, with reference to the following facts, purposes, and understandings. All initially capitalized terms used herein are referenced in Article 1 and, except as otherwise stated, are either defined therein or elsewhere in this Agreement as specified in Article 1.

**RECITALS**

A. On June 8, 2010, the voters of the City approved Measure J, which endorses the construction, operation and maintenance of a Stadium suitable for the exhibition of professional football games and other events.

B. The Stadium Authority is a joint powers authority originally formed by the City and the Agency, and currently comprised of, the City, the Agency and the Bayshore North Project Enhancement Authority pursuant to the Joint Powers Agreement for the purpose of acquiring, financing, constructing, owning, managing, operating and maintaining the Stadium and related facilities.

C. Stadco is an Affiliate of the Team. The Team is a member club of the NFL. Subject to the terms of the Team Sublease, the Team will play its home games in the Stadium. The Stadium will also be used for events other than NFL Games such as other sporting events, concerts and civic events and to provide additional meeting spaces that can be used in conjunction with the City's Convention Center.

D. The City owns the Stadium Site depicted on the Site Plan attached as Exhibit A. The Stadium Site is located within the Redevelopment Project Area. The Stadium Authority intends to lease the Stadium Site from the City subject to the terms of the Ground Lease to be entered into concurrently with the Stadium Lease.

E. Upon satisfaction or waiver of the conditions to Close of Escrow set forth in Article 3 of this Agreement, the Stadium Authority and Stadco intend to enter into the Stadium Lease, a summary of which is set forth in Exhibit B.

F. Concurrently upon entering into the Stadium Lease, Stadco shall enter into the Team Sublease with the Team.

G. Concurrently upon entering into the Team Sublease, the Team shall enter into the Non-Relocation Agreement with the Stadium Authority and the City.

H. The construction of the Stadium will further the goals of the City of creating an entertainment destination in the Redevelopment Project Area, and will provide significant economic benefits to the City and its residents and businesses.

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.

ARTICLE 2.  
GENERAL

**Section 2.1. Term.** The term of this Agreement shall commence on the Effective Date and, unless this Agreement is earlier terminated in accordance with its provisions, shall terminate on the later of the recordation of the Certificate of Completion pursuant to Section 14.1, or the closing of the Takeout Financing (the "Term").

**Section 2.2. Relationship of this Agreement to Stadium Lease.** This Agreement addresses, among other matters, the conditions to the Close of Escrow and the delivery of the Stadium Lease to Stadco from the Stadium Authority, the general scope of the Stadium Authority's obligations to design and construct the Project, and the obligations of the Parties relating to the financing for development of the Project. If the conditions to the Close of Escrow set forth in Article 3 are satisfied, then upon Close of Escrow, the Stadium Authority will enter into the Stadium Lease with Stadco and develop the Project. Before the Completion of the Project this Agreement shall control in the event of any inconsistencies between this Agreement and the Stadium Lease. From and after the Completion of the Project, the Stadium Lease will govern the rights and obligations of the Stadium Authority and Stadco with respect to the use and occupancy of the Premises.

**Section 2.3. Relationship of this Agreement and Stadium Lease to Ground Lease.** The Ground Lease will govern the rights and obligations of the City and the Stadium Authority with respect to the use and occupancy of the Stadium Site. The terms of the Stadium Lease shall be subject to the terms of the Ground Lease. The Stadium Authority shall not enter into any amendment of the Ground Lease without the prior written consent of Stadco. It shall be reasonable for Stadco to withhold such consent if any proposed amendment to the Ground Lease could either reduce the rights or increase the obligations of the Stadium Authority, Stadco or the Team with respect to the Project or the Stadium Site. The provisions of this Section 2.3 shall survive the termination of this Agreement.

**Section 2.4. Joint Powers Agreement.** The Stadium Authority covenants that during the Term, the Joint Powers Agreement shall not be amended to materially decrease the authority of the Stadium Authority thereunder, to permit the Stadium Authority to engage in any activities other than those required to develop and operate the Stadium as required or permitted in accordance with the terms of this Agreement, the Stadium Lease and the other documents contemplated by this Agreement, and shall not be terminated without the prior written consent of Stadco, which consent may be conditioned or withheld in the sole and absolute discretion of Stadco.

ARTICLE 3.  
PRECONDITIONS TO CLOSE OF ESCROW AND  
COMMENCEMENT OF STADIUM CONSTRUCTION

**Section 3.1. Conditions Precedent to the Commencement of Construction and Close of Escrow.** As conditions precedent to the Commencement of Construction of the Stadium and the Close of Escrow for the conveyance of a leasehold interest in the Premises to Stadco, the

conditions set forth in this Article 3 must be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 20.8 and as further described in Sections 3.1 (a) and (b) below) or, if no time is so specified, on or before the Close of Escrow.

(a) Mutual Benefit. The conditions set forth in Sections 3.2 through 3.19, and 3.22-3.28 are intended for the mutual benefit of the Stadium Authority and Stadco, and if any such condition is not satisfied on or before the date scheduled for the Close of Escrow, either Party shall have the right, in its sole discretion, to (i) waive in writing the condition in question, (ii) subject to the terms of Section 3.1(c), extend the date scheduled for the Close of Escrow for a reasonable period of time specified by, and at the option of the Party that would receive the benefit of any such condition if satisfied, to allow such condition to be satisfied, or (iii) if not satisfied by the Outside Closing Date, terminate this Agreement upon written notice to the other Party. Upon any termination of this Agreement pursuant to the terms of this Section 3.1(a), the Parties shall have no further obligations to each other with respect to this Agreement, except to the extent this Agreement expressly provides that an obligation survives termination hereof.

(b) Sole Benefit. The conditions precedent set forth in Sections 3.20, 3.29, 3.31 and 3.33 are for the sole benefit of, and may only be waived in writing by, the Stadium Authority. The conditions precedent set forth in Sections 3.21, 3.30, 3.32 and 3.34 are for the sole benefit of, and may only be waived in writing by, Stadco. If a condition precedent for the sole benefit of a Party has not been satisfied or waived on or before the date scheduled for the Close of Escrow, such Party shall have the right, in its sole discretion, to (i) waive in writing the condition in question, (ii) subject to the terms of Section 3.1(c), extend the date scheduled for the Close of Escrow for a reasonable period of time specified by, and at the option of the Party that would receive the benefit of any such condition if satisfied, to allow such condition to be satisfied, or (iii) if not satisfied by the Outside Closing Date, terminate this Agreement upon written notice to the other Party. Upon any termination of this Agreement pursuant to the terms of this Section 3.1(b), the Parties shall have no further obligations to each other with respect to this Agreement, except to the extent this Agreement expressly provides that an obligation survives termination hereof.

(c) Outside Closing Date. Upon no less than ten (10) days' prior written notice, and upon its payment to the Stadium Authority of [Five Hundred Thousand Dollars (\$500,000)], Stadco shall have the right, to be exercised in its sole and absolute discretion, to extend the Outside Closing Date to a date on or before December 31, 2015. If the Close of Escrow has not occurred on or before the Outside Closing Date, as it may have been extended in accordance with the prior sentence, either Party may terminate this Agreement effective upon written notice to the other Party, and upon such termination, the Parties shall have no further obligations to each other with respect to this Agreement, except to the extent this Agreement expressly provides that an obligation survives termination hereof.

**Section 3.2. Ground Lease**. The Ground Lease has been duly executed by the City and the Stadium Authority and each party thereto has deposited its executed counterpart of the Ground Lease into Escrow.

**Section 3.3. Stadium Lease.** The Parties have agreed upon and executed the final form of Stadium Lease and each party thereto has deposited its executed counterpart of the Stadium Lease into Escrow.

**Section 3.4. Team Sublease.** The Team Sublease has been duly executed by Stadco and the Team and has been deposited into Escrow by Stadco.

**Section 3.5. Non-Relocation Agreement.** The Non-Relocation Agreement has been duly executed by the Stadium Authority and the Team and each party thereto has deposited its counterpart of the Non-Relocation Agreement into Escrow.

**Section 3.6. Non-Disturbance And Attornment Agreements.** A separate non-disturbance and attornment agreement has been duly executed by the City and Stadco (“Ground Lease Non-Disturbance Agreement”), and the Stadium Authority and the Team (“Stadium Lease Non-Disturbance Agreement”), and each of the parties thereto has deposited its executed counterpart of the Ground Lease Non-Disturbance Agreement and the Stadium Lease Non-Disturbance Agreement, as applicable, into Escrow.

**Section 3.7. Public Safety Agreement.** The Public Safety Agreement has been duly executed by the Stadium Authority, Stadco and the City, and each party thereto has deposited its counterpart of the Public Safety Agreement into Escrow.

**Section 3.8. Approval of Stadium Design.** The Stadium Authority and Stadco have approved the GMP Set.

**Section 3.9. Design-Build Agreement.** The Stadium Authority, the Design-Build Contractor and Stadco, as Construction Agent, have entered into the Design-Build Agreement, the Initial Guaranteed Maximum Price has been established pursuant to the Design-Build Agreement, the amount of the Initial Guaranteed Maximum Price is consistent with the Final Development Budget, and the Design-Build Agreement is in full force and effect.

**Section 3.10. Construction Agency Agreement.** The Stadium Authority and Stadco have entered into the Construction Agency Agreement, and such Construction Agency Agreement is in full force and effect.

**Section 3.11. Approval of Final Development Budget.** The Stadium Authority and Stadco have approved the Final Development Budget for the construction of the Stadium.

**Section 3.12. Approval of Final Financing Plan.** The Stadium Authority and Stadco have approved the Final Financing Plan as described in Article 7.

**Section 3.13. Parking Plan.** The Stadium Authority and Stadco have approved the Preliminary Parking Plan.

**Section 3.14. Entitlements.** All Entitlements shall have been issued or approved.

**Section 3.15. Construction Financing.** The conditions of Section 7.2 have been satisfied and such Stadium Authority Financing is ready to close simultaneously with the Close of Escrow.

**Section 3.16. Funding Agreement.** The Stadium Authority, Stadco and the construction lender(s) have approved and duly executed the Funding Agreement and each such party has deposited into Escrow its executed counterpart of the Funding Agreement.

**Section 3.17. Payment and Performance Bonds.** The payment and performance bonds described in the Design-Build Agreement Summary and required to be delivered to the Stadium Authority have been approved by the Stadium Authority and Stadco.

**Section 3.18. Subdivision Map.** The Subdivision Map has been recorded.

**Section 3.19. Great America Theme Park.** The Stadium Authority has concluded, in its sole discretion, that the provisions of this Agreement and the Related Agreements are consistent with the terms of the ground lease for the Great America Theme Park.

**Section 3.20. Stadium Authority Title Policy.** The Title Company shall be prepared to issue to the Stadium Authority the title insurance policy required by Section 12.6(b) to be delivered to the Stadium Authority.

**Section 3.21. Stadco Title Policy.** The Title Company shall be prepared to issue to Stadco the title insurance policy required by Section 12.6(a) to be delivered to Stadco.

**Section 3.22. Advance Documentation.** Each of the CFD, the Stadium Authority and Stadco, as applicable, has duly executed and deposited into escrow its counterpart of the Advance Documentation.

**Section 3.23. Cost Overrun Commitment.** The Stadium Authority and Stadco have approved and duly executed the Cost Overrun Commitment and each Party has deposited into Escrow its executed counterpart of the Cost Overrun Commitment.

**Section 3.24. Financing Plan Conditions.** Any conditions established in the Final Financing Plan required thereunder to be satisfied or waived on or before the Close of Escrow have been satisfied or waived.

**Section 3.25. Training Facility Lease.** The Training Facility Lease Amendment has been duly executed by the Team and the City.

**Section 3.26. Line of Credit Agreement.** The Stadium Authority and Managementco have entered into [the Line of Credit Agreement].

**Section 3.27. Insurance.** The Stadium Authority and Stadco have approved the Insurance Program, and the insurance policies that are required under the Insurance Program to be in place at Commencement of Construction are in full force and effect.

**Section 3.28. CFD Reimbursement Agreement.** The CFD, the Stadium Authority and Stadco have entered into the CFD Reimbursement Agreement.

**Section 3.29. No Default Stadco.** No condition, event or act exists which would constitute a Stadco Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a Stadco Event of Default.

**Section 3.30. No Default Stadium Authority.** No condition, event or act exists which would constitute a Stadium Authority Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a Stadium Authority Event of Default.

**Section 3.31. No Litigation Stadco.** No existing, pending or threatened litigation, suit, Action or Proceeding before any court or administrative agency exists affecting Stadco or the Stadium Site that would, if adversely determined, adversely affect the Stadium Site or Stadco's or the Stadium Authority's ability to perform their obligations under this Agreement, or Stadco's ability to manage the development of the Stadium, as reasonably determined by the Stadium Authority.

**Section 3.32. No Litigation City and Stadium Authority.** No existing, pending or threatened litigation, suit, Action or Proceeding before any court or administrative agency exists affecting the City, the Agency, the Stadium Authority or the Stadium Site that would, if adversely determined, adversely affect, in the reasonable judgment of Stadco, the Stadium Site or the ability of any party to perform its obligations under this Agreement or the Related Agreements, or the Stadium Authority's ability to develop and operate the Stadium.

**Section 3.33. Stadco Representations and Warranties.** The representations and warranties of Stadco as set forth in Section 20.1 of this Agreement remain true and correct.

**Section 3.34. Stadium Authority Representations and Warranties.** The representations and warranties of the Stadium Authority as set forth in Section 20.2 of this Agreement remain true and correct.

**ARTICLE 4.**  
**CONSTRUCTION OF MAKE-READY WORK**

**Section 4.1. Make-Ready Work.** Pursuant to the Predevelopment Funding Agreement, Stadco is preparing design documents for the Make-Ready Work, which documents are subject to the Stadium Authority's approval. Subject to the conditions set forth in Section 4.2 of this Agreement, the Stadium Authority will commence the Make-Ready Work prior to the Close of Escrow in accordance with the terms of this Agreement. The Parties shall cooperate and use good faith efforts to satisfy the conditions in Section 4.2 of this Agreement so as to allow commencement of the Make-Ready Work in January, 2012.

**Section 4.2. Conditions to Commencement of Make-Ready Work.** The conditions set forth in this Section 4.2 are intended for the mutual benefit of the Stadium Authority and Stadco,

and if any such condition is not satisfied, each Party shall have the right, in its sole discretion, to waive in writing the condition in question.

(a) Make-Ready Work License. The Stadium Authority has obtained the Make-Ready Work License from the City.

(b) Team Make-Ready Work License. The Team has (i) issued a license to the Stadium Authority and Stadco, (“Team Make-Ready Work License”), in a form reasonably acceptable to the Stadium Authority and Stadco, to allow access to the Training Facility land as necessary to perform the Make-Ready Work, and (ii) the City, as landlord under the Training Facility Lease, has approved the Make-Ready Work.

(c) Final Plans and Specifications for Make-Ready Work. The Stadium Authority and Stadco shall have approved the final plans and specifications for the Make-Ready Work.

(d) Cost Estimate. Stadco shall have submitted to the Stadium Authority, and the Stadium Authority shall have reasonably approved, the estimated budget for the Make-Ready Work to be submitted pursuant to Section 2.3 of the Predevelopment Funding Agreement. The estimated budget shall include all hard and soft costs items necessary to meet City standards for acceptance of the Completed Make-Ready Work by the City in accordance with the City Subdivision and Planning Codes, and any applicable Mitigation Measures and Conditions of Approval for the Stadium or the Make-Ready Work.

(e) Additional Funds Deposit. Stadco shall have delivered the Make-Ready Deposit if required pursuant to Section 4.4 of this Agreement.

(f) Make-Ready Work Agency Agreement. The Stadium Authority and Stadco shall have entered into the Make-Ready Work Agency Agreement, which among other things, shall provide that despite any termination of this Agreement, the Make-Ready Work Agency Agreement shall not terminate until the Make-Ready Work is Complete, unless otherwise terminated in accordance with its terms.

(g) Improvement Agreement. The Stadium Authority [and Stadco] shall have entered into the Improvement Agreement with the City pursuant to Section 4.5 of this Agreement.

(h) Award of Make-Ready Work Construction Contract. The Stadium Authority shall have awarded a lump sum construction contract on terms satisfactory to Stadco for the construction of the Make-Ready Work (the “Make-Ready Work Construction Contract”) pursuant to Section 4.3 of this Agreement.

(i) Payment and Performance Bonds. The Make-Ready Work Contractor shall have provided payment and performance bonds for the full amount of the Make-Ready Work.

(j) Permits and Approvals. All permits and approvals required by any Regulatory Agency to commence construction of the Make-Ready Work shall have been obtained.

**Section 4.3. Competitive Bidding.** The Stadium Authority shall competitively bid the Make-Ready Work Construction Contract and, if determined to be appropriate, shall award the Make-Ready Work Construction Contract to the lowest responsive and responsible bidder, all in a manner generally consistent with the City's standard process for bidding public works projects. Prior to issuance of any bid packages, the Stadium Authority shall provide the City's Public Works Director with a copy of the bid package as well as the proposed process for soliciting bids and selecting contractors, all of which documents and process shall be subject to the prior approval of Stadco. No bid package shall be issued or bids awarded until the City's Public Works Director has approved the bid package. Promptly following Stadco's request, the Stadium Authority shall submit to Stadco all bid documents and all documents relating to the contractor and subcontractor selection process.

**Section 4.4. Make-Ready Work Funding.** If the Make-Ready Work commences prior to Close of Escrow, Stadco shall advance to the Stadium Authority prior to the commencement of construction an amount equal to the contract amount due under the Make-Ready Work Construction Contract plus fifteen percent (15%) (the "Make-Ready Deposit"). Prior to the date of this Agreement and pursuant to the Predevelopment Funding Agreement, the Stadium Authority has advanced funds to Stadco in the amount of Four Million Dollars (\$4,000,000) to fund preliminary design, permitting and construction for the Make-Ready Work ("Initial Make-Ready Work Funds"), and these funds may be used by Stadco to fund the Make-Ready Deposit. Amounts in excess of the Initial Make-Ready Work Funds advanced by Stadco to fund the Make-Ready Deposit will be reimbursed to Stadco by the Stadium Authority, in accordance with the Funding Agreement and the Final Development Budget. In the event the Close of Escrow does not occur, any funds advanced by Stadco in excess of the Initial Make-Ready Work Funds advanced by Stadco to fund the Make-Ready Deposit shall be repaid by the Stadium Authority, but only from funds other than funds of the Stadium Authority that (a) were received by the Stadium Authority from the Agency, (b) are required to pay other costs incurred by the Stadium Authority in furtherance of the Stadium Project that are included in the budget approved by the Board, and (c) the Stadium Authority cannot, consistent with applicable Law and its other contractual covenants, use to pay for Make-Ready Work costs. The provisions of this Section 4.4 shall survive the termination of this Agreement.

**Section 4.5. Improvement Agreement and Security.** Certain components of the Make-Ready Work are required as conditions to approval of the Subdivision Map. Prior to the commencement of the Make-Ready Work, the Stadium Authority shall enter into an improvement agreement with the City pursuant to Section 17.05.650 of the Municipal Code of the City, the form of which shall be subject to Stadco's reasonable approval, providing for the completion of those components of the Make-Ready Work (the "Improvement Agreement"). As and to the extent required by the Improvement Agreement, the Make-Ready Deposit shall be deposited by the Stadium Authority with the City or a responsible escrow agent or trust company

to provide for any security required under Section 17.05.660 of the Municipal Code of the City for the Make-Ready Work that is subject to the Improvement Agreement.

**Section 4.6.** Compliance with Approvals and Applicable Law. Prior to the Close of Escrow, Stadco shall supervise the Make-Ready Work in accordance with the Make-Ready Work Agency Agreement. From and after the Close of Escrow, Stadco, as Construction Agent, shall supervise the Make-Ready Work under the Construction Agency Agreement. In its capacity under, and in accordance with, each of the Make-Ready Work Agency Agreement and the Construction Agency Agreement, as applicable, Stadco shall use Professional Efforts to cause the Make-Ready Work to be performed in compliance with the requirements of the Make-Ready Work License, other third party approvals, if any, and all applicable Laws now in force or that may be enacted hereafter, (including, without limitation, the prevailing wage provisions of Sections 1770 et seq., of the California Labor Code).

**Section 4.7.** Acceptance of Make-Ready Work. Upon completion of the Make-Ready Work and its acceptance by the City, the Make-Ready Work License shall terminate, and the Parties will cause the Team Make-Ready Work License to terminate. As a condition of acceptance of the Make-Ready Work, the Stadium Authority shall cause the contractor responsible for constructing the Make-Ready Work to provide to the City a warranty for all Make-Ready Work items, which warranty shall not expire any sooner than the one year anniversary date for the Completion of the Stadium.

**Section 4.8.** Assignment of Work Product. Prior to the issuance of bid documents for the Make-Ready Work, Stadco shall assign to the Stadium Authority, pursuant to a form of assignment prepared by Stadco and approved by the Stadium Authority, and the Stadium Authority shall accept assignment from Stadco, all of Stadco's right, title and interest in the permits and entitlements or work products obtained or created in connection with the Make-Ready Work.

ARTICLE 5.  
DESIGN AND ENTITLEMENTS

**Section 5.1.** Cooperation. The Stadium Authority and Stadco agree to cooperate and coordinate with each other in connection with the Stadium Authority's ongoing efforts to develop the Stadium, including, without limitation, with respect to the Stadium design work. The Parties acknowledge that such cooperation and coordination is necessary in order to timely develop the Stadium Project.

**Section 5.2.** Design Development. Prior to the date of this Agreement, Stadco retained the Architect and Stadco Design Professionals to prepare design documents for the Stadium, including the Schematic Design Drawings and Design Development Documents, anticipating that the costs it incurred in doing so would be considered Development Costs and reimbursed out of the Development Fund if the Stadium Authority proceeded with development of the Stadium. Stadco's agreement with the Architect and with Stadco Design Professionals shall expressly provide that Stadco shall have the right to transfer and assign to the Stadium Authority all of its right, title and interest in the Schematic Design Drawings, the Design Development Documents,

the GMP Set, and other work product prepared by the Architect or Stadco Design Professionals for the Stadium Project. Stadco has submitted to the Stadium Authority, a statement of the costs for the Design Development Documents incurred as of the date the Predevelopment Funding Agreement and an estimated budget for the completion of the Design Development Documents. The budget approved pursuant to the Predevelopment Funding Agreement shall be incorporated into the Final Development Budget.

**Section 5.3. Design Consistent with Scope of Development and Schematic Design Drawings.** The Scope of Development and the Schematic Design Drawings shall establish the baseline design standards from which, and consistent with which, Stadco, in consultation with the Stadium Authority, shall cause the Architect and Stadco Design Professionals to prepare the Design Development Documents and the GMP Set.

**Section 5.4. LEED Certification.** The Stadium has been registered with the U.S. Green Building Council for Leadership in Energy and Environmental Design (“LEED”) certification. The Architect shall submit or cause to be submitted to the Stadium Authority a preliminary LEED checklist signed by a LEED Accredited Professional demonstrating the credits Stadco intends to attain for the Stadium in order to meet the point requirements for LEED certification. The Stadium Authority and Stadco shall cooperate to obtain LEED certification for the Project.

**Section 5.5. Submittal and Review of Design Development Documents.** Within the time period set forth in the Schedule of Performance, Stadco shall submit the Design Development Documents to the Stadium Authority for review and approval. The Design Development Documents shall, as appropriate, provide for compliance with the relevant Mitigation Measures and Conditions of Approval. The purpose of the Stadium Authority’s review of the Design Development Documents is to ensure consistency with the Scope of Development and Schematic Design Drawings, the provisions of this Agreement, and conformance to the Redevelopment Plan. The Stadium Authority shall be required to approve the Design Development Documents provided that the Design Development Documents meet the requirements of this Section 5.5 and are a Logical Evolution of the Schematic Design Drawings. For purposes of this Article 5, “Logical Evolution” means a refinement or amplification of the prior phase of drawings approved by the Stadium Authority into drawings and design material which flow reasonably therefrom, and which reflect architectural and engineering design consistent with such industries’ standards and practices and applicable code requirements.

**Section 5.6. Submittal and Review of GMP Set.** Within the time periods set forth in the Schedule of Performance, Stadco shall submit the GMP Set to the Stadium Authority for review and approval. The purpose of the Stadium Authority’s review of the GMP Set is to ensure that the GMP Set is generally consistent in all material respects with the Scope of Development, the Design Development Documents, the provisions of this Agreement, the Mitigation Measures and Conditions of Approval, and conformance to the Redevelopment Plan. The Stadium Authority shall be required to approve the GMP Set provided that the GMP Set meets the requirements set forth in this Section 5.6 and is a Logical Evolution of the Design Development Documents.

**Section 5.7. Approval Process.** The Stadium Authority shall approve or disapprove submittals under this Article 5 within thirty (30) days of receipt of the submittal from Stadco. The failure of the Stadium Authority to approve or disapprove such submittals within thirty (30) days shall be deemed to be an approval of such submittals. In the event the Stadium Authority disapproves a submittal pursuant to the terms of this Article 5, the Stadium Authority shall submit a list of reasons for such disapproval to Stadco, together with its notice of disapproval. Upon receipt of such a list, Stadco shall submit a revised submittal the later of (a) the date set forth in the Schedule of Performance for such submittal or (b) twenty (20) Business Days after receipt of such list. Upon the Stadium Authority's receipt of a revised submittal, the Stadium Authority shall have fifteen (15) Business Days to approve or disapprove of the revised design. The Stadium Authority's failure to approve or disapprove the revised submittal within fifteen (15) Business Days shall be deemed to be an approval of such change. The times for approval of the submittals included in the Schedule of Performance shall be automatically adjusted to reflect time for Stadco to make resubmittals, if required to obtain Stadium Authority approval, as allowed by this Section 5.7.

**Section 5.8. Construction Oversight Working Group.** Stadco shall meet with the Executive Director, on a schedule to be agreed upon by the Parties, to review and discuss the evolution of the design documents through the development of the Final Construction Documents. Stadco shall consult with the Executive Director regarding the progress of the design documents at each meeting and shall report on any material alterations or issues encountered by Stadco, the Architect, Stadco Design Professionals, as applicable, or the Design-Build Contractor in the design process since the previously held meeting.

**Section 5.9. Concessionaire.** Prior to the date of this Agreement, the Stadium Authority, Stadco and the Concessionaire entered into the Pre-Opening Services Contract, pursuant to which the Stadium Authority selected Concessionaire to act in the capacity of the pre-opening concessionaire to provide assistance to the Stadium Authority in the design and location of concession spaces within the Stadium. The Pre-Opening Services Contract includes a form of Concession Operating Agreement as an exhibit to the Pre-Opening Services Contract with the intent that the Concessionaire would execute a form of the Concession Operating Agreement with the Managementco at or around the date of Completion. Stadco, on behalf of the Stadium Authority, shall coordinate and supervise the Concessionaire in the Concessionaire's performance of the Pre-Opening Services Contract. Stadco and the Stadium Authority acknowledge that the Concessionaire, the Architect, other design professionals, and other Persons designated by the Stadium Authority and Stadco will need to collaborate in order for the Design Development Documents to accurately incorporate the design and location needs of the Concessionaire for the concession areas of the Stadium Project. Stadco shall coordinate the necessary exchange of information between the Concessionaire, the Architect and others referenced in this Section 5.9 to facilitate such collaboration.

**Section 5.10. Preconstruction Services.** Prior to the date of this Agreement, Stadco engaged TDJV to perform certain preconstruction services, including among other things, to participate in the development of the Design Development Documents. Consistent with the Procurement Plan, TDJV may issue prequalification and bid documents and select design/build

subcontractors for the Project. The subcontractors selected through the Procurement Plan may participate in the development of the Design Development Documents as part of TDJV's preconstruction services. The Stadium Authority shall have no obligation to TDJV or to such selected subcontractors unless and until the Stadium Authority enters into the Design-Build Agreement with TDJV.

**Section 5.11. Design-Build Contractor.**

(a) **Entry into Design-Build Agreement.** Subject to the satisfactory completion of preconstruction services, Stadco expects to recommend TDJV as the Design-Build Contractor. Within the time specified in the Schedule of Performance, the Stadium Authority will consider approving and executing the Design-Build Agreement with the recommended Design-Build Contractor; provided, however, that (i) the award of the Design-Build Agreement shall be subject to compliance with California Government Code Section 6532, and (ii) Stadco shall be responsible to pay, on the Stadium Authority's behalf, any payments due to the Design-Build Contractor under the Design-Build Agreement from its effective date until the Close of Escrow, at which time, the Stadium Authority shall become responsible to pay the costs due to the Design-Build Contractor under the Design-Build Agreement. Amounts advanced by Stadco to fund the costs due to the Design-Build Contractor under the Design-Build Agreement will be reimbursed to Stadco by the Stadium Authority, in accordance with the Funding Agreement and the Final Development Budget. In the event the Close of Escrow does not occur, any such funds advanced by Stadco shall be repaid by the Stadium Authority, but only from funds other than funds of the Stadium Authority that (1) were received by the Stadium Authority from the Agency, (2) are required to pay other costs incurred by the Stadium Authority in furtherance of the Stadium Project that are included in the budget approved by the Board, and (3) the Stadium Authority cannot, consistent with applicable Law and its other contractual covenants, use to pay for Development Costs. The provisions of this Section 5.11(a) shall survive the termination of this Agreement.

(b) **Establishment of GMP.** The Stadium Authority shall not issue the notice to proceed until the IGMP has been established and the Close of Escrow has occurred. Within ninety (90) days of the Close of Escrow, the GMP shall be established pursuant to the provisions of the Design-Build Agreement and the Construction Agency Agreement. As provided in Section 6.4, the Funding Agreement shall include limitations, satisfactory to the Stadium Authority and consistent with the Final Financing Plan, on draws on any Stadium Authority financing prior to the establishment of the GMP.

**Section 5.12. Separate Construction Work.** The Parties acknowledge that certain components of the Improvements, including certain infrastructure (such as the pedestrian bridges across San Tomas Creek) and certain Tenant Improvements, are expected to be excluded from the scope of work under the Design-Build Agreement and the Make-Ready Construction Contract (the "Separate Construction Work") and constructed by Separate Contractors. Plans and Specifications for any Separate Construction Work shall be submitted to the Stadium Authority for review, and it shall be subject to the Stadium Authority's approval pursuant to the process set forth in Section 5.7. Any and all Separate Contractors shall be directed and managed

by the Construction Agent, and any Separate Construction Contracts shall contain provisions consistent with the Design-Build Agreement requiring coordination with the work of the Design-Build Contractor. Any Separate Construction Contract entered into by the Stadium Authority shall be competitively bid and, if determined to be appropriate, awarded to the lowest responsive and responsible bidder, all in a manner generally consistent with the City's standard process for bidding public works projects. The Stadium Authority shall obtain Stadco's approval of the bid documents prior to issuing the bid documents, and promptly following Stadco's request, the Stadium Authority shall submit to Stadco all bid documents and all documents relating to the selection process for the Separate Contractors and their subcontractors.

**Section 5.13. Construction Agency Agreement.** Simultaneously with the execution of the Design-Build Agreement, the Stadium Authority and Stadco shall enter into the Construction Agency Agreement in substantially the form attached hereto as Exhibit M.

**Section 5.14. Entitlements and Additional Permits and Approvals.** Within the time period specified in the Schedule of Performance, Stadco and the Stadium Authority shall work cooperatively and use commercially reasonable efforts to identify, prepare and submit, the required applications and supporting documents to applicable government agencies to obtain the Entitlements and a Building Permit as necessary to allow for the commencement of construction of the Make-Ready Work, and with respect to the other Improvements, the Commencement of Construction. All applications for such permits and approvals shall be consistent with the Project Documents, as applicable, and shall be subject to approval by the Stadium Authority before submission to the applicable government agency. Stadco acknowledges that execution of this Agreement by the Stadium Authority does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the lawful exercise of discretion by the City in the permit, allocation or approval process otherwise required under applicable Law. Each Party shall provide reasonable assistance to the other in their efforts to secure such permits and approvals.

**Section 5.15. Subdivision of the Stadium Site.** Stadco and the Stadium Authority shall work cooperatively and use commercially reasonable efforts to prepare and submit the required applications and supporting documents to the City to obtain approval from the City of the recordation of the Subdivision Map at the Close of Escrow.

**Section 5.16. Stadium Authority's Purchase of Stadco's Stadium Design Work Product.** At the Close of Escrow, Stadco shall assign to the Stadium Authority, in a form reasonably approved by the Stadium Authority, and the Stadium Authority shall purchase from Stadco, all of Stadco's Stadium Design Work Product, excluding any of Stadco's Stadium Design Work Product relating to the Tenant Improvements, for a purchase price equal to the lesser of (i) the actual costs incurred by Stadco for such work and (ii) the amount for such work set forth in the Final Development Budget. Such purchase price shall be payable to Stadco from the Development Fund in accordance with the Funding Agreement and the Final Development Budget.

ARTICLE 6.  
DEVELOPMENT BUDGET AND FINANCING PLAN

Section 6.1. Budget and Financing Plan Overview. The Parties have agreed on a Preliminary Development Budget and Preliminary Financing Plan, although it is recognized that both are preliminary and will be further developed and refined as described in this Article 6. In conjunction with the preparation of Design Development Documents and GMP Set, as described in Article 5 above, Stadco will have lead responsibility for refining cost estimates and developing the Final Development Budget. The Stadium Authority and Stadco shall work cooperatively to develop a Final Financing Plan. As further set forth in this Article 6, the Stadium Authority's approval of the Final Development Budget and Final Financing Plan constitute conditions to the Close of Escrow. The Executive Director may, in her sole discretion, present any matter contained in this Article 6 to the Board for its approval or disapproval.

Section 6.2. Development Budget.

(a) Preliminary Development Budget Update. The Preliminary Development Budget is intended to represent a summary of Total Development Costs using preliminary cost estimates for the development of the Improvements based on the Scope of Development and the Schematic Design Drawings. The Preliminary Development Budget shall provide the basis for preliminary cost estimates for the development of the Stadium. Within ninety (90) days following the Stadium Authority's approval of the Design Development Documents, unless by that time Stadco has submitted a Final Development Budget pursuant to Section 6.2(b), Stadco shall submit to the Stadium Authority an update to the Preliminary Development Budget based on the Design Development Documents. Such update to the Preliminary Development Budget shall include reasonably detailed information, including, but not limited to the designation of which items qualify as Eligible CFD Expenditures, and shall be based on the previously submitted Preliminary Development Budget. Such update to the Preliminary Development Budget shall also include any new line items required as a result of changes to the design of the Stadium and shall contain updated construction cost estimates that are reasonable and consistent with the level of the drawings submitted by Stadco in accordance with Article 5. Stadco shall include reasonable supporting documents with such proposed update to the Preliminary Development Budget.

(b) Submission of Final Development Budget. Within the time period specified in the Schedule of Performance, Stadco shall submit the Final Development Budget to the Stadium Authority for the Stadium Authority's review and approval. The Final Development Budget shall be substantially in the form of the Preliminary Development Budget. The Final Development Budget shall include the estimated Total Development Costs based on the GMP Set, including, without limitation, the Make-Ready Work costs and Tenant Improvement Costs. The Final Development Budget shall also include an equitable allocation of costs between Development Costs and Tenant Improvement Costs.

(c) Final Development Budget Approval Procedure. The Stadium Authority shall review the Final Development Budget and shall approve the Final Development Budget if it reasonably determines that the Final Development Budget contains a reasonable projection of the

Total Development Costs, as evidenced by the IGMP established pursuant to the Design Build Agreement, as well as provisions for other Development Costs and Tenant Improvement Costs not covered by the Design-Build Agreement, and the Final Development Budget is consistent with the Final Financing Plan. The Stadium Authority shall approve or disapprove the Final Development Budget within thirty (30) days of receipt. If the Stadium Authority conditionally approves the Final Development Budget, the conditions shall be stated in writing and a time shall be stated therein for satisfying the conditions. Any disapproval of the Final Development Budget shall be in writing and shall contain a detailed explanation of (i) the reason(s) for such disapproval, and (ii) the additional information Stadco would need to submit to obtain approval. Promptly following any disapproval of the Final Development Budget, the Stadium Authority and Stadco shall meet and confer to attempt to resolve the dispute. In connection with such disputes, both Stadco and the Stadium Authority agree to use their best efforts to reach a solution expeditiously that is mutually satisfactory to both Parties.

(d) Changes in Final Development Budget. After the Close of Escrow, adjustments may be made to the Final Development Budget, with any such adjustment subject to the approval of the Parties and, to the extent required by the Funding Agreement, any other parties to the Funding Agreement, provided that (i) approval of any increase in budgeted Tenant Improvement Costs will be conditioned on the commitment of Stadco to pay such costs, and (ii) approval of any increase in budgeted Development Cost will be conditioned on the commitment of payment by a dedicated funding source, which may be a third party (such as a naming rights sponsor's commitment to pay costs attributable to changes in Project Documents requested by such naming rights sponsor) or the Cost Overrun Commitment.

**Section 6.3. Financing Plan.**

(a) Development of Final Financing Plan. The Preliminary Financing Plan attached hereto as Exhibit H provides a general description of the expected amounts and timing of each of the sources of funding for the estimate of Total Development Costs set forth in the Preliminary Development Budget. Based on the Preliminary Financing Plan, the Stadium Authority and Stadco will use good faith efforts, working cooperatively, to develop a Final Financing Plan that is fiscally prudent, consistent with the requirements of Measure J and this Agreement, and that provides funding sufficient for the Stadium Authority to pay all Development Costs and for Stadco to pay all Tenant Improvement Costs. The Final Financing Plan shall be prepared by Stadco, in consultation with a working group composed of the Executive Director, representatives of Stadco, and financial advisors selected by the Stadium Authority and Stadco, and shall be submitted to the Stadium Authority for review and approval as provided in this Section 6.3. The working group shall meet on a schedule to be agreed upon by the Parties, to review and discuss the evolution of the Financing Plan.

(b) Requirements of Final Financing Plan. The Final Financing Plan shall include: (i) a description of the amounts and sources of Stadium Authority funds sufficient to pay all estimated Development Costs; (ii) a description of the timing, type and expected terms of any Stadium Authority Financing, consistent with the requirements of Article 7 of this Agreement; (iii) a description of the timing, type and expected terms of any Stadco Advances

and/or Subordinated Loan, consistent with the requirements of Article 8 of this Agreement; (iv) evidence reasonably satisfactory to the Stadium Authority, that all conditions to the disbursement of Stadium Authority Financing will be satisfied prior to the time the funds will be needed to pay Development Costs; (v) evidence reasonably satisfactory to the Stadium Authority that Stadco (either separately or together with its Affiliates) has, or as of the Close of Escrow will have, access to sufficient funds available to pay for all Tenant Improvement Costs, and to fund any Stadco Advances and/or Subordinated Loan provided in the Final Financing Plan; (vi) the Rent Schedule and a description of any surcharges on tickets to NFL Games proposed to be imposed through the Stadium Lease; (vii) where required by legal restrictions on the use of funds, the proposed use of each source of funding for the construction of the Stadium; (viii) a description of the anticipated timing for the disbursement of funds identified in the Final Financing Plan, and (ix) a general description of the expected timing, structure and terms of any Takeout Financing.

(c) Final Financing Plan Approval Procedure. Within the time period specified in the Schedule of Performance, the Parties shall make a good faith effort to mutually finalize and approve the Final Financing Plan. The Final Financing Plan shall provide, to the reasonable satisfaction of both the Stadium Authority and Stadco, that (i) the contemplated Stadium Authority Sources will be available and will provide sufficient funds for development of the Project consistent with the terms of this Agreement and the approved Final Development Budget, (ii) the proposed use of the funds comply with the requirements of the applicable funding source, (iii) the Rent Schedule provides for Facility Rent that, 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 the 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 any Stadium Authority Financing, (iv) Takeout Financing, on terms and with a structure that can be issued with an investment grade credit rating, is expected to be available, and (v) the Final Financing Plan is consistent with the requirements of Measure J. If the Parties cannot develop a mutually acceptable Final Financing Plan by the time set forth in the Schedule of Performance, the Stadium Authority and Stadco shall meet and confer to attempt to resolve the dispute. In connection with such dispute, both Stadco and the Stadium Authority agree to use their best effort to reach a solution expeditiously that is mutually satisfactory to both parties.

Section 6.4. Funding Agreement. At or prior to the Close of Escrow, the Stadium Authority, Stadco, the CFD and each lender identified in the Final Financing Plan shall enter into the Funding Agreement which will set forth the terms and conditions for the use and disbursement of the funds set forth in the Final Financing Plan. The Funding Agreement shall be consistent with the Final Financing Plan and the terms of this Agreement and shall include limitations satisfactory to the Stadium Authority on draws on any Stadium Authority Financing prior to the establishment of the GMP. The Funding Agreement shall require the establishment of one or more accounts into which all funds identified in the Final Financing Plan to pay Development Costs shall be deposited, and from which such funds shall be disbursed (collectively, the "Development Fund"). The Funding Agreement shall also describe records

maintenance, accounting, audit and other relevant procedures with which the parties to the Funding Agreement shall comply.

**Section 6.5. Construction Cost Overrun.** Stadco will be responsible to pay the amount, if any, by which the total, actual Development Costs incurred by the Stadium Authority exceed the amount of such costs set forth in the approved Final Development Budget (a "Cost Overrun"). Prior to the Close of Escrow, Stadco and the Stadium Authority shall negotiate and approve the form of the Cost Overrun Commitment.

**ARTICLE 7.**  
**STADIUM AUTHORITY FINANCING**

**Section 7.1. Stadium Authority Financing.** Consistent with the Final Financing Plan, the Stadium Authority, in consultation with Stadco, shall make a good faith effort to negotiate and execute Stadium Authority Financing Documents reasonably acceptable to the Stadium Authority and Stadco for all Stadium Authority Financings identified in the Final Financing Plan. The Stadium Authority Financing Documents shall expressly provide that no lender or bondholder under such documents shall have any recourse to the City or the Agency general funds or operating revenues or to the City enterprise funds, and any recourse shall be solely against the Stadium Authority and/or any Stadium Authority Source pledged to secure such financing. The Stadium Authority makes no representation as to the amount of funds from one or more of the Stadium Authority Financings that will be available to pay Development Costs.

**Section 7.2. Conditions to Stadium Authority Financing.** The conditions set forth in this Section 7.2 must be met prior to the Stadium Authority's consummation of any Stadium Authority Financing, unless waived in writing by the parties with approval rights over the applicable condition:

(a) The conditions to the Close of Escrow set forth in Article 3 shall have been satisfied or waived.

(b) As applicable, the Stadium Authority's legal counsel shall be irrevocably prepared to issue an opinion letter in a form acceptable to the Stadium Authority's lenders, and approved by the Stadium Authority in its reasonable discretion, stating, among other things, that the Stadium Authority Financing Documents constitute the valid and binding obligations of the Stadium Authority, enforceable against the Stadium Authority, and the Stadium Authority Financing Documents have been duly executed and delivered by, and constitute the valid and binding obligation of, the Stadium Authority enforceable against the Stadium Authority and that such Stadium Authority Financing does not constitute a debt of the City or the Agency.

(c) The Stadium Authority and Stadco shall have approved the projected amount of proceeds to be realized from such funds.

(d) The Stadium Authority and Stadco shall have approved, each in its sole discretion, the final form of all Stadium Authority Financing Documents required for each

Stadium Authority Financing, which documents shall comply with the provisions of Section 7.1, hereof.

(e) The Stadium Authority and Stadco shall have approved, each in its sole discretion, the final form of Funding Agreement pursuant to Section 6.4 hereof.

(f) No condition, event or act exists which would constitute a Stadco Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a Stadco Event of Default.

(g) No existing, pending or threatened litigation, suit, Action or Proceeding before any court or administrative agency exists affecting the Stadium Authority or Stadco that would, if adversely determined, adversely affect the Stadium Authority Financing.

**Section 7.3. No Right to Obligate Other Party.** No Party to this Agreement shall have the right to obligate the other party to satisfy, or be obligated to satisfy, the debt of the other Party without the express written consent of the Party obligated to satisfy such debt.

**Section 7.4. Takeout Financing.** Subject to the provisions of Section 8.5 below, the Stadium Authority, in consultation with Stadco, shall make good faith efforts to enter into the Takeout Financing consistent with the Final Financing Plan prior to the maturity date of the Stadium Authority Financing (the "Maturity Date"). The terms of the Takeout Financing shall be subject to the reasonable approval of Stadco, and shall be structured with the goal of achieving an investment grade credit rating. No lender or bondholder under any Takeout Financing shall have any recourse to the City or the Agency general funds or operating revenues or to the City enterprise funds, and any recourse shall be solely against the Stadium Authority and/or any Stadium Authority Source pledged to secure such financing. Consistent with the Rent Schedule adopted as part of the Final Financing Plan, and incorporated into the Stadium Lease as of the Close of Escrow, the Facility Rent under the Stadium Lease shall be determined or adjusted so as to provide to the Stadium Authority, together with other amounts payable by Stadco under the Stadium Lease and other revenues of the Stadium Authority, funds required to pay the 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 any Takeout Financing.

## ARTICLE 8. STADCO ADVANCES

### **Section 8.1. Prior Agreements.**

(a) **Cooperation Agreement.** Prior to the date of this Agreement, the Stadium Authority and the Agency entered into the Cooperation Agreement. Pursuant to Section 3.2 of the Cooperation Agreement, the Agency agreed to contribute a total of Forty Million Dollars (\$40,000,000) (exclusive of debt service and other financing costs) toward Development Costs. In addition, the Agency agreed pursuant to Section 3.1 of the Cooperation Agreement to pay to the City, on behalf of the Stadium Authority one-half (1/2) of the Development Fees in the amount of One Million Six Hundred Thousand Dollars (\$1,600,000). Under the Predevelopment

Funding Agreement, the Stadium Authority acknowledges receipt of such development fee funds from the Agency. Pursuant to Section 3.2(b) of the Cooperation Agreement, the Agency has contributed Four Million Dollars (\$4,000,000) of available funds to the Stadium Authority and has already funded Three Million Fifty-Three Thousand Three Hundred Eighty Dollars (\$3,053,380) in Pre-DDA Costs, totaling Seven Million Fifty-Three Thousand Three Hundred Eighty Dollars (\$7,053,380) in advanced funds. As of the date hereof, the Agency holds another approximately Two Million Six Hundred Ninety Seven Thousand Dollars (\$2,697,000) of proceeds from the Agency's 2011 Tax Allocation Bonds issuance which also constitute available funds under Section 3.2(a) of the Cooperation Agreement that the Parties expect will be contributed to the Stadium Authority to pay for Development Costs pursuant to the Final Financing Plan and the Funding Agreement together with the Four Million Dollars (\$4,000,000) previously contributed will bring the total Agency contribution to approximately Nine Million Seven Hundred Fifty Thousand Three Hundred Eighty Dollars (\$9,750,380) (collectively, the "Agency Upfront Contribution").

(b) Predevelopment Funding Agreement. Pursuant to the Predevelopment Funding Agreement, the Stadium Authority has advanced the Initial Make-Ready Work Funds to Stadco in the amount of Four Million Dollars (\$4,000,000) to fund preliminary design and construction for the Make-Ready Work after payment of certain Stadium Authority costs.

Section 8.2. Stadco Agency Advance. To assist the Stadium Authority in funding the construction costs of the Project, Stadco may advance to the Stadium Authority an amount up to approximately Thirty Thousand Two Hundred Forty-Nine Thousand Six Hundred Twenty Dollars (\$30,249,620), the approximate difference between the maximum Agency investment of Forty Million Dollars (\$40,000,000) and the Agency Upfront Contribution (the "Stadco Agency Advance"). The outstanding principal balance of the Stadco Agency Advance will accrue interest at the Advance Interest Rate. The amount and timing of the Stadco Agency Advance shall be specified in the Final Financing Plan. The Stadco Agency Advance, including interest at the Advance Interest Rate, will be repayable by the Stadium Authority solely from Net Tax Increment received by the Stadium Authority from the Agency pursuant to the Cooperation Agreement and the Predevelopment Funding Agreement. Upon the expiration of the Agency's ability to collect Tax Increment from the Redevelopment Project Area, any principal or interest amount of the Stadco Agency Advance still outstanding shall no longer be a debt of the Stadium Authority or the Agency.

Section 8.3. Stadco CFD Advance. In accordance with the Final Financing Plan, Stadco may advance to the CFD the difference between the maximum CFD contribution to Development Costs of Thirty Five Million Dollars (\$35,000,000) and the total proceeds of any CFD Bonds that have then been issued (the "Stadco CFD Advance"). The outstanding principal balance of the Stadco CFD Advance will accrue interest at the Advance Interest Rate. As part of the Final Financing Plan, the Parties shall determine the timing for the issuance of the CFD Bonds. The Stadco CFD Advance shall be evidenced by Advance Documentation, entered into by and between the CFD and Stadco. The Stadco CFD Advance, including interest incurred at the Advance Interest Rate, will be repayable only from the net proceeds of CFD Bonds and from CFD Tax (as reduced by CFD administrative expenses permitted in accordance with the CFD

formation documents), and only to the extent such revenues exceed debt service and reserves, if required, on and for any outstanding CFD Bonds.

**Section 8.4. Stadco Subordinated Loan Commitment.** As generally described in the Summary of Stadco Loan included as part of the Preliminary Financing Plan, and as will be further described in accordance with the Financing Plan, it is expected that Stadco will make, subject to conditions, a Subordinated Loan to the Stadium Authority, in a form reasonably approved by the Stadium Authority. Prior to the Close of Escrow, the Stadium Authority and Stadco shall agree on the form of the Subordinated Loan Documents. Stadco acknowledges that Stadco's right to receive payments under the Subordinated Loan Documents will be subordinated to the rights of the lenders providing funds to the Stadium Authority through the various Stadium Authority Financings and as such Stadco agrees to execute any and all subordination agreements reasonably requested by the Stadium Authority's lenders to evidence such subordination.

**Section 8.5. Stadco's Purchase Commitment.** The Preliminary Financing Plan contemplates that Stadco would, under certain circumstances, be required to purchase on the Maturity Date of the Stadium Authority Financing all or a portion of the Stadium Authority Financing then outstanding on terms and under conditions to be agreed upon among Stadco, the Stadium Authority, and the lenders (the "Stadco Purchase Commitment"). The Stadium Authority Financing Documents shall provide that if Stadco purchases all or a portion of the Stadium Authority Financing pursuant to the Stadco Purchase Commitment (the "Stadco Interim Loan"), the Stadium Authority's obligation to repay the principal of the Stadco Interim Loan will be forborne by Stadco until (a) the third anniversary of the Maturity Date, or (b) if earlier, the date on which the Stadco Interim Loan has been fully refinanced (either such date, as applicable, the "Deferred Maturity Date"). During the period that begins on the Maturity Date and ends on the Deferred Maturity Date, (x) interest on such Stadco Interim Loan will be payable by the Stadium Authority, and (y) as of the Maturity Date, an interim Facility Rent shall be determined, and shall be payable under the Stadium Lease, so as to provide to the Stadium Authority, together with other amounts payable by Stadco under the Stadium Lease and other revenues of the Stadium Authority, funds required to pay the 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 Stadco Interim Loan as well as any outstanding Stadco Authority Financing or Takeout Financing.

**Section 8.6. Stadco's Encumbrance of Stadium Lease.** Stadco may place Security Financing Interests on Stadco's leasehold interest in the Premises, and its interest in this Agreement and other Project-related documents entered into in connection with this Agreement. Such permitted security instruments and related interests may not encumber the City's fee interest or the Stadium Authority's leasehold interest in the Stadium Site and no Stadium Authority revenues, City or Agency general funds or assets or operating revenues or City enterprise funds may be encumbered thereby. Any financing secured by Stadco's leasehold interest obtained by Stadco shall be obtained from one or more lenders and shall be used prior to Completion to fund the Subordinated Loan, Tenant Improvements Costs, the Stadco Agency

Advance, the Stadco CFD Advance and other costs connected with the Project. Not later than the date set forth in the Schedule of Performance, Stadco shall submit to the Stadium Authority for review and approval the final form of loan documents for each loan in which Stadco is a party and that is secured by Stadco's leasehold interest and is consistent with the Final Financing Plan. The Stadium Authority's review and approval of the loan documents described in the immediately foregoing sentence shall be limited to a determination, in the exercise of the Stadium Authority's reasonable judgment, that the loan documents are consistent with the provisions of this Agreement, Final Financing Plan, the Funding Agreement and the previously approved loan commitment(s). The recourse of any lender of any construction or permanent financing obtained by Stadco shall be limited such that no City, Agency or Stadium Authority funds, assets, or operating revenues or City enterprise funds will be used as collateral. For other sources of Stadco funds described in the Final Financing Plan that are not loans, Stadco shall provide to the Stadium Authority for its review and approval, evidence, reasonably satisfactory to the Stadium Authority, that such funds shall be available as of the Close of Escrow to pay Development Costs. The Stadium Authority's review and approval of the evidence of funding shall be limited to a determination, in the exercise of the Stadium Authority's reasonable judgment, that the evidence of funding is consistent with the provisions of this Agreement, Final Financing Plan, and the Funding Agreement

ARTICLE 9.  
NAMING RIGHTS AND SBLs

**Section 9.1. Naming Rights.** Stadium Naming Rights matters, including, without limitation, marketing thereof and the requirements of the Stadium Naming Rights Agreement are governed by the terms of the Naming Rights Marketing Agreement. All Stadium Naming Rights Revenue derived from the sale of Naming Rights shall be the property of the Stadium Authority. Stadco's costs incurred on behalf of the Stadium Authority in connection with marketing the Naming Rights, as set forth in the budget approved by the Executive Director pursuant to the terms of the Stadium Naming Rights Agreement, shall be included in the Final Development Budget and shall be reimbursed from the Development Fund in accordance with the Final Financing Plan and the Funding Agreement.

**Section 9.2. Stadium Builders Licenses.** As owner of the Stadium, the Stadium Authority possesses the sole and exclusive right to sell, license, or otherwise transfer SBLs and similar instruments and rights with respect to any and all seats located in the Stadium. Prior to the date of this Agreement, the Stadium Authority and Legends entered into that certain Agreement for Stadium Builders License Sales and Related Services dated as of July 5, 2011, pursuant to which the Legends was engaged as the Stadium Authority's sole contractor for the marketing and sales of SBLs and related services. Proceeds from the sale of SBLs shall be collected solely for the account and benefit of the Stadium Authority. Such proceeds shall not be collected for the benefit of the Stadco, nor shall they be treated for any purpose as such, nor shall they be used to defray or otherwise satisfy any obligation of the Stadco with respect to the financing of the Stadium. Each SBL shall provide that the recourse of the holder of the SBL in the event of a failure to complete construction of the Stadium shall be limited to the termination of the SBL and the refund of any funds advanced by the holder of the SBL.

ARTICLE 10.  
MELLO-ROOS FINANCING

**Section 10.1. Creation of the CFD.** The City has created that certain City of Santa Clara Community Facilities District No. 2010 1 (the "CFD") pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Mello-Roos Act"), to finance and pay for Eligible CFD Expenditures. Currently, the CFD includes eight (8) hotels in the vicinity of the Stadium Site. As more specifically set forth in the Ordinance No. [ ] creating the CFD, the CFD will impose an annual special tax on each hotel property within the CFD (the "CFD Tax").

**Section 10.2. CFD Bonds.** Prior to the Close of Escrow, the CFD, Stadco and the Stadium Authority shall enter into the CFD Reimbursement Agreement. The CFD Reimbursement Agreement shall require the CFD to issue bonds secured by and paid from the CFD Tax (the "CFD Bonds"), and in accordance with the CFD Reimbursement Agreement, the Stadium Authority shall cause the CFD to endeavor to generate maximum CFD Bonds proceeds up to Thirty-Five Million Dollars (\$35,000,000) in net proceeds subject to fiscal prudence and consistent with the City's financial policies. In accordance with the Final Financing Plan, the CFD Reimbursement Agreement shall provide that the CFD use the proceeds of the CFD Bonds to reimburse the CFD formation costs, the CFD Bonds issuance costs and to reimburse the Stadium Authority for the cost of the development of the CFD Infrastructure to be paid by the CFD Bonds. The CFD Reimbursement Agreement shall also provide that in the event Stadco makes a Stadco CFD Advance as described in Section 8.3, the CFD will pay to the Stadium Authority for reimbursement to Stadco, first from the net proceeds of the CFD Bonds until such proceeds are exhausted, then annually from available CFD revenue after any required payments on the CFD Bonds for the applicable tax year, all CFD Taxes received which shall first be applied against all interest accrued on the Stadco CFD Advance, and the balance shall be applied against the principal of the Stadco CFD Advance until all principal is repaid. The CFD Reimbursement Agreement shall provide that if the CFD has fully paid the debt service on the CFD Bonds and has fully reimbursed the Stadium Authority for the cost of development of the CFD Infrastructure to be paid by the CFD Bonds and the Stadium Authority has fully repaid Stadco any Stadco CFD Advance, plus interest thereon at the Advance Interest Rate, then prior to the expiration of the term of the CFD, the Stadium Authority may use any remaining proceeds from the CFD Tax for Eligible CFD Expenditures. The Stadium Authority shall obtain and disburse the proceeds of the CFD Bonds and the CFD Tax in accordance with the terms of this Agreement and the CFD Reimbursement Agreement. The foregoing obligations of the Stadium Authority shall survive the termination of this Agreement.

**Section 10.3. TOT Credit.** The Parties acknowledge that the documents establishing the CFD provide that if the CFD has fully repaid the Mello-Roos Act bonds and Stadco CFD Advance plus interest thereon at the Advance Interest Rate, prior to the expiration of the term of the CFD, and the City has increased the TOT from its current rate of nine and one-half percent (9½%) at any time during the term of the CFD, then, for the remaining term of the CFD, each hotel in the CFD may offset against its CFD payment an amount equal to the amount by which the City TOT paid by such hotel exceeds the current rate of nine and one-half percent (9½%).

Nothing in this Section 10.3 is intended to restrict the City's ability to increase the TOT from time to time.

ARTICLE 11.  
LEASES

**Section 11.1. Ground Lease.** Within the time period specified in the Schedule of Performance, the Stadium, the City and Stadco shall agree on the final form of the Stadium Ground Lease. The purpose of Stadco's review shall be to determine that the terms of the Ground Lease comply with the terms of Measure J, that the Ground Lease grants leasehold rights to the Stadium Authority consistent with the rights granted to Stadco under the Stadium Lease and that the terms of the Ground Lease are not in conflict with the terms of the Stadium Lease.

**Section 11.2. Stadium Lease.** Within the time period specified in the Schedule of Performance, the Stadium Authority and Stadco shall agree on the final form of the Stadium Lease. The Stadium Lease shall incorporate each of the provisions of the Stadium Lease Summary, substantially in the form attached with no material deviations from the attached provisions, unless mutually agreed upon by the Parties.

**Section 11.3. Team Sublease.** Within the time period specified in the Schedule of Performance, Stadco shall submit the Team Sublease to the Stadium Authority for the Stadium Authority's review and approval. The Stadium Authority's review shall be for the purpose of determining that the Team Sublease meets the requirements in this Agreement.

**Section 11.4. Training Facility Lease.** Within the time period specified in the Schedule of Performance, Stadco shall cause the Team to negotiate with the City to amend the lease between the Team and the City for the Team's headquarters and training facility at 4949 Centennial Boulevard, which amendment among other things is intended to extend the term of the Team's lease to be co-terminus with the Stadium Lease, reduce the size of the premises under such lease to exclude property included in the Stadium Site, in accordance with the Subdivision Map, and coordinate the non-economic terms of such lease with the Stadium Lease.

ARTICLE 12.  
DISPOSITION OF STADIUM LEASE

**Section 12.1. Opening Escrow.** To accomplish the conveyance of the leasehold interest in the Premises to Stadco pursuant to the Stadium Lease, Stadco shall establish an escrow ("Escrow") with the Title Company no later than the date set forth in the Schedule of Performance. By the date set forth in the Schedule of Performance, the Parties shall prepare, execute and deliver to the Title Company joint written instructions that are consistent with this Agreement ("Joint Escrow Instructions").

**Section 12.2. Deposit of Documents.** Within ten (10) Business Days following the satisfaction or waiver of all of the conditions set forth in Article 3 above as mutually determined by the Parties, excepting only the satisfaction of conditions requiring execution and deposit into Escrow of those documents that will not become effective until the Close of Escrow, the Parties

shall duly execute and acknowledge, as necessary, and deposit into Escrow with the Title Company any and all documents and funds necessary to effectuate the Close of Escrow, including the original counterparts of the Ground Lease, the Stadium Lease and all other agreements, instruments, or documents required under this Agreement. Each such agreement, instrument and document shall be in recordable form if it is to be recorded.

**Section 12.3. Close of Escrow.** The Joint Escrow Instructions shall require that provided that all of the conditions set forth in Article 3 above have been satisfied or waived and all of the documents and funds described forth in Section 12.2 above have been deposited into Escrow, Title Company shall do all of the following:

- (a) Complete the blank spaces in the documents referred to in Section 12.2 above (and all other documents required to be submitted prior to Close of Escrow) with the recording date and tract map information, if available, and other such information as may be specified in the Joint Escrow Instructions by the Parties;
- (b) Attach thereto final and accurate legal descriptions consistent with the title policies required under this Agreement; and
- (c) Cause to be recorded in the Official Records, the following documents:
  - (i) The Memorandum of Ground Lease;
  - (ii) The Memorandum of Agreement;
  - (iii) The Memorandum of Stadium Lease;
  - (iv) The Memorandum of Team Sublease; and
  - (v) Such other documents specified in the Joint Escrow Instructions, if any.

The date on which the Title Company records all of the above items pursuant to the Joint Escrow Instructions shall be the "Close of Escrow." The Close of Escrow shall occur no later than the Outside Closing Date.

**Section 12.4. Closing Costs and Prorations.** Subject to the terms of Section 12.6, Stadco shall pay to the Title Company all title insurance premiums and endorsement charges and all escrow fees in connection with the conveyance of the Premises to Stadco. Ad valorem taxes and assessments, if any, shall be prorated as of the Close of Escrow. Any such taxes and assessments, including supplemental taxes and escaped assessments, levied, assessed or imposed for any period up to the Close of Escrow shall be borne by the Stadium Authority, all of which shall be a Development Cost.

**Section 12.5. Condition of Title to the Premises.**

(a) Permitted Exceptions. The Stadium Authority shall convey the Premises to Stadco free of all liens, encumbrances, clouds, conditions, assessments, taxes, easements, occupancy or possession by others and rights of occupancy and possession by others, except the Permitted Exceptions.

(b) Title Defect. The Stadium Authority will not intentionally alter, or consent to the alteration by the City of, the condition of title existing as of the Effective Date, except for the documents and transactions contemplated hereunder, including without limitation the authorization for the Make-Ready Work. If on the date scheduled for the Close of Escrow, there exists on the Premises any liens, encumbrances, clouds, conditions, assessments, taxes, easements, occupancy and possession by others or rights of occupancy and possession other than those of Stadco, or any other matter which is not a Permitted Exception or an encumbrance otherwise agreed to by Stadco (each of the foregoing, a "Title Defect"), the Stadium Authority will have up to ninety (90) days following the scheduled date for the Close of Escrow to remove the Title Defect, which time period may be extended for up to an additional ninety (90) days at the option of Stadco, or extended for such longer period mutually agreed upon by the Stadium Authority and Stadco; provided that such extension period does not go beyond the Outside Closing Date. The Stadium Authority shall cooperate with Stadco to extend the Close of Escrow in order to permit the removal of any Title Defect (the "Extended Close of Escrow"); provided that the Extended Close of Escrow does not extend beyond the Outside Closing Date.

(c) Remedies With Respect to Uncured Title Defects. If at the date specified for the Extended Close of Escrow, or such later date mutually agreed upon by the Stadium Authority and Stadco, a Title Defect still exists, Stadco may by written notice to the Stadium Authority either (i) terminate this Agreement or (ii) accept delivery of the Premises under the Stadium Lease. If Stadco accepts delivery, the Title Defect will be deemed waived but solely with respect to any action by Stadco against the Stadium Authority and the City. If Stadco does not accept delivery and fails to terminate this Agreement within seven (7) days after the date specified for the Extended Close of Escrow, or any extension provided above, the Stadium Authority may terminate this Agreement upon three (3) days' written notice to Stadco. If the Agreement is terminated under this Section, the Parties shall have no further obligations to each other with respect to this Agreement, except to the extent this Agreement expressly provides that an obligation survives termination hereof.

**Section 12.6. Title Insurance.** The Joint Escrow Instructions will provide that concurrently with the Close of Escrow, the Title Company shall issue and deliver the following title insurance policies:

(a) Stadco Title Insurance. An A.L.T.A. extended coverage title insurance policy issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as Stadco may request, in an amount designated by Stadco which is satisfactory to the Title Company, insuring that the leasehold estate in the Premises is vested in Stadco subject only to the Permitted Exceptions, and with such endorsements as may be requested by Stadco, all at the sole cost and expense of Stadco; and

(b) Stadium Authority Title Insurance. An A.L.T.A. extended coverage title insurance policy issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as the Stadium Authority may request, in an amount designated by the Stadium Authority which is satisfactory to the Title Company, insuring that the Stadium Authority's leasehold estate in the Stadium Site is vested in the Stadium Authority subject only to the Permitted Title Exceptions which are applicable to such leasehold interest, and with such endorsements as may be requested by the Stadium Authority, all at the sole cost and expense of Stadco; provided that the cost to Stadco for such policy (including the endorsements) is not in excess of the cost of the title policy in Section 12.6(a), in which case, the Stadium Authority shall pay any excess amount.

(c) Lender(s) Title Insurance. An A.L.T.A. extended coverage title insurance policy issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as any of the Stadium Authority's or Stadco's leasehold lenders may request, in an amount designated by each such lender which is satisfactory to the Title Company, insuring that the each such lender's lien in leasehold estate in the Stadium Site or Premises is vested in such leasehold lender, subject only to the Permitted Title Exceptions, and with such endorsements as may be requested by each such lender.

**Section 12.7. Condition of the Stadium Site.**

(a) "As Is" Conveyance. STADCO SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SUBJECT TO THE PROVISIONS OF SECTION 12.5(a), THE STADIUM AUTHORITY'S INTEREST IN THE STADIUM SITE WILL BE DELIVERED PURSUANT TO THE GROUND LEASE ON AN "AS IS, WITH ALL FAULTS" BASIS AND THAT STADCO IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE CITY OR STADIUM AUTHORITY AS TO ANY MATTERS CONCERNING THE STADIUM SITE, INCLUDING WITHOUT LIMITATION: (i) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE STADIUM SITE (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (ii) THE STADIUM SITE'S, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE STADIUM SITE FOR ANY PARTICULAR PURPOSE, (iii) THE ZONING OR OTHER LEGAL STATUS OF THE STADIUM SITE OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE STADIUM SITE, (iv) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE STADIUM SITE OR THE ADJOINING OR NEIGHBORING PROPERTIES, (v) THE CONDITION OF TITLE TO THE STADIUM SITE AND (vi) WHETHER THE STADIUM SITE IS LOCATED IN ANY OF THE FOLLOWING AREAS, EACH OF WHICH, AND COLLECTIVELY, SHALL BE REFERRED TO AS AN "ENVIRONMENTALLY DANGEROUS AREA": AN AREA WHICH IS DESIGNATED BY ANY FEDERAL, STATE OR LOCAL AGENCY AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE

INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA. STADCO ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE STADIUM SITE AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE STADIUM SITE. STADCO UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE STADIUM SITE'S LOCATION IN ANY ENVIRONMENTALLY DANGEROUS AREA. NOTWITHSTANDING ANY OF THE FOREGOING, OR THE REMAINDER OF THIS SECTION 12.7 TO THE CONTRARY, THE STADIUM AUTHORITY'S CONVEYANCE OF STADCO'S LEASEHOLD INTEREST PURSUANT TO THE STADIUM LEASE SHALL NOT RELEASE THE STADIUM AUTHORITY FROM ITS OBLIGATIONS UNDER SECTION 13.1 OF THIS AGREEMENT.

(b) Stadco's Release of the Stadium Authority. Stadco, on behalf of itself and anyone claiming by, through or under Stadco, hereby waives its right to recover from and fully and irrevocably releases the Stadium Authority, the City, and their council members, board members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that Stadco may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action (collectively, "Loss") arising from or related to (i) the condition, valuation, salability or utility of the Stadium Site or its suitability for any purpose whatsoever, (ii) any presence of hazardous materials on the Stadium Site occurring prior to the delivery of Stadco's leasehold interest in the Premises pursuant to the Stadium Lease, except if caused by the gross negligence or intentional misconduct of a Released Party, and (iii) any information furnished in good faith by the Released Parties regarding the physical condition of the Stadium Site.

(c) Scope of Release. The release set forth in Section 12.7(b) hereof includes claims of which Stadco is presently unaware or which Stadco does not presently suspect to exist which, if known by Stadco, would materially affect Stadco's release of the Released Parties. Stadco specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by Law, Stadco agrees, represents and warrants that Stadco realizes and acknowledges that factual matters now unknown to Stadco may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Stadco further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Stadco nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, Stadco, on behalf of itself and anyone claiming by, through or under Stadco, hereby assumes the above-mentioned risks and hereby expressly waives any right Stadco and anyone claiming by, through or under Stadco, may have under Section 1542 of the California Civil Code, which reads as follows:

**“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

permit of any Regulatory Agency required for occupancy of the Stadium. Stadco shall comply with all such requirements or conditions separately.

(iii) The issuance of the Certificate of Completion shall not relieve the Parties from their obligations that expressly survive the expiration or termination of this Agreement, including, without limitation, Stadium Authority's obligations to obtain Stadium Authority Financing in accordance with Sections 7.1 and 7.2 of this Agreement.

(b) Deferred Items. If there remain minor items of incomplete work not impacting Substantial Completion and to be completed and/or corrected after Substantial Completion in accordance with the terms of the Construction Contracts, as applicable (collectively, "Deferred Items"), the Parties may mutually agree to issue the Certificate of Completion upon if they are satisfied that adequate provision has been made for completion of all of the Deferred Items under the respective Construction Contracts and that such Deferred Items will be diligently pursued to final completion.

(c) Definition of Completed and Completion. For purposes of the Parties' issuance of the Certificate of Completion in accordance with the provisions of Section 14.1(a) above, "Complete", "Completed" and "Completion" mean

(i) with respect to the Improvements subject to the Design-Build Agreement, Substantial Completion, as defined in the Design-Build Agreement, by Design-Build Contractor of all aspects of the Improvements and Final Construction Documents and this Agreement and following the release of the Retention, as defined in the Design-Build Agreement, to the Design-Build Contractor (other than funds reserved for Deferred Items);

(ii) with respect to the Separate Construction Contracts, completion of all Separate Construction Work by the applicable Separate Contractor in accordance with the plans and specifications and final construction documents approved by the Parties; and

(iii) with respect to the Make-Ready Work, completion by the Make-Ready Work Contractor in accordance with the approved Make-Ready Work plans and specifications and acceptance by the City of those portions of the Make-Ready Work to be dedicated to the City.

**Section 14.2. Form and Effect of Certificate.**

(a) Form of Certificate. The Certificate of Completion will be in a form that permits it to be recorded in the Official Records. For purposes of this Agreement, the Certificate of Completion will be a conclusive determination of Completion of the Improvements (except for completion of Deferred Items).

(b) Effect. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code, and is not in lieu of a certificate of occupancy to be issued by the City, which is separately required for occupancy, nor shall it constitute evidence of compliance with or satisfaction of any obligation of the Design-Build

Contractor or Separate Contractor as applicable, regarding prevailing wages required in the applicable Construction Contracts, or to any holder of a deed of trust securing money loaned to finance the Project or any portion thereof.

**Section 14.3. Failure to Issue.** If either Party refuses or fails to execute the Certificate of Completion after an inspection requested by the other Party, such refusing or failing Party shall provide the requesting Party with a written statement specifying the reasons for such refusal or failure to execute the Certificate of Completion and identifying the items that require completion or requirements that must be satisfied in order to issue the Certificate of Completion. The Stadium Authority agrees through the respective Construction Agency Agreement and Make-Ready Work Agency Agreement, to cause the Design-Build Contractor, Separate Contractors and Make-Ready Work Contractor as applicable, to correct, pursuant to the terms of the applicable Construction Contracts, all construction defects or items that fail to comply with the Project Documents or plans and specifications and final construction documents identified by Stadco, and the Stadium Authority shall enforce its rights in connection therewith under such agreements against the Make-Ready Work Contractor, Design-Build Contractor and the Separate Contractors. The immediately preceding sentence shall survive the termination of this Agreement.

**Section 14.4. Early Occupancy.** Nothing in this Article 14 is intended to limit Stadco's right to early occupancy of the Premises as authorized by the Stadium Lease.

**ARTICLE 15.**  
**ACCOUNTING; AUDIT RIGHTS**

**Section 15.1. Accounting.** Pursuant to the terms of this Agreement, the Stadium Authority is responsible for the payment of Development Costs, and Stadco is responsible for the payment of Tenant Improvement Costs. Stadco, as Construction Agent, shall maintain complete and accurate books and records of the Total Development Costs in accordance with generally accepted accounting principles consistently applied, or in another auditable form approved by the Parties in advance and in writing ("Records"), and the Stadium Authority shall cooperate with the Construction Agent to provide documents and information reasonably requested by Construction Agent to comply with the foregoing obligations.

**Section 15.2. Audit Rights.** Within ninety (90) days after receipt of the Total Development Costs Statement or inspection of other Records, if a Party disputes any matters set forth in such Records, a Party shall have the right to retain an independent certified public accountant to audit such Records and the Party subject to the audit agrees to cooperate with the auditor in its conduct of the audit. The report of the auditor and the auditor's determination of the amount, payment or reimbursement of Total Development Costs shall be final and binding on the Parties except in the case of fraud, corruption or undue influence. The cost of the audit shall be paid by the requesting Party. The provisions of this Article 15 shall survive the termination of this Agreement.

ARTICLE 16.  
STADIUM MANAGEMENT AGREEMENT

**Section 16.1. Stadium Management Agreement.** Prior to the Close of Escrow, the Stadium Authority and Stadco shall agree on the final form of the Stadium Management Agreement. The Parties anticipate that Stadco will create an Affiliate to enter into the Stadium Management Agreement (“Managementco”), subject to the Stadium Authority’s approval of the organizational documents, staffing, and capitalization of Managementco at the Close of Escrow. Except as otherwise agreed in the Stadium Management Agreement, the Stadium Management Agreement shall be on terms consistent with the following:

(a) **Management Services.** Managementco shall be responsible for the day-to-day operation of the Stadium on behalf of Stadco and the Stadium Authority, pursuant to an annual operations plan approved by the Stadium Authority, including management and oversight of the maintenance and repair of the Stadium, marketing activities with respect to Non-NFL Events, concession and parking operations of the Stadium, development of budgets and capital plans, and maintenance of books and records.

(b) **Term.** The initial term of the Stadium Management Agreement shall continue for a period of twenty-five (25) years from the Commencement Date, and thereafter shall be subject to extension, at the option of the Stadium Authority, for the balance of the term of the Stadium Lease.

(c) **Third Party Contracts.** Managementco shall have the right and obligation, in accordance with standards and processes set forth in the Stadium Management Agreement, to enter into third party contracts relating to the operation and maintenance of the Stadium in order to provide services to the Stadium on a year-round basis, including, without limitation, the Concession Operating Agreement and agreement for parking operations.

**Section 16.2. Line of Credit.** As a condition of the Close of Escrow, the Stadium Authority shall have entered into an agreement with Managementco, in a form and amount reasonably satisfactory to the Stadium Authority, pursuant to which Managementco commits to loan funds to the Stadium Authority at the request of the Stadium Authority in accordance with the Line of Credit Agreement Summary. The Line of Credit Agreement shall incorporate in substantial form the material terms as set forth in the Line of Credit Agreement Summary.

ARTICLE 17.  
STADIUM PARKING

**Section 17.1. Publicly-Owned Parking.** Pursuant to the Ground Lease, the Stadium Authority and Stadco will have the rights described in the Summary of Parking Rights.

**Section 17.2. Parking Plan.** Prior to the Close of Escrow, Stadco shall submit to the Stadium Authority, for its reasonable review and approval, a preliminary plan to provide a sufficient number of parking spaces to meet the NFL game-day parking requirements (the “Preliminary Parking Plan”). The Preliminary Parking Plan shall demonstrate reasonable

progress toward securing required parking spaces by identifying as many of the approximately 21,000 parking spaces needed for NFL game-day parking as can be identified by the time of submission. In addition to the spaces on publicly owned property described in the Summary of Parking Rights, the Preliminary Parking Plan shall describe the number and location of private parking spaces expected to be available, along with reasonable evidence, such as a letter of intent between Stadco and the Person with legal rights to allow the use of such parking spaces for NFL Events, that such spaces will be available, subject to obtaining an off-site parking permit pursuant to Chapter 18.86 of the Santa Clara Municipal Code.

ARTICLE 18.  
ASSIGNMENT AND TRANSFERS

**Section 18.1.** Definitions. As used in this Article 18, the term “Transfer” means:

(a) Any total or partial sale, assignment or conveyance, or any transfer in any other mode or form, of or with respect to Stadco’s interest in this Agreement, or any valid, duly executed contract or agreement to do any of the same; or

(b) Any direct or indirect sale, assignment or conveyance, or any transfer in any other mode or form, of any ownership interest in Stadco that results in the Team no longer Controlling Stadco.

**Section 18.2.** Any Purpose of Restrictions on Transfer. The qualifications and identity of Stadco are of particular concern to the Stadium Authority, in view of the importance of the redevelopment of the Stadium Site to the general welfare of the community. It is because of the qualifications and identity of Stadco that the Stadium Authority is entering into this Agreement with Stadco and that Transfers are permitted only as provided in this Agreement.

**Section 18.3.** Prohibited Transfers. The limitations on Transfers set forth in this Article 18 shall apply from the Effective Date until the termination of this Agreement. Except as expressly permitted in this Agreement, Stadco represents and agrees that Stadco has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the Stadium Authority, which may be granted in the sole discretion of the Stadium Authority. Any Transfer made in contravention of this Section 18.3 shall be void and shall be deemed to be a default under this Agreement, whether or not Stadco knew of or participated in such Transfer.

**Section 18.4.** Permitted Transfers. Notwithstanding the provisions of Section 18.3, the following Transfers shall be permitted without prior consent of Stadium Authority (subject to satisfaction of the applicable conditions of Section 18.5):

(a) Any Transfer related to an encumbrance of Stadco's leasehold interest in the Premises approved by the Stadium Authority pursuant to Section 8.6.

(b) Any Transfer directly resulting from the foreclosure of or the granting of a deed in lieu of foreclosure of an encumbrance of Stadco's leasehold interest in the Premises approved by the Stadium Authority pursuant to Section 8.6.

(c) Any Transfer to an Affiliate of the Team.

(d) Any Transfer otherwise approved by the Stadium Authority.

**Section 18.5. Permitted Transfers Conditions.** As a condition of any direct Transfer of an interest in this Agreement pursuant to Section 18.4(c) or (d) above, the transferee must concurrently assume the obligations of Stadco under this Agreement and the Stadium Lease. As a condition of a Transfer described in Section 18.4(c), the Stadium Authority may require review and approval of the transferee's organizational documents for the purposes of determining that such Transfer does not result in a change in Control of Stadco by the Team.

**Section 18.6. Effectuation of Transfers.** Other than as permitted in Section 18.4, no Transfer of a direct interest in this Agreement shall be permitted without the prior approval of the Stadium Authority, which may be withheld in its sole discretion. Other than as permitted in Section 18.4, no Transfer shall be approved unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the Stadium Authority and in form recordable among the land records, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of this Agreement; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. The Stadium Authority shall grant or deny approval of a proposed Transfer within forty-five (45) days of receipt by the Stadium Authority of Stadco's request for approval of a Transfer, which request shall include evidence of the proposed transferee's business expertise and financial capacity. Any assignment of rights and/or delegation of obligations under this Agreement in connection with a Transfer of a direct interest in this Agreement (whether or not Stadium Authority approval is required) shall be in writing executed by Stadco and the assignee or transferee, which written agreement shall name the Stadium Authority as an express third party beneficiary with respect to such agreement (the "Assumption Agreement") with a copy thereof delivered to the Stadium Authority within seven (7) Business Days after the effective date thereof. Upon Transfer of a direct interest in this Agreement pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Project accruing from and after the date of such Transfer. Notwithstanding the foregoing, unless such assignee specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify Stadium Authority with respect to the Project, the assignor will retain such obligations and remain jointly and severally liable for such indemnity obligations with such assignee.

**ARTICLE 19.**  
**DEFAULT AND REMEDIES**

**Section 19.1. Application of Remedies.** The provisions of this Article shall govern the Parties' remedies for breach of this Agreement.

**Section 19.2. Default of Stadium Authority.**

(a) Event of Default. Following expiration of the applicable notice and cure period as set forth in subsection (b) below, each of the following events constitutes a “Stadium Authority Event of Default” and a basis for Stadco to take action against the Stadium Authority:

(i) The Stadium Authority fails to convey the leasehold in the Premises to Stadco as provided in this Agreement and Stadco is otherwise entitled by this Agreement to such conveyance.

(ii) The Stadium Authority breaches any other provision of this Agreement.

(iii) The Stadium Authority defaults under the Stadium Lease and has not cured such default within the applicable time period contained therein.

(iv) The Stadium Authority: (1) files for bankruptcy, dissolution, or reorganization, or fails to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or one hundred eighty (180) days after the filing; (2) makes a general assignment for the benefit of creditors; (3) applies for the appointment of a receiver, trustee, custodian, or liquidator, or fails to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or one hundred eighty (180) days after the filing; (4) becomes insolvent; or (5) fails, is unable or admits in writing to its inability to pay its debts as they become due.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of any of the above-described events, Stadco shall first notify the Stadium Authority in writing of its purported breach or failure to make a payment required by this Agreement, giving the Stadium Authority fifteen (15) days from receipt of such notice and (60) days from receipt of such notice to cure any other breach or failure. In the event the Stadium Authority does not then cure the payment default within such fifteen (15) day-period, or such other default within such sixty (60)-day period (or, if the default is not reasonably susceptible of cure within such sixty (60)-day period, the Stadium Authority fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion within a reasonable time not to exceed one hundred twenty (120) days from receipt of the default notice), then Stadco shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies:

(i) terminating this Agreement upon thirty (30) days prior written notice to the Stadium Authority;

(ii) instituting an action for specific performance;

(iii) prosecuting an action for damages (excluding punitive damages and Consequential Damages) for a Stadium Authority Event of Default occurring after the Close of Escrow; or

(iv) seeking any other remedy available at law or in equity (excluding punitive damages and Consequential Damages). If Stadco elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

**Section 19.3. Default of Stadco.**

(a) Event of Default. Following notice and cure as set forth in subsection (b) below, each of the following events constitutes a "Stadco Event of Default" and a basis for the Stadium Authority to take action against Stadco:

(i) Stadco fails to make any payment required to be made by Stadco under this Agreement.

(ii) Stadco Transfers in violation of the terms of Article 18.

(iii) Stadco defaults under the Stadium Lease and has not cured such default within the applicable time period contained therein, subject, to the rights of any tenant mortgagee under the Stadium Lease.

(iv) Stadco:

(1) files for bankruptcy, dissolution, or reorganization, or fails to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or one hundred eighty (180) days after the filing;

(2) makes a general assignment for the benefit of creditors;

(3) applies for the appointment of a receiver, trustee, custodian, or liquidator, or fails to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or one hundred eighty (180) days after the filing;

(4) becomes insolvent; or

(5) fails, is unable, or admits in writing to its inability, to pay its debts as they become due.

(v) Stadco breaches any other provision of this Agreement.

(vi) A default under the Non-Relocation Agreement that is not cured within the time periods set forth therein

(vii) Stadco, or an Affiliate, defaults under the Subordinate Loan Documents and such default is not cured within the time periods set forth therein.

(viii) Stadco, or an Affiliate, defaults under the Construction Agency Agreement and such default is not cured within the time periods set forth therein.

(b) Notice and Cure Procedure. Upon the occurrence of any of the above-described events, the Stadium Authority shall first notify Stadco in writing of its purported breach or failure, giving Stadco ten (10) days from receipt of such notice to cure a failure to make a payment required by this Agreement and thirty (30) days from receipt of such notice to cure any other breach or failure. Except as provided in the Stadium Lease with respect to permitted Mortgagees, in the event Stadco does not then cure the payment default within such ten (10) day period, or such other default within such thirty (30)-day period (or, if the default is not reasonably susceptible to cure within such thirty (30)-day period, Stadco fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion within a reasonable time not to exceed sixty (60) days from receipt of the default notice), then the Stadium Authority shall be entitled to any rights afforded it at law or in equity by pursuing any or all of the following remedies:

- (i) terminating this Agreement upon thirty (30) days' prior written notice to Stadco;
- (ii) instituting an action for specific performance;
- (iii) prosecuting an action for damages (excluding punitive damages and Consequential Damages) for a Stadco Event of Default occurring after the Close of Escrow;  
or
- (iv) seeking any other remedy available at law or in equity (excluding punitive damages and Consequential Damages). If the Stadium Authority elects to terminate this Agreement the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

Section 19.4. Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default. No waiver made by one Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own obligation under this Agreement will be considered a waiver with respect to any such obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

ARTICLE 20.  
GENERAL PROVISIONS

Section 20.1. Stadco Representations and Warranties. As an inducement to the Stadium Authority to enter into this Agreement, Stadco hereby represents and warrants to the Stadium Authority as of the Effective Date (except with respect to (g)) and as of the Close of Escrow, as follows:

(a) Power and Authority. Each individual executing and delivering this Agreement on behalf Stadco hereby represents to the other Party that such individual has all requisite power and authority to execute and deliver the same and to bind Stadco hereunder.

(b) Organization. Stadco is a limited liability company, duly organized and validly existing under the laws of the State of Delaware, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated. Stadco is qualified to do business in the State of California.

(c) Authorization. Stadco has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement, performance of the Agreement. No consent to the execution and delivery of this Agreement by Stadco or the performance by Stadco of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or other Person, other than any such consent which already has been given.

(d) Enforceable. Upon the date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of Stadco, enforceable against Stadco in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity.

(e) No Conflict. The execution, delivery and performance of this Agreement by Stadco does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the formation documents of Stadco, (ii) any applicable Law binding upon or applicable to Stadco, or (iii) any material agreements to which Stadco is a party that are materially related to the development or operation of the Stadium, including, but not limited to a loan agreement.

(f) No Litigation. Unless otherwise disclosed in writing to the Stadium Authority prior to the date of this Agreement and prior to the Close of Escrow, as applicable, to Stadco's actual knowledge, there is no existing, pending or threatened litigation, suit, Action or Proceeding before any court or administrative agency affecting Stadco that would, if adversely determined, materially and adversely affect Stadco's ability to perform its obligations under this Agreement or to manage the development of, and if Stadco or an Affiliate enters into an agreement with the Stadium Authority to operate the Stadium, the operation of, the Stadium. For the purpose of this subsection (f), Stadco's actual knowledge means the actual knowledge of each of John Edward York and Larry MacNeil.

(g) No Material Adverse Change. There has been no material adverse change in the financial condition of Stadco since the Effective Date which would materially and adversely affect Stadco's ability to perform its obligations under this Agreement, or to participate in the development and operation of the Stadium in accordance with the terms of this Agreement.

**Section 20.2. Stadium Authority Representations and Warranties.** As an inducement to Stadco to enter into this Agreement, the Stadium Authority represents and warrants to Stadco as of the Effective Date (except with respect to (g)) and the Close of Escrow as follows:

(a) **Power and Authority.** Each individual executing and delivering this Agreement on behalf the Stadium Authority hereby represents to the other Party that such individual has all requisite power and authority to execute and deliver the same and to bind the Stadium Authority hereunder.

(b) **Organization.** The Stadium Authority is a joint powers authority duly formed and validly existing under the laws of the State of California, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated.

(c) **Authorization.** The Stadium Authority has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement, performance of the Agreement. No consent to the execution and delivery of this Agreement by Stadco or the performance by Stadco of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or other Person, other than any such consent which already has been given.

(d) **Enforceable.** This Agreement shall constitute a legal, valid and binding obligation of the Stadium Authority, enforceable against the Stadium Authority in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity.

(e) **No Conflict.** The execution, delivery and performance of this Agreement by the Stadium Authority does not and will not conflict with, or constitute a violation or breach of, or constitute a default under or violation of (i) the Joint Powers Agreement or any other formation documents of the Stadium Authority, (ii) any applicable Law binding upon or applicable to the Stadium Authority, or (iii) any material agreements to which the Stadium Authority is a party, that is materially related to the development or operation of the Project, including but not limited to the Ground Lease.

(f) **No Litigation.** Unless otherwise disclosed in writing to Stadco, to the Stadium Authority's actual knowledge, there is no existing, pending or threatened litigation, suit, Action or Proceeding before any court or administrative agency affecting the Stadium Authority or the Stadium Site that would, if adversely determined, materially and adversely affect the Stadium Authority or the Stadium Site or the Stadium Authority's ability to perform its obligations under this Agreement or to develop and operate the Project. For the purpose of this subsection (f), the Stadium Authority's actual knowledge means the actual knowledge of the Executive Director.

(g) No Material Adverse Change. To the best of the Stadium Authority's knowledge, there has been no material adverse change in the financial condition or bonding capacity of the Stadium Authority since the date of this Agreement which would materially and adversely affect the Stadium Authority's ability to perform its obligations under this Agreement or to develop and operate the Stadium.

Section 20.3. Stadco's Termination of Agreement. Notwithstanding any provision of this Agreement to the contrary, if, prior to the Close of Escrow, Stadco determines that one or more conditions to the Close of Escrow will not timely be met following the good faith effort to satisfy such condition by Stadco and/or the Stadium Authority, Stadco may give notice of such determination to the Stadium Authority, specifying in reasonably sufficient detail the basis for Stadco's determination. Following the delivery of such notice, the Parties shall cooperate to minimize the costs incurred by either Party in connection with this Agreement. Over the ninety (90) days following delivery of such notice, the Parties shall meet at least weekly to explore and consider in good faith approaches to satisfying the conditions to the Close of Escrow. If, at the conclusion of such ninety (90)-day period, it remains Stadco's good faith determination that the conditions to the Close of Escrow will not timely be met, Stadco shall have the right to terminate this Agreement by delivering a notice of termination to the Stadium Authority. If the Agreement is terminated under this Section, any costs incurred by a Party in connection with this Agreement and the Project shall be completely borne by such Party, and the Parties shall have no further obligations to each other with respect to this Agreement, except to the extent this Agreement expressly provides that an obligation survives termination hereof.

Section 20.4. Notices, Demands and Communications.

(a) General Notice. All notices, consents, directions, approvals, instructions, requests and other communications given to a Party under this Agreement shall be given in writing to such Party at the address set forth below, or at such other address as such Party shall designate by written notice to the other Party to this Agreement and may be (i) sent by registered or certified U.S. Mail with return receipt requested, (ii) delivered personally (including delivery by private courier services) or (iii) sent by facsimile (with confirmation of such notice) to the Party entitled thereto. Such notices shall be deemed to be duly given or made (1) three (3) Business Days after posting if mailed as provided, (2) when delivered by hand unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day, or (3) in the case of facsimile (with confirmation of such notice), when sent, so long as it was received during normal business hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day. Each Party hereto shall have the right at any time and from time to time to specify additional parties to whom notice hereunder must be given, by delivering to the other Party five (5) days' notice thereof setting forth the address(es) for each such additional party.

Stadium Authority:

Santa Clara Stadium Authority  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attention: Jennifer Sparacino, Executive Director

with copies to:

Santa Clara Stadium Authority  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attention: Richard E. Nosky, Jr., Authority General Counsel

Stadco:

Forty Niners Stadium, LLC  
4949 Centennial Boulevard  
Santa Clara, CA 95054  
Attention: John Edward York, President

with copies to:

Forty Niners Stadium, LLC  
4949 Centennial Boulevard  
Santa Clara, CA 95054  
Attention: Larry MacNeil, CFO

and

Forty Niners Stadium, LLC  
4949 Centennial Boulevard  
Santa Clara, CA 95054  
Attention: Jack Hill, Project Executive

and

Coblentz, Patch, Duffy & Bass LLP  
One Ferry Building, Suite 200  
San Francisco, CA 94111  
Attention: Harry O'Brien

(b) NFL Notice. If any Party delivers any notice pursuant to Article 19 or Section 20.3 of this Agreement, such Party shall also contemporaneously deliver a copy of such notice to the NFL at 280 Park Avenue, New York, NY 10017, Attention: Treasurer. The NFL

shall have the right at any time and from time to time to change such address for notice by giving all Parties at least five (5) days prior written notice of such change of address.

**Section 20.5. Stadium Authority Approval.** Whenever this Agreement calls for Stadium Authority approval, consent, or waiver, the written approval, consent, or waiver of the Executive Director, or his or her designee, shall constitute the approval, consent, or waiver of the Stadium Authority, without further authorization required from the Board. The Stadium Authority hereby authorizes the Executive Director, or his or her designee, to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the Stadium Authority.

**Section 20.6. No Personal Liability.** No member, official, councilmember, commissioner, partner, employee, shareholder, member, manager, director or agent of any Party or the City shall be personally liable to any other Party, the City or any of their successors-in-interest, in the event of any default or breach by any Party or for any amount which may become due to such Party or on any obligation under the terms of this Agreement.

**Section 20.7. Submittals and Approvals.** Various submittals are required or may be provided by the Stadco pursuant to this Agreement. As expressly provided by this Agreement, the Stadium Authority shall approve or disapprove certain of Stadco's submittals within a certain timeframe or else such submittal shall be deemed approved by the Stadium Authority. Notwithstanding the provisions for deemed approval, no matter shall be deemed approved unless the request for approval contains the following provision, in bold print with the appropriate time period stated:

NOTICE IS HEREBY GIVEN THAT PURSUANT TO SECTION \_\_ OF THE DDA THAT FAILURE TO APPROVE OR DISAPPROVE THE REQUESTED MATTER WITHIN \_\_\_\_ ( ) DAYS SHALL BE DEEMED AN APPROVAL.

**Section 20.8. Enforced Delay.**

(a) **Force Majeure.** No Party hereunder, nor its successor-in-interest, shall be deemed to be in default with respect to an obligation under this Agreement where an enforced delay in the performance of such obligation is primarily due to war; insurrection; strikes and substantial interruption of work because of labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; acts or the failure to act of any public or governmental agency or entity relating to the issuance of permits or other regulatory approvals, and moratoriums in the issuance of permits or approvals applicable to the Stadium Site or the Improvements; delays of contractors and subcontractors due to any of these causes; the unanticipated presence of hazardous materials or other concealed conditions on the Stadium Site that would materially and adversely hinder the construction of the Project (including archeological finds); inability to obtain materials or reasonably acceptable substitute materials; Litigation Force Majeure (provided that the Party seeking to claim the occurrence of a Litigation Force Majeure proceeds with due diligence to defend such Action or Proceeding or takes other appropriate measures to resolve any dispute that is the subject of such Action or Proceeding); or

other causes beyond the reasonable control and without the fault of the Party claiming an extension of time to perform ("Force Majeure"). An extension of time for Force Majeure shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the enforced delay; provided that the Party requesting an extension of time under this Section 20.8 has given notice to the other Parties promptly following knowledge of the enforced delay, but in no event later than thirty (30) days after the commencement of such enforced delay. For purposes of this Section 20.8, a cause shall be beyond the control of the Party whose performance would otherwise be due only if and to the extent such cause would prevent or hinder the performance of an obligation by any reasonable person similarly situated and shall not apply to causes peculiar to the Party claiming the benefit of this Section 20.8 (such as a failure to order materials in a timely fashion).

(b) Litigation Force Majeure. "Litigation Force Majeure" means any Action or Proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, brought by a third party, (i) which seeks to challenge the validity of any action taken by the City, the Stadium Authority or the Agency in connection with the Project, including the City's approval execution and delivery of the Ground Lease and the Stadium Authority's approval, execution and delivery of this Agreement or the Stadium Authority's approval, execution and delivery of the Stadium Lease and its performance hereunder and thereunder, as applicable, or other action by the City, the Stadium Authority or the Agency approving the execution and delivery of any Project-related documents, or any findings upon which any of the foregoing are predicated, or (ii) which seeks to challenge the validity of any other governmental permit or approval required in connection with construction of the Project. Performance by a Party hereunder shall be deemed delayed or made impossible by virtue of Litigation Force Majeure during the pendency thereof, and until a judgment, order, or other decision resolving such matter in favor of the Party whose performance is delayed has become final and unappealable. Under no circumstances shall the delay attributable to an event of Litigation Force Majeure extend beyond three (3) years unless the Parties expressly waive such limitation. The Parties shall each proceed with due diligence and shall cooperate with one another to defend the Action or Proceeding or take other measures to resolve the dispute that is the subject of such Action or Proceeding.

Section 20.9. Inspection of Books and Records. The Stadium Authority has the right at all reasonable times during customary business hours and upon two (2) Business Days' prior written notice to inspect (but not copy, unless such information is public record) the books and records of Stadco pertaining to its obligations under this Agreement; provided that, the Stadium Authority shall, to the maximum extent allowed by applicable Law, keep strictly confidential any such information which Stadco determines is proprietary. Stadco also has the right at all reasonable times during customary business hours and upon two (2) Business Days' prior written notice to inspect the books, records and all other documentation of the Stadium Authority which legally may be disclosed pertaining to its obligations under this Agreement. The provisions of this Section 20.9 shall survive the termination of this Agreement for two (2) years after such termination.

**Section 20.10. Table of Contents; Headings.** The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

**Section 20.11. Governing Law.** This Agreement and the actions of the Parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of California (excluding principles of conflict of laws).

**Section 20.12. Severability.** If any term or provision of this Agreement, or the application thereof to any Person or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Agreement, or the application of such term or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 20.13. Legal Actions.** Except as otherwise expressly provided in this Agreement, if either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

(a) In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Agreement and/or the power of the Stadium Authority to enter into this Agreement or perform its obligations hereunder, either the Stadium Authority or Stadco may defend such action. Upon commencement of any such action, the Stadium Authority and Stadco shall meet in good faith and seek to establish a mutually acceptable method of defending such action, and the Stadium Authority shall defend such action if requested by Stadco.

(b) Subject to the agreement of the Parties contained in this Agreement regarding alternative procedures for dispute resolution, any Action or Proceeding against any Party arising out of or relating to this Agreement or any transaction contemplated hereby or any judgment entered by any court in respect thereof may be brought in any federal or state court located in the County of Santa Clara, California, and each Party hereby submits to the nonexclusive jurisdiction of such courts for the purpose of any such Action or Proceeding. Each Party irrevocably agrees not to assert any objection that it may ever have to the location of venue of any such Action or Proceeding in any federal or state court in the County of Santa Clara,

California, and any claim that any such Action or Proceeding brought in any such court has been brought in an inconvenient forum. Subject to the agreement of the Parties contained in this Agreement regarding alternative procedures for dispute resolution, each Party agrees not to bring any Action or Proceeding against the other Party arising out of or relating to this Agreement or any transaction contemplated hereby except in a federal or state court located in the County of Santa Clara, California. The provisions of this Section 20.13 shall survive the termination of this Agreement.

**Section 20.14. Parties Not Co-Venturers.** Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

**Section 20.15. Entire Understanding of the Parties.** This Agreement constitutes the entire understanding and agreement of the Parties with respect to the matters set forth herein.

**Section 20.16. Discretion Retained By City.** The Stadium Authority's execution of this Agreement in no way limits the lawful exercise by the City in the otherwise required permit and approval process.

**Section 20.17. Counterparts.** This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together constitute one and the same Agreement. All signatures need not be on the same counterpart.

**Section 20.18. Amendments.** The Parties may amend this Agreement only by means of a writing signed by all Parties.

**Section 20.19. Standard of Approval.** Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

**Section 20.20. Indemnity.** To the extent permitted by law, and subject to the indemnification obligations under the Construction Agency Agreement and the Design-Build Agreement, Stadco undertakes and agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to the Stadium Authority) the Stadium Authority, the City, their respective commissioners, council members, officers, employees, agents, and successors (the "Indemnified Parties"), from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation and litigation-related matters, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to Stadco's acts or omissions in its performance under this Agreement, except to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties.

**Section 20.21. No Presumption against Drafter.** This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of

the Parties, without any presumption against the Party responsible for drafting any part of this Agreement (including, but not limited to California Civil Code Section 1654).

**Section 20.22. Successors and Assigns.** This Agreement is binding upon and will inure to the benefit of the successors and assigns of the Stadium Authority, the Agency and Stadco, subject to the limitations on assignment set forth in Article 18, including, as to any Mortgagee, any transferee and any successor or assign of such transferee. Where each term "Stadium Authority" or "Stadco" is used in this Agreement, it means and includes the respective successors and assigns.

**Section 20.23. No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other Person shall have or acquire any right or action based upon any provisions of this Agreement.

**Section 20.24. Time of Performance.**

(a) **Expiration.** All performance dates (including cure dates) expire at 5:00 p.m., Santa Clara, California time, on the performance or cure date.

(b) **Weekends and Holidays.** A performance date that falls on a Saturday, Sunday or Legal Holiday is deemed extended to the next Business Day.

(c) **Days for Performance.** All periods for performance specified in this Agreement in terms of days shall be calendar days, and not Business Days, unless otherwise expressly provided in this Agreement.

(d) **Time of the Essence.** Time is of the essence with respect to each required completion date in the Schedule of Performance.

**Section 20.25. Further Assurances.** The Parties shall execute, acknowledge and deliver, after the date hereof, without additional consideration, such further assurances, instruments and documents, and shall take such further actions, as the Parties shall reasonably request of each other in order to fulfill the intent of this Agreement and the transactions contemplated thereby. The Parties understand and acknowledge that the actual amounts of the potential revenue streams that are planned to be used to finance the development of the Stadium, as generally described in this Agreement, and the specific requirements of the various bond underwriters and lenders that will provide financing in the future, are uncertain at this point in time and that no Party has committed to any specific amount to be raised from these funding sources nor has any Party made any representation that it will be financially feasible to capitalize these funding sources. In recognition of these facts, the Parties acknowledge that it is critical to maintain flexibility in the approach to financing of the Stadium construction, subject in all events to the limitations on the investment of the City, Agency and CFD as set forth herein.

**Section 20.26. Public Records Act Request.** If any Person requests the Stadium Authority or any of its Affiliates, or agents to disclose any information of a confidential, proprietary or trade secret nature with respect to Stadco or Stadco's activities in connection with

the Project under the California Public Records Act (California Government Code Section 6250, et seq.) or equivalent or successor statute (the "Public Records Act"), then, prior to making any such disclosure, the Stadium Authority shall give notice to Stadco prior to any required disclosure and, subject to the time periods imposed by the Public Records Act for responses to public record requests, shall give Stadco a reasonable opportunity to interpose an objection or to seek a protective order, subject to the time limitations. Each Party shall also cooperate with each other and use reasonable efforts to promptly identify any applicable exemptions from disclosure under the Public Records Act. If a legal action is filed against the Stadium Authority seeking to compel disclosure of any such information of a confidential, proprietary or trade secret nature with respect to Stadco or Stadco's activities in connection with the Project, the Stadium Authority shall give prompt notice of the filing of such action to Stadco and Stadco shall defend and indemnify the Stadium Authority from all costs and expenses of such defense, including reasonable attorney fees of the Stadium Authority or attorneys' fees awarded by a court arising out of such action. The provisions of this Section 20.26 shall survive the termination of this Agreement.

**Section 20.27. Cooperation with Lenders.** At the request of lenders under any Stadium Authority Financing or any financing permitted by Section 8.6 of this Agreement obtained by Stadco, the Parties shall reasonably cooperate to revise provisions of this Agreement to coordinate with the documents for such financings provided that the requested revisions do not materially alter the Parties rights or obligations under this Agreement, as reasonably determined by each Party.

**Section 20.28. Effectiveness of Agreement.** This Agreement is dated and shall become effective on the date the Parties duly execute and deliver this Agreement following approval of this Agreement by the Board in its sole and absolute discretion. The Effective Date of this Agreement will be inserted on Page 1 of this Agreement by the Stadium Authority with the prior approval of Stadco. Where used in this Agreement or in any of its exhibits, references to the "date of this Agreement," the "Agreement date" or the "Effective Date" means the Effective Date determined as set forth above and shown on Page 1 of this Agreement.

**In Witness Whereof** the Parties have caused this Agreement to be executed by their duly appointed representatives as of the date first above written.

**SANTA CLARA STADIUM AUTHORITY,** APPROVED AS TO FORM:  
a California joint powers authority

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JENNIFER SPARACINO  
Executive Director

1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax Number: (408) 241-6771

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RICHARD E. NOSKY, JR.  
Stadium Authority General Counsel

ATTEST:

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ROD DIRIDON, JR.  
Stadium Authority Secretary

**FORTY NINERS STADIUM, LLC,**  
a Delaware limited liability company

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JOHN EDWARD YORK  
President

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Telephone: (408) 562-4949  
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