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and Santa Clara Stadium Authority, and
8 Cross-Complainant Santa Clara Stadium
Authority
9

10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF SANTA CLARA**

12 FORTY NINERS STADIUM
13 MANAGEMENT COMPANY LLC, and
14 FORTY NINERS SC STADIUM COMPANY
LLC,

15 Plaintiffs,

16 v.

17 CITY OF SANTA CLARA, a municipal
corporation; SANTA CLARA STADIUM
18 AUTHORITY, a joint powers agency; and
DOES 1-20, inclusive,

19 Defendants.

20 SANTA CLARA STADIUM AUTHORITY, a
21 joint powers agency,

22 Cross-Complainant,

23 v.

24 FORTY NINERS STADIUM
MANAGEMENT COMPANY LLC, a
25 Delaware limited liability company, and
26 FORTY NINERS SC STADIUM COMPANY
LLC, a Delaware limited liability company,
and ROES 1-40, inclusive,

27 Cross-Defendants.
28

Case No. 19CV355432

**SANTA CLARA STADIUM
AUTHORITY'S CROSS-COMPLAINT
FOR DECLARATORY RELIEF,
ACCOUNTING, BREACH OF
MANAGEMENT AGREEMENT,
BREACH OF IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING,
AND BREACH OF FIDUCIARY DUTIES**

Action Filed: September 20, 2019
Trial Date: None Set

1 Cross-Complainant Santa Clara Stadium Authority alleges in this Cross-Complaint as
2 follows:

3 **The Parties**

4 1. Cross-Complainant Santa Clara Stadium Authority ("Stadium Authority") is a joint
5 exercise of powers entity, created through Government Code section 6500 *et seq.*, with its
6 principal place of business in the City of Santa Clara, County of Santa Clara, State of California.

7 2. Cross-Defendant Forty Niners Stadium Management Company LLC ("Stadium
8 Manager") is a Delaware limited liability company, with its principal place of business in the City
9 of Santa Clara, County of Santa Clara, State of California.

10 3. Cross-Defendant Forty Niners SC Stadium Company LLC ("StadCo") is a
11 Delaware limited liability company, with its principal place of business in the City of Santa Clara,
12 County of Santa Clara, State of California.

13 4. Stadium Authority is unaware of the true identities of the Cross-Defendants sued
14 herein as ROES 1 through 40, and will amend this Cross-Complaint to state their true names when
15 they have been ascertained.

16 **Background Facts**

17 5. The San Francisco Forty Niners ("Team") is a professional football team, and a
18 franchise of the National Football League. Prior to 2014, the Team played its home games in
19 Candlestick Park in the City and County of San Francisco. In 2008, the Team and the City of
20 Santa Clara, through its governing body, the City Council, began to discuss the possibility of
21 developing a new stadium in the City of Santa Clara ("Levi's Stadium").

22 6. Representatives for the Team and City of Santa Clara negotiated terms that would
23 apply to the development and operation of Levi's Stadium. These terms, as well as objectives,
24 findings, and requirements for the development and operation of the stadium, were presented to
25 the voters of the City of Santa Clara in the Santa Clara Stadium Taxpayer Protection and
26 Economic Progress Act, also known as "Measure J."

27 7. Measure J authorized the creation of a separate governmental entity, *i.e.*, Stadium
28 Authority, to ground lease the stadium site from the City of Santa Clara, and in turn, enter into a

1 stadium lease with the Team, whereby Stadium Authority would serve as the owner and landlord
2 of Levi's Stadium. Measure J authorized Stadium Authority to oversee design, construction,
3 development, management and operation of the stadium, including but not limited to, the right to
4 enter into agreements with the Team. Measure J includes various terms and responsibilities
5 pertaining to the costs, expenses, and revenues of the stadium operations. One of the key and
6 repeated objectives, findings, and declarations of Measure J was to provide taxpayer protections.

7 8. Measure J requires that the City of Santa Clara receive fair market value for the
8 land based on the fixed base rent payments for the stadium plus anticipated performance-based
9 rent from non-NFL events held at Levi's Stadium. Indeed, the ballot materials paid for by the
10 Team to convince the voters to pass Measure J represented that the performance-based rent over
11 the life of the stadium would produce \$155 million.

12 9. In June 2010, the voters of the City of Santa Clara passed Measure J. The
13 Ordinance portion of Measure J is codified into the Santa Clara City Code as Chapter 17.20.
14 Because Chapter 17.20 was adopted by the voters, it can be amended only by the voters.

15 10. On or about March 28, 2012, Stadium Authority, as landlord, and StadCo, as
16 tenant, entered into a Stadium Lease Agreement. The Stadium Lease Agreement was
17 subsequently amended and restated on or about June 19, 2013. The initial term of the Stadium
18 Lease Agreement is forty (40) years.

19 11. On or about March 28, 2012, Stadium Authority, StadCo, and Stadium Manager
20 entered into a Stadium Management Agreement, which was subsequently amended (collectively,
21 the "Management Agreement"). A copy of the Management Agreement, as amended, is attached
22 hereto as Exhibit A.

23 12. The Management Agreement was not the result of a competitive bid process. At
24 StadCo's request and based upon representations that Stadium Manager had the requisite
25 management experience, Stadium Authority agreed to select Stadium Manager to provide
26 management services on a continual, year-round basis, including overseeing the day-to-day
27 operations and maintenance of Levi's Stadium. Indeed, Stadium Manager represented that it is "an
28 organization whose principals have substantial experience and expertise in the management and

1 operation of public assembly facilities." (Exh. A, Management Agreement, Recital D.)

2 13. Under the Management Agreement, Stadium Manager is responsible for handling
3 the management and operational services for NFL events on the tenant StadCo's behalf, and also
4 handling the marketing and booking of non-NFL events on the owner/landlord Stadium
5 Authority's behalf.

6 14. Stadium Authority, charged with safeguarding public funds, has a duty to the
7 public to ensure that its contracts and expenditures are in accordance with the agreements with
8 Stadium Manager, and in accordance with the laws and regulations governing public contracting
9 and labor law, among others.

10 **Management Agreement Obligations**

11 15. Construction began in April 2012 and Levi's Stadium opened in July 2014.

12 16. Stadium Manager agreed to various pre-opening obligations (including, but not
13 limited to, developing policies and procedures for non-NFL events), and post-opening obligations
14 (including, but not limited to, developing operation and maintenance plans, budgets, and
15 marketing plans). (Exh. A, Management Agreement, §§2.4-2.12.)

16 17. Under the Management Agreement, Stadium Manager is obligated to exercise
17 prudent, commercially reasonable good faith efforts in managing and operating Levi's Stadium in
18 accordance with the terms so as to (a) maintain the Stadium in the Required Condition and operate
19 the Stadium ... to a standard of quality comparable to other similar facilities ...; (b) control
20 Manager Operating Expenses, StadCo Operating Expenses and Stadium Authority Operating
21 Expenses; and (c) maximize Operating Revenues. (*Id.*, §2.9.)

22 18. Stadium Manager is obligated to conduct the management and operation of Levi's
23 Stadium at all times with integrity and good faith. (*Id.*, §2.10.)

24 19. Stadium Manager is obligated to maintain complete and accurate books and records
25 relating to stadium operations and the services Stadium Manager provides under the Management
26 Agreement. Title to form documents and software developed by or for Stadium Manager in
27 connection with performing its obligations – other than game day ticket information or NFL
28 events data – vest and are the property of Stadium Authority and StadCo. (*Id.*, §4.2.)

1 20. While the Management Agreement ensures certain proprietary information is not
2 disclosed to competitors or potential users by requiring written consent prior to release, the parties
3 expressly agreed in the Management Agreement that records pertaining to non-NFL events and
4 Stadium Authority's season are not private or confidential. In addition, Stadium Manager is
5 obligated to maintain separate records for the NFL and non-NFL seasons, in order to effectively
6 protect the confidentiality of records relating solely to StadCo and the NFL season. (Exh. A, First
7 Amendment to Management Agreement, §7.)

8 21. As is required of any manager, especially one managing a public asset, Stadium
9 Manager is obligated to comply in all material respects with all legal requirements, including
10 applicable statutes, laws, rules, regulations, ordinances and similar requirements of applicable
11 Government Authorities. (Exh. A, Management Agreement, §2.11.)

12 22. Based upon Stadium Manager's representations about its professional capabilities,
13 Stadium Authority delegated, in the First Amendment of the Management Agreement dated
14 November 13, 2012, Stadium Authority Executive Director's procurement authority to Stadium
15 Manager:

16 "Stadium Manager shall have full authority and discretion to select the providers,
17 and to negotiate, approve, enter into and administer contracts with such providers
18 on behalf of the Stadium Authority, for the purchase of supplies, materials and
19 equipment, and for services, relating to the Stadium and its operations ('Stadium
Procurement Contracts'), as and to the extent the Executive Director has authority
to enter into such Stadium Procurement Contracts pursuant to Sections 17.30.010
through 17.30.180 of the Santa Clara City Code."

20 (*Id.*, First Amendment to Management Agreement, §2.1.)

21 23. In connection with the delegation of procurement authority in the First Amendment
22 to the Management Agreement, Stadium Manager was required within thirty (30) days to provide
23 Stadium Authority with information regarding all stadium procurement contract entered into for
24 amounts over \$100,000. (*Id.*, §2.1.) In addition, under Section 17.30.120 of the Santa Clara City
25 Code, any contract to provide services for Stadium Authority totaling \$250,000 or more were
26 subject to approved budgetary amounts, and required Stadium Authority Board's approval. (As
27 discussed in more detail below, Stadium Manager failed to comply these reporting and
28 procurement obligations, and applicable laws. As such, on September 17, 2019, the City of Santa

1 Clara voted to adopt an amendment to these ordinances to require Stadium Authority's Executive
2 Director, including any delegee such as Stadium Manager, to obtain Stadium Authority Board
3 approval prior to entering any contract to provide services for Stadium Authority.)

4 24. Stadium Manager is also required under the Management Agreement to use
5 approved procurement forms for Stadium procurement contracts based on the City of Santa Clara's
6 existing forms, or as later modified with the Stadium Authority Executive Director's prior
7 approval. (Exh. A, First Amendment to Management Agreement, §2.2.)

8 25. In exercising its delegated procurement authority on behalf of a public entity,
9 Stadium Manager is required to comply with all applicable legal requirements, including but not
10 limited to California Prevailing Wage statutes (California Labor Code §§1720 and 1771),
11 regulations of the California Department of Industrial Relations, as well as conflict of interest laws
12 under the Political Reform Act and Government Code §1090.

13 26. Stadium Manager's transactions with affiliates must also comply with contract
14 procurement laws. Specifically, the Management Agreement provides that Stadium Manager may
15 acquire property, services or engage in transactions with affiliates for any of the goods or services
16 to be performed under the Management Agreement, "but only if the prices charged and services
17 rendered are competitive with those obtainable from others rendering comparable services in the
18 field." (Exh. A, First Amendment to Management Agreement, §2.3.)

19 27. The Management Agreement provides Stadium Authority the right to terminate the
20 agreement for cause and without StadCo's prior written approval based on the following
21 occurrences: (i) fraud or intentional or material representation by or at the direction of Stadium
22 Manager in connection with the Management Agreement; (ii) misappropriation or conversion of
23 funds received by or at the direction of Stadium Manager; or (iii) willful misconduct of Stadium
24 Manager resulting in an uncured Event of Default. (Exh. A, Management Agreement, §8.1.1.)

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1 **From 2016, Stadium Authority is Forced to Seek its Own Records and**
2 **files the Related Declaratory Relief Action in 2017**

3 28. On or about June 15, 2016, a Civil Grand Jury in the Santa Clara County Superior
4 Court issued an investigative report regarding the operation of Levi's Stadium. Finding that no
5 audit had been completed to assure City taxpayers that all transactions were in compliance with
6 Measure J, the Grand Jury recommended "A comprehensive audit focused on compliance with
7 Measure J and the use of the City of Santa Clara general funds should be conducted immediately."
8 The Grand Jury further recommended that Stadium Authority release the audit results to the
9 public. A copy of the June 15, 2016 Grand Jury Report is attached hereto as Exhibit B.

10 29. On or about July 25, 2016, Stadium Authority retained Harvey Rose Associates,
11 LLC, a public sector management consulting company (the "Independent Auditor"), to conduct the
12 recommended Measure J Audit. Starting in August 2016, the Independent Auditor met with
13 Stadium Authority staff, and reviewed and analyzed details of Measure J, core agreements
14 between Stadium Authority and Stadium Manager and StadCo, and financial and stadium-related
15 documents from Stadium Authority. The Independent Auditor made several requests to Stadium
16 Manager for various financial, management and operational documents, including underlying data
17 and information. The Independent Auditor met a few times with Stadium Manager staff regarding
18 the Measure J Audit and the requested information, each time at the Team's office located at Levi's
19 Stadium. Ultimately, Stadium Manager did not provide the Independent Auditor with all of the
20 requested information, which impacted the Independent Auditor's ability to fully conduct his work
21 and therefore his final report.

22 30. Unrelated to the Measure J Audit, Stadium Authority separately requested that
23 Stadium Manager provide Stadium Authority with its own financial, management and operational
24 documents. These requests, which have continued from 2016 to the present, were made directly
25 by Stadium Authority staff, the City Attorney, outside counsel, and even by the public through
26 Public Record Requests.

27 31. In February 2017, Stadium Authority filed a Cross-Complaint for Declaratory
28 Relief to adjudicate its rights to obtain ownership, access, copying and use of its own records

1 (Santa Clara Superior Court, Case No. 17CV304903). That Declaratory Relief action was based
2 on the Independent Auditor's requests and Stadium Authority's own requests. To date, Stadium
3 Manager has not provided Stadium Authority with complete copies of the requested records.

4 32. The very same refusal to provide records and the lack of transparency from
5 Stadium Authority's own manager addressed in Stadium Authority's Declaratory Relief action has
6 led to and impacted other disputes, some of which are directly at issue in this case. Accordingly,
7 on October 2, 2019, Stadium Authority filed and served a Notice of Related Action in both this
8 action and the related 2017 Declaratory Relief action. Cross-Defendants did not oppose the
9 Notices of Related Action.

10 **Stadium Manager Violates the Law**

11 33. With the possession of records and transparency issues still unresolved, Stadium
12 Authority raised concerns in 2018 regarding Stadium Manager's compliance with contract
13 procurement obligations. Stadium Manager was unable or unwilling to provide sufficient
14 assurances in response to Stadium Authority's concerns. Thus, on or about December 13, 2018,
15 Stadium Authority served a request for Management Correction Action pursuant to Section 3.3.2
16 of the Management Agreement. Therein, Stadium Authority identified examples of Stadium
17 Manager's failure to report or obtain necessary approval for its procurement activity on behalf of
18 Stadium Authority. A copy of the December 13, 2018 Corrective Action Notice is attached hereto
19 as Exhibit C.

20 34. The Management Agreement required substantive meetings and a written
21 corrective action plan in response to Stadium Authority's request for Management Corrective
22 Action, which Stadium Manager failed to provide. Instead of receiving corrections, Stadium
23 Authority had to continue to follow-up and request contracts and records.

24 35. One contract that Stadium Manager procured on Stadium Authority's behalf was
25 with third-party NEx Systems, a flooring and coating vendor that had already provided services at
26 Levi's Stadium. When Stadium Authority learned of charges over \$250,000, it notified Stadium
27 Manager of its failure to obtain prior Stadium Authority Board approval. To remedy that failure,
28 Stadium Manager submitted a contract for retroactive approval and represented that this contract

1 was performed in accordance with prevailing wage laws. Stadium Manager also represented that
2 the total amount due to be paid by Stadium Authority for the work was \$643,567. Both
3 representations by Stadium Manager were later revealed to be false. The contractor under the NEx
4 contract did not comply with prevailing wage requirements, a fact that Stadium Manager has now
5 admitted, and the total amount due was significantly less than the \$643,567 that Stadium Manager
6 was asking the Stadium Authority to pay.

7 36. On or about March 21, 2019, Stadium Authority issued a Notice of Breach of the
8 Management Agreement due to Stadium Manager's failure to comply with the California Labor
9 Code and Department of Industrial Relations regulations for prevailing wage requirements related
10 to the NEx services. The Notice of Breach also identified Stadium Manager's failure to comply
11 with Stadium Authority Procurement Policy, as set forth in Chapter 17.30 of the Santa Clara City
12 Code. This March 21, 2019 Notice of Breach included a mechanism for Stadium Manager to cure
13 its breach: provide documentation showing the NEx contract is in compliance with prevailing
14 wage laws. A copy of the March 21, 2019 Notice of Breach is attached hereto as Exhibit D.

15 37. Stadium Manager failed to cure the March 21, 2019 Notice of Breach.
16 Accordingly, on or about April 26, 2019, Stadium Authority served a Notice of Default. A copy
17 of the April 26, 2019 Notice of Default is attached hereto as Exhibit E.

18 38. As Stadium Authority's inquiry efforts continued, it learned that Stadium Manager
19 had not complied with prevailing wage requirements with respect to numerous other contracts,
20 invoices, and services, and that these failures to comply had apparently been going on since the
21 beginning of the Management Agreement.

22 39. Given the seriousness of the violations, Stadium Authority reiterated its demand for
23 records of Stadium Manager's handling of Stadium Authority's other contracts and charges. But
24 again, Stadium Manager refused to produce the information or records as requested. Rather,
25 Stadium Manager provided only piecemeal records, and then began to provide contracts and
26 documents that were created and dated after the invoices and work were completed. Stadium
27 Authority instructed Stadium Manager not to create documents, but to produce actual records of
28 how they had been spending the Stadium Authority's funds. To date, the records provided by

1 Stadium Manager remain incomplete and Stadium Authority is unable to determine the full extent
2 of Stadium Manager's noncompliance with the law and with the contract terms.

3 40. In fact, the members of the public also demanded similar contract procurement
4 records through the California Public Records Act Requests (the "CPRA"). On or about April 7,
5 May 1, and May 13, 2019, respectively, three separate CPRA requests were made, demanding
6 from Stadium Authority all records pertaining to Stadium Manager's delegated procurement
7 activity and the pending prevailing wage law issues. As before, Stadium Manager refused to
8 produce all documents or records pertaining to its procurement activity on behalf of the Stadium
9 Authority under the Executive Director's delegated authority.

10 41. Meanwhile, further accusations and claims arose pertaining to Stadium Manager's
11 compliance with conflict of interest laws. Earlier in April 2018, the Fair Political Practices
12 Commission (the "FCCP") confirmed that Stadium Manager, as an entity and through its
13 respective individual employees, had to comply with conflict of interest laws. The FCCP later
14 opened investigations into whether Jim Mercurio, the appointed manager of Stadium Manager,
15 violated conflict of interest laws with respect to two contracts that Stadium Manager had entered.

16 42. Stadium Manager's failure to comply with these laws, as well as its refusal to
17 provide the requested records, is in bad faith, willful and grossly negligent.

18 43. On or about June 14, 2019, Stadium Authority issued a second Notice of Breach of
19 the Management Agreement due to Stadium Manager's failure to comply with its contract
20 procurement obligations, prevailing wage requirements, and conflict of interest requirements.
21 This second Notice detailed how Stadium Manager's failures of contractual and legal obligations
22 placed Stadium Authority in potential violation of several California State laws. The second
23 Notice outlined the documentation Stadium Manager was required to produce to cure its breaches,
24 including documents related to Stadium Manager's procurement of any goods or services provided
25 for Stadium Authority or related to payments made using Stadium Authority funds. A copy of the
26 June 14, 2019 Notice of Breach is attached hereto as Exhibit F.

27 44. Like before, Stadium Manager failed to cure the June 14, 2019 second Notice of
28 Breach. Instead, Stadium Manager's counsel disputed the underlying claims despite the pending

1 Department of Industrial Relations and FCCP investigations, and Stadium Manager's own
2 admissions of violating prevailing wage laws.

3 45. Accordingly, on or about August 16, 2019, Stadium Authority served a second
4 Notice of Default pursuant to Section 11.1.2 of the Management Agreement. A copy of the
5 August 16, 2019 Notice of Default is attached hereto as Exhibit G.

6 **Stadium Manager Books Money-Losing non-NFL events and Self-Deals**

7 46. Stadium Manager books and manages non-NFL events at Levi's Stadium on behalf
8 of Stadium Authority, such as concerts, college football games and soccer matches. Under the
9 Ground Lease between Stadium Authority and the City of Santa Clara, the net-revenue from non-
10 NFL events funds performance based rent payments owed to the City of Santa Clara. Under
11 Measure J, the City of Santa Clara is required to receive fair market value for the land based on the
12 fixed rent payments plus these performance based rent payments. Accordingly, non-NFL net
13 revenue is a necessary and fundamental component to ensure the City of Santa Clara and its
14 citizens receive fair market value for the land. Indeed, the Team funded ballot measures that
15 represented \$115 million of performance based rent payments over the life of Levi's Stadium.

16 47. But over the past two years, the non-NFL events booked by Stadium Manager have
17 resulted in little to no net revenue for Stadium Authority, and in turn, the City of Santa Clara.
18 Indeed, the majority of ticketed non-NFL events booked on behalf of Stadium Authority are
19 money losing events. Stadium Authority's net non-NFL revenue for the recent 2018-2019 fiscal
20 year is estimated at only \$18,000, and Stadium Manager estimates that the net non-NFL revenue
21 for the upcoming 2019-2020 fiscal year will be \$0.00. These results demonstrate that Stadium
22 Manager's booking efforts are not "maximizing Operating Revenues" as required by the
23 Management Agreement, or providing sufficient net revenue to pay the City of Santa Clara fair
24 market value rent as required by Measure J.

25 48. Stadium Authority is informed and believes, and thereon alleges, that events
26 booked by Stadium Manager are financially beneficial for Stadium Manager, StadCo or their
27 affiliates, but not for Stadium Authority. Accordingly, Stadium Manager's booking of money
28 losing non-NFL events and its allocation of revenues and expenses is a breach of Stadium

1 Manager's fiduciary duties to Stadium Authority, is self-dealing, and misappropriates funds.
2 Specifically, Stadium Authority is informed and believes, and thereon alleges, that Team-related
3 entities or affiliates have a financial interest in some of these money-losing events. Consequently,
4 Stadium Manager is violating its fiduciary duty to Stadium Authority by generating revenues for
5 these affiliates from these events, even though Stadium Authority loses money on the same events.

6 49. In addition, StadCo receives a portion of non-NFL event revenues from StadCo's
7 suites at Levi's Stadium. Stadium Authority is informed and believes, and thereon alleges, that
8 Stadium Manager's allocation of costs and expenses between Stadium Authority and StadCo are
9 not proportionate to the revenues earned by the respective parties, or the lack of net revenue to
10 Stadium Authority.

11 **Stadium Authority Terminates Stadium Manager's Management of non-NFL Operations**

12 50. Stadium Manager continues to violate its duties as an agent and manager to provide
13 Stadium Authority, the owner and landlord, with a full record of Stadium Manager's activities,
14 and a full explanation of its efforts (if any) to cure legal violations. This resistance and refusal has
15 placed Stadium Authority itself in violation of California labor law. Stadium Manager's conduct
16 and omissions have also caused Stadium Authority to incur substantial costs and expend
17 unanticipated resources. In addition, Stadium Manager's communications with Stadium Authority
18 have contained numerous material misrepresentations and omissions of material facts that have
19 caused Stadium Authority damages in the form of excessive staff time and costs.

20 51. On or about September 17, 2019, Stadium Authority exercised its rights under
21 Section 8.1.1 of the Management Agreement to terminate the agreement with regard to non-NFL
22 events. Stadium Authority's termination does not pertain to Stadium Manager's duties, rights and
23 obligations pertaining to StadCo, the NFL Season or NFL events. A copy of the September 17,
24 2019 Notice of Termination is attached hereto as Exhibit H.

25 52. Stadium Authority's termination of Stadium Manager's non-NFL operations is
26 based on several, independent grounds. First, Stadium Manager committed fraud and intentional
27 misrepresentation in connection with the Management Agreement. Stadium Manager represented
28 that it has "substantial experience and expertise in the management and operation of public

1 assembly facilities" (Exh. A Management Agreement, Recital E), and StadCo and Stadium
2 Manager represented that Stadium Manager had the requisite management experience. These
3 representations were false, as demonstrated by Stadium Manager's failure to comply with legal
4 requirements and obligations, including but not limited to prevailing wage laws, conflict of
5 interest laws and the Public Records Request Act. The representations were also false as
6 demonstrated by the continued and substantial decline of Stadium Authority's non-NFL net
7 revenues based on Stadium Manager's performance and omissions. This, in turn, has led to
8 minimal to no performance-based rent payments to the City of Santa Clara, which results in the
9 City not receiving fair market value for the land in violation of Measure J.

10 53. The second ground for termination is Stadium Manager committing fraud,
11 intentional misrepresentation and material omission of facts in connection with the NEx services
12 for Stadium Authority. As alleged above, Stadium Manager misrepresented that the services
13 complied with prevailing wage laws, and the total contact amount that Stadium Manager sought
14 payment.

15 54. The third ground for termination is Stadium Manager's misappropriation of funds
16 under the Management Agreement and its violation of its fiduciary duties to Stadium Authority.
17 As alleged above, Stadium Manager booked money-losing non-NFL events for Stadium
18 Authority, with Stadium Authority's net non-NFL revenue for the recent 2018-2019 fiscal year
19 estimated at only \$18,000, and \$0.00 for the upcoming fiscal year. Stadium Authority is informed
20 and believes, and thereon alleges, that Team-related entities have a financial interest in some of
21 these events, and that StadCo receives suite revenues from these events that are not proportionate
22 to the revenues and expenses to Stadium Authority for the same money losing event. Thus, these
23 money losing events for Stadium Authority are financially beneficial for Stadium Manager,
24 StadCo or their affiliates. Accordingly, Stadium Manager's booking and management of money
25 losing non-NFL events and its allocation of revenues and expenses is a breach of Stadium
26 Manager's fiduciary duties to Stadium Authority, is self-dealing, and misappropriates funds.

27 55. The fourth and fifth grounds for termination are Stadium Manager's willful
28 misconduct that resulted in two Events of Defaults, which have not been cured. As alleged above,

1 and that Stadium Manager must cease its managerial and operational services for Stadium
2 Authority and the non-NFL operations.

3 61. Stadium Authority is also entitled to a declaration of the parties' rights and
4 obligations in selecting a successor manager for non-NFL operations (which requires StadCo's
5 good faith cooperation), the transition steps and obligations (including the transfer of all records
6 that have yet to be transferred as of the termination effective date), and the determination of any
7 amounts due to Stadium Manager under the Management Agreement, if any.

8 **SECOND CAUSE OF ACTION**

9 **(Accounting, against Stadium Manager, StadCo and Roes 1-10)**

10 62. Stadium Authority realleges and incorporates by reference the allegations in
11 paragraphs 1 through 61, above, as if fully set forth herein.

12 63. Stadium Authority has demanded the records of Stadium Manager's actions as
13 Stadium Authority's selected manager and delegated agent, including Stadium Manager's actions
14 with regards to non-NFL operations, revenues, expenses and contract procurement on Stadium
15 Authority's behalf. Stadium Authority also seeks records pertaining to ticketed non-NFL events
16 that were or are scheduled by Stadium Manager (including but not limited to the financial interests
17 of StadCo, Stadium Manager or other Team-related entities in those scheduled events), and also
18 the revenues and expenses earned, allocated to or paid by StadCo from the usage of StadCo's
19 suites for these ticketed non-NFL events. These financial and operational records, calculations
20 and statements are not reasonably ascertainable absent an accounting.

21 64. Stadium Manager and StadCo have refused to provide Stadium Authority with the
22 information or documents to demonstrate Stadium Manager's actions and financial decisions and
23 calculations regarding non-NFL operations, revenue, expenses and contract procurement. Stadium
24 Authority is informed and believes, and thereon alleges, that Stadium Manager and StadCo will
25 refuse to provide Stadium Authority with verified and complete information and documents
26 regarding their or other Team-related entities' financial interest in non-NFL events and the
27 allocation of revenues and expenses from StadCo's suites for these events.

28 65. Stadium Authority is entitled to an accounting of these financial and operational

1 documents and services, and also seeks the appointment of an independent auditor to perform a
2 full compliance and financial audit of these records.

3 **THIRD CAUSE OF ACTION**

4 **(Breach of Management Agreement, by Stadium Manager and Roes 11-20)**

5 66. Stadium Authority realleges and incorporates by reference the allegations in
6 paragraphs 1 through 65, above, as if fully set forth herein.

7 67. Stadium Manager breached the Management Agreement based, among other
8 things, on its failure to comply with the applicable laws; Stadium Manager's refusal to produce
9 and provide Stadium Authority with records reflecting whether Stadium Manager has remedied
10 prevailing wage law violations; Stadium Manager's failure to cure the two Notices of Breaches
11 and Defaults; Stadium Manager's failure to provide commercially reasonable good faith efforts in
12 managing and operating Levi's Stadium on Stadium Authority's behalf; Stadium Manager's failure
13 to use standard procurement agreements; and Stadium Manager's failure to maintain separate and
14 accurate records of its operational, financial and management services on Stadium Authority's
15 behalf.

16 68. Stadium Authority has fully performed all conditions, covenants and promised
17 required on its part to be performed in accordance with the Management Agreement, except for
18 those obligations that Stadium Manager has interfered with and restricted.

19 69. As a result of Stadium Manager's breaches, Stadium Authority has been damaged,
20 including but not limited to loss of net non-NFL revenues, and also the expenses, costs and
21 employee time that Stadium Authority was forced to incur to attempt to obtain Stadium Manager's
22 compliance with the agreement terms and the law. These amounts will be proven at trial.

23 **FOURTH CAUSE OF ACTION**

24 **(Breach of Implied Covenant of Good Faith and Fair Dealing,**

25 **by Stadium Manager and Roes 21-30)**

26 70. Stadium Authority realleges and incorporates by reference the allegations in
27 paragraphs 1 through 69, above, as if fully set forth herein.

28 71. Stadium Manager breached the implied covenant of good faith and fair dealing

1 based, among on other things, on its failure to comply with the applicable laws; Stadium
2 Manager's refusal to produce and provide Stadium Authority with records reflecting whether
3 Stadium Manager has remedied prevailing wage law violations; Stadium Manager's failure to
4 provide commercially reasonable good faith efforts in managing and operating Levi's Stadium on
5 Stadium Authority's behalf; and Stadium Manager's failure to maintain separate and accurate
6 records of its operational, financial and management services on Stadium Authority's behalf.

7 72. Stadium Authority has fully performed all conditions, covenants and promised
8 required on its part to be performed in accordance with the Management Agreement, except for
9 those obligations that Stadium Manager has interfered with and restricted.

10 73. As a result of Stadium Manager's breaches of the implied covenant, Stadium
11 Authority has been damaged in amounts to be proven at trial

12 **FIFTH CAUSE OF ACTION**

13 **(Breach of Fiduciary Duties, by Stadium Manager and Roes 31-40)**

14 74. Stadium Authority realleges and incorporates by reference the allegations in
15 paragraphs 1 through 73, above, as if fully set forth herein.

16 75. Stadium Manager serves as Stadium Authority's selected manager, delegee, and
17 agent under the Management Agreement. As Stadium Authority's agent, Stadium Manager has a
18 fiduciary duty to act loyally for the principal's benefit in all matters connected with the agency
19 relationship. In addition, Stadium Manager is required to disclose to the principal all information
20 relevant to the subject matter of the agency, and cannot take advantage of the principal by
21 withholding information secured by means of the agency.

22 76. Stadium Manager has breached its fiduciary obligations based, among on other
23 things, on its failure to comply with the applicable laws; Stadium Manager's continued and
24 deliberate efforts to withhold information from Stadium Authority regarding these violations, any
25 cure efforts or status; Stadium Manager's booking of money losing non-NFL events that are
26 financially beneficial to StadCo, Stadium Manager or other Team-related entities, and the related
27 misappropriation of expenses for these events.

28 77. As a result of Stadium Manager's breach of fiduciary duties, Stadium Authority is

1 in risk of further liability and damages to third parties and government enforcement entities, and
2 has been damaged in amount to be proven at trial.

3 78. These breaches and legal violations are and were the result of Stadium Manager's
4 gross negligence, willful misconduct and bad faith conduct, and Stadium Authority is therefore
5 entitled to punitive damages from Stadium Manager.

6 WHEREFORE, Santa Clara Stadium Authority prays for judgment against Cross-
7 Defendants, jointly and severally, as follows:

8 On the First Cause of Action

- 9 1. For a judicial declaration of the parties' rights and obligations under the
10 Management Agreement.
11 2. For attorney's fees and costs under Section 15.13 of the Management Agreement.
12 3. For any other relief that this Court deems appropriate.

13 On the Second Cause of Action

- 14 1. For an accounting to be taken of all dealings and transactions pertaining to non-
15 NFL operations, revenues and expenses; all contract procurement dealings by Stadium Manager
16 on Stadium Authority's behalf; the financial interests of StadCo, Stadium Manager or any other
17 Team-related entities in non-NFL events; and revenues and charges earned or allocated to StadCo
18 from the usage of suites for non-NFL events.
19 2. For the appointment of an independent auditor to perform a full compliance and
20 financial audit of these operational and financial records.
21 3. For any other relief that this Court deems appropriate.

22 On the Third Cause of Action

- 23 1. For an award in an amount to be proven at trial, together with pre-judgment interest
24 and post-judgment interest thereon to the maximum extent allows by law;
25 2. For attorney's fees and costs under Section 15.13 of the Management Agreement.
26 3. For any other relief that this Court deems appropriate.

27 On the Fourth Cause of Action

- 28 1. For an award in an amount to be proven at trial, together with pre-judgment interest

1 and post-judgment interest thereon to the maximum extent allows by law;

2 2. For attorney's fees and costs under Section 15.13 of the Management Agreement

3 3. For any other relief that this Court deems appropriate

4 On the Fifth Cause of Action m

5 1. For an award in an amount to be proven at trial, together with pre-judgment interest

6 and post-judgment interest thereon to the maximum extent allows by law;

7 2. For punitive and exemplary damages.

8 3. For attorney's fees and costs under Section 15.13 of the Management Agreement

9 4. For any other relief that this Court deems appropriate.

10 Dated: October 29, 2019

HANSON BRIDGETT LLP

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By: _____

Mohammad Walizadeh
Emily M. Charley
Attorneys for Defendants City of Santa Clara and
Santa Clara Stadium Authority, and Cross-
Complainant Santa Clara Stadium Authority

EXHIBIT A

EXHIBIT A

STADIUM MANAGEMENT AGREEMENT

by and among

SANTA CLARA STADIUM AUTHORITY,
a joint exercise of powers entity, created through Government Code section 6500 *et seq.*
(the "Stadium Authority")

and

FORTY NINERS STADIUM MANAGEMENT COMPANY LLC,
a Delaware limited liability company (the "Stadium Manager")

and

FORTY NINERS SC STADIUM COMPANY, LLC,
a Delaware limited liability company ("StadCo")

Dated as of March 28, 2012

STADIUM MANAGEMENT AGREEMENT

THIS STADIUM MANAGEMENT AGREEMENT (this "Agreement") is dated as of March 28, 2012 (the "Agreement Effective Date"), and is entered into by and among the SANTA CLARA STADIUM AUTHORITY, a joint exercise of powers entity, created through Government Code section 6500 *et seq.* (the "Stadium Authority"), FORTY NINERS STADIUM MANAGEMENT COMPANY LLC, a Delaware limited liability company (the "Stadium Manager"), and FORTY NINERS SC STADIUM COMPANY, LLC, a Delaware limited liability company ("StadCo").

RECITALS:

A. Pursuant to that certain Stadium Lease Agreement dated as of March 28, 2012 (as the same may be amended, restated and modified, the "Stadium Lease"), by and between the Stadium Authority and StadCo, from and after the Commencement Date, StadCo will have a leasehold interest in the Premises (as defined in the Stadium Lease) located in Santa Clara County, California.

B. The Lease Year (as defined in the Stadium Lease) is divided into two (2) seasons: the Tenant Season and the Stadium Authority Season (as defined in the Stadium Lease), and the respective Stadium Authority's and StadCo's use of, and obligations relating to, the Stadium are different for each such season, as set forth in the Stadium Lease.

C. Each of StadCo and the Stadium Authority has selected the Stadium Manager to provide management services for the Stadium on its respective behalf on a continual, year-round basis, regardless of which season of the Lease Year it is, in accordance with Section 7.2 of the Stadium Lease, including overseeing the day-to-day operations and maintenance of the Stadium.

D. The Stadium Authority has also selected the Stadium Manager to handle the marketing and booking of Non-NFL Events at the Stadium on its behalf.

E. The Stadium Manager is an organization whose principals have substantial experience and expertise in the management and operation of public assembly facilities.

F. The Stadium Authority and StadCo have determined to grant to Stadium Manager, and Stadium Manager has agreed to accept, the authority and responsibility to manage and operate the Stadium in accordance with the terms of this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the premises, covenants, agreements and obligations contained herein, the parties hereto enter into this Agreement and agree as follows:

ARTICLE 1

DEFINITIONS; INTERPRETATION

1.1 Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Stadium Lease. As used in this Agreement, the following terms shall have the meanings indicated unless a different meaning is specifically provided or unless the context otherwise requires:

“**Acceptable Bank**” means a domestic bank or financial institution mutually agreed to by StadCo and the Stadium Authority.

“**Affiliate**” of any Person 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.

“**Agreement**” shall have the meaning set forth in the initial paragraph hereof.

“**Agreement Effective Date**” shall have the meaning set forth in the initial paragraph hereof.

“**Agreement Termination Date**” shall have the meaning set forth in Section 2.2.

“**Annual Shared Stadium Expense Budget**” means the annual budget for Shared Stadium Expenses, which shall be included in the Annual Stadium Authority Budget.

“**Annual Stadium Authority Budget**” shall have the meaning set forth in Section 4.6.

“**Annual Statement of Stadium Operations**” shall have the meaning set forth in Section 4.2.

“**Applicable Law**” means any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, or any recorded restrictive covenant or deed restriction, affecting the Stadium, including those applicable to environmental, zoning, building code, health and safety and other similar matters.

“**Base Management Fee**” shall have the meaning set forth in Section 7.3.

“**Budget**” shall mean any budget prepared by the Stadium Manager under the provisions of this Agreement.

“**Business Day**” means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks generally under the laws of the State of California. Use of the word “day”, as opposed to “Business Day”, means calendar day.

“**Capital Expenditures**” means the cost of items considered Capital Repairs, capital replacements, capital improvements or capital equipment pursuant to GAAP and shall include

the rental cost of items which if purchased, rather than rented, would constitute a Capital Expenditure.

"Capital Expenditure Plan" shall mean the plan for the expenditures from the Stadium Capital Expenditure Reserve approved by the Stadium Authority and StadCo on an annual basis.

"Certificate of Completion" shall have the meaning set forth in the DDA.

"Claim or Loss" means any claim, cost, damage, demand, expense, loss, obligation or other liability (including reasonable attorneys' fees), including those relating to property, injury to or death of persons, loss of income and losses under workers' compensation laws and benefits.

"Commencement Date" means the first day following the Substantial Completion Date.

"Construction Agency Agreement" has the meaning set forth in the DDA.

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

"DDA" means that certain Disposition and Development Agreement (Stadium Lease), dated as of December 13, 2011 between StadCo and the Stadium Authority.

"Deposit Account" shall have the meaning set forth in Section 5.1.

"Dispute Resolution Procedures" shall have the meaning set forth in the Stadium Lease.

"Emergency" means any condition or situation that presents an imminent and significant threat (or if not immediately acted upon will present an imminent and significant threat) to the health or safety of users of the Stadium or to the structural integrity of the Stadium or any portion of thereof.

"Emergency Expenditures" shall mean any Transitional Period Expenses or Operating Expenses, as applicable, to the extent not included within a Budget and not expected by the Stadium Manager, the Stadium Authority or StadCo to be incurred but which the Stadium Manager believes in good faith are necessary or prudent Transitional Period Expenses or Operating Expenses in the management or operation of the Stadium, and in respect of which it would be imprudent to delay remedial action until the time needed to obtain StadCo and the Stadium Authority's prior approval for such expenditures.

"Event of Default" means any one of the "Events of Default" described in Section 11.1.

"Fiscal Year" means each Lease Year under the Stadium Lease.

"Force Majeure" means an occurrence, including any of the following, for the period of time, if any, that a Party's performance under this Agreement is actually and materially, delayed or prevented thereby: acts of God; acts of the public enemy; the confiscation or seizure by any Governmental Authority; insurrections; wars or war-like action (whether actual and pending or expected); arrests or other restraints of government (civil or military); blockades; embargoes; labor unrest, labor disputes or unavailability of labor or materials; strikes, lock-outs or other work stoppages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; wash-outs; explosions; any delays occasioned by arbitration actions or other proceedings; civil disturbance or disobedience; riot; sabotage; terrorism, threats of sabotage or terrorism; or any other cause, whether of the kind herein enumerated or otherwise, that is not within the reasonable anticipation or control of the Party claiming the right to excuse performance on account of such occurrence and which, in any event, is not a result of the negligence or willful misconduct of the Party claiming the right to excuse performance on account of such occurrence. Notwithstanding the foregoing, "Force Majeure" shall not include economic hardship or inability to pay debts or other monetary obligations in a timely manner.

"GAAP" means generally accepted accounting principles in effect in the United States of America from time to time, as consistently applied.

"GA Parking Agreement" shall have the meaning set forth in the Stadium Lease.

"General Manager" shall mean Stadium Manager's chief of stadium operations at the Stadium.

"Governmental Authority" means any federal, state, local or foreign governmental entity, authority or agency, 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.

"Imposition(s)" means all governmental assessments, franchise fees, transaction privilege and use taxes, excise taxes, license and permit fees, levies, charges and taxes, general and special, ordinary and extraordinary, of every kind and nature whatsoever (irrespective of the nature thereof, including all such charges based on the fact of a transaction, irrespective of how measured) which at any time during the Term may be assessed, levied, confirmed or imposed upon: (a) the Stadium or any portion thereof; and (b) any payments received by the Stadium Manager from any Person using or occupying the Stadium or any portion thereof.

"Innocent Party" shall have the meaning set forth in Section 15.16.

"Legal Requirement" shall mean all applicable statutes, laws, rules, regulations, ordinances and similar requirements of applicable Governmental Authorities relating to the use and operation of the Facilities or otherwise relating to any matters set forth herein.

"Major Contracts" means (a) the Stadium Lease and the Team Sublease; (b) any naming rights agreement to be entered into; (c) any telecommunications agreement now in effect or hereafter entered into; (c) any event utility services agreements now in effect or hereafter entered into; (d) any concession agreements now in effect or hereafter entered into; (e) any

energy commodity purchase agreement StadCo and the Stadium Authority may hereafter enter into; (f) the GA Parking Agreement; and (g) any other contract or agreement designated as a Major Contract by StadCo and the Stadium Authority; *provided*, that each of the foregoing items (a) through (g) shall include all amendments, modifications and successor agreements to those currently in effect or otherwise described in such sections.

"Management Company Revolving Loan" means the Revolving Loan to be provided by the Stadium Manager, in the form attached hereto as Exhibit A.

"Management Correction Plan" shall have the meaning set forth in Section 3.3.2.

"Management Fees" means, collectively, the Base Management Fee and the Marketing and Booking Fee paid to the Stadium Manager in accordance with Sections 7.2 and 7.3 of this Agreement, respectively.

"Manager Operating Expenses" shall mean, subject to the exclusions and exceptions set forth herein, reasonable and necessary expenses and expenditures of whatever kind or nature incurred, directly or indirectly, by the Stadium Manager in promoting, operating, maintaining and managing the Stadium as set forth in a Budget approved by the Stadium Authority and/or StadCo, as applicable, and as determined in accordance with GAAP recognized on a full accrual basis; *provided, however*, that Manager Operating Expenses shall not include (a) Capital Expenditures, amortization, depreciation and other non-cash charges for capital items; or (b) any loss or damage (unless the same is covered by insurance proceeds or other third party payments) suffered by the Stadium Manager or its authorized representatives as a result of (i) any act or omission of the Stadium Manager or any authorized representative not in good faith or involving gross negligence or willful misconduct or (ii) any transaction from which the Stadium Manager derives an improper personal benefit.

"Marketing and Booking Fee" shall have the meaning set forth in Section 7.3.

"Marketing and Booking Services" shall have the meaning set forth in Section 3.1.

"NFL" means the National Football League, a not-for-profit association having its chief executive office currently located at 345 Park Avenue, New York, New York 10017 and any successor thereto.

"NFL Games" means NFL or other professional football games, as more particularly described in the Stadium Lease.

"Non-NFL Event Replacement Right" shall have the meaning set forth in Section 3.3.

"Notice of StadCo Assignment" shall have the meaning set forth in Section 14.1.3.

"Notice of Stadium Authority Assignment" shall have the meaning set forth in Section 14.2.3.

"Notice of Stadium Manager Assignment" shall have the meaning set forth in Section 14.3.3.

"Operating Receipts" means all revenues collected by the Stadium Manager from the management and operation of the Stadium.

"Operating Revenues" means all revenues attributable to the Stadium Authority in connection with the operation of the Stadium on its behalf, as determined on an accrual basis in accordance with GAAP.

"Person" means any individual (including an individual acting as a trustee of a trust), partnership, corporation, limited liability company, unincorporated association, joint venture or other entity or association, the United States, any State or political subdivision thereof, any municipal government, or any agency or subdivision of any one or more of the foregoing.

"Proceeding" shall have the meaning set forth in Section 11.6.

"Public Safety Plan" means the public safety plan to be adopted by the City and the Stadium Authority from time to time, in consultation with the City's Chief of Police and StadCo, describing procedures for traffic management, security and public safety during and for a reasonable period before and after NFL Games and other large events at the Stadium, and including provisions for determining staffing levels for police, fire and other City personnel stationed in and around the Stadium, as well as private security, and provisions for the closure of Tasman Drive to non-emergency vehicles during NFL Games and other large events.

"Required Condition" shall have the meaning set forth in the Stadium Lease.

"Revolving Credit Agreement" shall have the meaning set forth in the Stadium Lease.

"Scheduling Procedures" means the scheduling procedures for the Stadium, as more particularly described in the Stadium Operations Agreement.

"Shared Stadium Expenses" shall have the meaning set forth in the Stadium Lease.

"StadCo" shall have the meaning set forth in the initial paragraph hereof.

"StadCo Assignee" shall have the meaning set forth in Section 14.1.3.

"StadCo Budget" shall have the meaning set forth in Section 4.6.

"StadCo Deposit Account" shall have the meaning set forth in Section 5.1(b).

"StadCo Operating Expenses" shall mean, subject to the exclusions and exceptions set forth herein, reasonable and necessary expenses and expenditures of whatever kind or nature incurred, directly or indirectly, by StadCo in connection with its use of the Stadium and the marketing of NFL Events therein and as determined in accordance with GAAP recognized on a full accrual basis, as may be set out in a Budget agreed by StadCo.

"Stadium" means the approximately 68,500 seat stadium (with the possibility for expansion to approximately 75,000 seats for special events), which is to be constructed by the Stadium Authority within the Stadium Site in accordance with the Construction Agency

Agreement. Any reference to "Stadium" shall include any part or portion thereof, unless the context otherwise requires.

"Stadium Authority" shall have the meaning set forth in the initial paragraph hereof.

"Stadium Authority Assignee" shall have the meaning set forth in Section 14.2.3.

"Stadium Authority Deposit Account" shall have the meaning set forth in Section 5.1(a).

"Stadium Authority Operating Expenses" means, subject to the exclusions and exceptions set forth herein, reasonable and necessary expenses and expenditures of whatever kind and nature incurred, directly or indirectly, by the Stadium Authority with respect to the Stadium for a Fiscal Year, including, without limitation, (a) the rent paid to the City during such Fiscal Year under the Ground Lease; (b) all costs and expenses paid by the Stadium Authority in operating, managing and maintaining the Stadium during such Fiscal Year, including (i) the amount of the Annual Capital Reserve Amount, if any, required to be deposited by the Stadium Authority into the Stadium Capital Expenditure Reserve, (ii) all amounts payable by the Stadium Authority to the Stadium Manager hereunder (including that portion of the Base Management Fee allocable to the Stadium Authority and any Marketing and Booking Fee), and (iii) amounts payable by the Stadium Authority in respect of insurance and utilities; (c) the Stadium Authority Overhead; (d) all actual, out-of-pocket costs paid by the Stadium Authority in connection with Non-NFL Events during such Fiscal Year; (e) all amounts paid by the Stadium Authority during such Fiscal Year for scheduled debt service on the Permitted Landlord Financing, including any required prepayments thereof; and (f) any Stadium Authority Discretionary Expenses; *provided* that each such Stadium Authority Operating Expense shall be in such amount as set forth in a Budget approved by the Stadium Authority and the Stadium Manager and as determined in accordance with GAAP recognized on a full accrual basis.

"Stadium Event" means any NFL Game or other NFL Event, Non-NFL Event or Civic Event, but excluding Tenant Incidental Uses, in, at or on the Stadium.

"Stadium Lease" shall have the meaning set forth in Recital A.

"Stadium Lease Documents" shall have the meaning set forth in the Stadium Lease.

"Stadium Manager" shall have the meaning set forth in the initial paragraph hereof.

"Stadium Manager Assignee" shall have the meaning set forth in Section 14.3.3.

"Stadium Operation and Maintenance Plan" means the operation and maintenance plan for the Stadium, as the same may be amended or supplemented from time to time, which shall be designed to achieve a safe and well-maintained Stadium, and shall include the standards for management and operation of the Stadium, including the required security, staffing and other required elements of hosting Stadium Events.

"Stadium Operations Agreement" shall have the meaning set forth in the Stadium Lease.

"Stadium Operations Budget" shall have the meaning set forth in Section 4.6.

"Stadium Records" shall have the meaning set forth in Section 4.1.

"Substantial Completion Date" is the date of the issuance of the Certificate of Completion pursuant to the DDA.

"Term" shall mean any term specified in Section 2.2, together with any renewal period provided for under Section 2.2(a) or any automatic renewal under Sections 2.2(b) or 2.2(c).

"Transitional Budget" shall have the meaning set forth in Section 2.4.1.

"Transitional Period Expenses" shall have the meaning set forth in Section 2.5.

1.2 Accounting Terms. Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with GAAP, and all financial computations hereunder shall be computed, unless otherwise specifically provided herein, in accordance with GAAP.

1.3 Captions. The captions of articles and sections of this Agreement are for convenient reference only and shall not be deemed to limit, construe, affect, modify or alter the meaning of such articles or sections.

1.4 Cross References. Any reference in this Agreement to a Section, Subsection, Article, Paragraph or Exhibit is a reference to a Section, Subsection, Article, Paragraph or Exhibit, as appropriate, of this Agreement, unless otherwise expressly indicated.

1.5 Terms. Whenever the context shall so require, all words herein in any gender shall be deemed to include the masculine, feminine or neuter gender, and all singular words shall include the plural, and all plural words shall include the singular.

The words "herein," "hereof," "hereunder," "hereby," "this Agreement" and other similar references shall mean and include this Agreement and all amendments hereof and supplements hereto unless the context clearly indicates or requires otherwise.

The words "include," "including," and other similar references shall mean "include, without limitation," and "including, without limitation," respectively.

The words "sole discretion" and other similar references shall mean "sole, absolute and unfettered discretion."

1.6 Exhibits. Each exhibit referred to herein shall be considered a part of this Agreement as fully, and with the same force and effect, as if such exhibit had been included herein in full.

1.7 Language. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

ARTICLE 2

ENGAGEMENT OF STADIUM MANAGER; STADIUM MANAGER'S PRE-OPENING RIGHTS AND OBLIGATIONS

2.1 Engagement of Stadium Manager. Each of the Stadium Authority and StadCo hereby engages the Stadium Manager to be the sole and exclusive manager of the Stadium on its behalf during its respective season of the Lease Year during the period commencing on the Agreement Effective Date and ending on the Agreement Termination Date, with the responsibility for the operation, direction, management and supervision of the Stadium, subject to, and as more fully described in, this Agreement.

2.2. Term. The Term shall commence as of the Commencement Date and shall expire for any and all purposes, unless terminated earlier under the terms of this Agreement or renewed for successive periods under Section 2.2(a) hereof, at 12:00 a.m. PST on the twenty-fifth (25th) anniversary of the Commencement Date (the "**Agreement Termination Date**").

(a) Subject to the terms and conditions of this Agreement, the Stadium Authority may elect to renew and extend the Term for one fifteen (15) year renewal period by delivering written notice of such election to the other parties hereto at least one hundred and twenty (120) days prior to the expiration of the Term (the "**Extension Option**"). If the Stadium Authority elects to exercise the Extension Option, such election shall be binding on StadCo, and the Term shall be extended as to all Parties to this Agreement.

(b) If the Stadium Authority does not exercise the Extension Option, on the Agreement Termination Date (or the termination date of the applicable renewal Term then in effect, as applicable), the Term shall be automatically extended and renewed for consecutive one (1) year renewal periods not to exceed fifteen (15) total renewal periods unless any of the Stadium Manager, the Stadium Authority or StadCo delivers written notice of its intent not to renew and extend the Term to the other parties hereto at least one hundred and twenty (120) days prior to the expiration of the Term (or applicable renewal Term then in effect, as applicable).

(c) In the event that the Lease Term is extended in accordance with the terms of the Stadium Lease, during each applicable Extension Term, this Agreement shall be automatically extended and renewed for consecutive one (1) year renewal periods not to exceed four (4) total renewal periods per each Extension Term unless any of the Stadium Manager, the Stadium Authority or StadCo delivers written notice of its intent not to renew and extend the Term to the other parties hereto at least one hundred and twenty (120) days prior to the expiration of the Term (or applicable renewal Term then in effect, as applicable).

(d) Upon any renewal or extension, this Agreement shall be deemed to continue in full force and effect on the previously existing terms and conditions.

2.3 Intentionally Deleted.

2.4 Pre-Opening Obligations. From and after the Agreement Effective Date and continuing through the Commencement Date, the Stadium Manager shall, in a commercially reasonable manner and in all events consistent with the provisions of this Agreement and any Transitional Budget and in close collaboration with StadCo and the Stadium Authority, do all things and take all actions requested by StadCo and/or the Stadium Authority and reasonably necessary or appropriate to prepare for the opening of the Stadium on the Commencement Date, including the following:

2.4.1 Within a reasonable time after the Agreement Effective Date, prepare a final pre-opening and start-up budget for review and approval by each of StadCo and the Stadium Authority, for the services to be provided by Stadium Manager during the period from the Agreement Effective Date to the anticipated Commencement Date. Such Transitional Budget may be prepared separately with respect to the services to be provided to StadCo and the Stadium Authority, respectively, as agreed by the parties. The final pre-opening and start-up budget approved by Stadium Manager, StadCo and the Stadium Authority pursuant to this Section 2.4.1 shall be the "Transitional Budget";

2.4.2 Timely prepare any additional and/or separate budget materials as may be required to be delivered by either the Stadium Authority or StadCo in accordance with the terms of any financing documents entered into by either of the Stadium Authority or StadCo, respectively;

2.4.3 In consultation with the Stadium Authority and StadCo, develop the Stadium Operations Agreement at least six (6) months prior to the Commencement Date;

2.4.4 Subject to review and approval by the Stadium Authority, develop user policies and procedures for Non-NFL Events at the Stadium, including booking and scheduling policies and procedures (consistent with the Stadium Operations Agreement), license rates and service fees; forms of service contracts; insurance requirements for users; and rules and regulations for users;

2.4.5 Develop personnel policies and procedures for, and recruit, hire and train, the Stadium Manager's personnel, including Stadium Event staff;

2.4.6 Employ, train, pay and supervise, as employees of the Stadium Manager and not of either the Stadium Authority or StadCo, all personnel that are necessary or appropriate to prepare for the opening of the Stadium on the Commencement Date; determine all matters with regard to such personnel, including compensation, bonuses, employee benefit plans, hiring and replacement; and prepare and file when due, all forms, reports and returns required by Applicable Law relating to the employment of such personnel;

2.4.7 Establish charts of accounts and accounting policies, procedures and systems, including policies, procedures and systems for payroll processing, accounts payable, accounts receivable, depository accounts, box office and reporting functions;

2.4.8 Design, establish and maintain effective internal accounting controls with respect to compliance with Applicable Laws, this Agreement and contracts

pertaining to the Stadium, in such a manner as to minimize the risk of noncompliance and to provide for the detection of any noncompliance within a timely period by the Stadium Manager's employees in the normal course of performing their assigned functions;

2.4.9 Establish the Stadium funds and accounts and policies, procedures and systems to ensure compliance with Article 5;

2.4.10 Evaluate computer hardware and software needs and requirements;

2.4.11 Establish preventive maintenance policies, procedures and systems;

2.4.12 Subject to review and approval by each of the Stadium Authority and StadCo, establish safety policies, procedures and systems for all users of, and Stadium Manager employees working at, the Stadium;

2.4.13 Acquire all licenses, permits and approvals pertaining to the operation and management of the Stadium and required by Applicable Law as and when required. In connection with the foregoing, each of the Stadium Authority and StadCo will enter into any licensing agreements with respect to their respective intellectual property that may be necessary to allow the Stadium Manager to perform the scope of services required under this Agreement on behalf of each of the Stadium Authority and StadCo;

2.4.14 Subject to review and approval by each of the Stadium Authority and StadCo, develop and implement pre-opening advertising, marketing, public relations and promotional programs and supporting materials;

2.4.15 Establish and maintain bookings, calendars and schedules for Stadium Events and other activities at the Stadium booked or scheduled prior to the Commencement Date in accordance with the Scheduling Procedures (or if the Scheduling Procedures have not yet been adopted, in accordance with reasonable instructions), and use commercially reasonable efforts to schedule and book such Stadium Events and other activities at the Stadium in accordance with the Scheduling Procedures;

2.4.16 Prepare such materials as may be required and approved by Stadium Authority in connection with the services to be performed by Stadium Manager to the Stadium Authority under Article 3 hereof;

2.4.17 Prepare the initial Public Safety Plan in consultation with the City's Chief of Police, the Stadium Authority, StadCo and NFL Rules and Regulations, which initial Public Safety Plan shall be adopted by the Stadium Authority and the City;

2.4.18 To the extent requested by StadCo and the Stadium Authority, plan and coordinate the dedication opening ceremonies for the Stadium; and

2.4.19 Incur Emergency Expenditures in the event of an Emergency, as further described in this Agreement.

2.5 Transitional Period Expenses. Subject to the reimbursement obligations of StadCo and the Stadium Authority in Section 7.1 of this Agreement and only to the extent set forth in the Transitional Budget or any amendments thereto, the Stadium Manager shall advance any and all expenses (other than Capital Expenditures and Emergency Expenditures) with respect to the Stadium prior to the Commencement Date ("Transitional Period Expenses"). Without limiting the generality of the foregoing, it is agreed that the Stadium Manager shall have no obligation to apply its own funds to pay any amounts other than as set forth in the Transitional Budget (including any amendments thereto) (e.g., if a structural element of the Stadium becomes in disrepair or is otherwise not usable, the Stadium Manager shall have no obligation to expend its own funds to fix the same unless such expenditures are set forth in the Transitional Budget or any amendment thereto; the parties acknowledge and agree that the Stadium Manager shall have no obligation to make Capital Expenditures or Emergency Expenditures during the Transitional Period).

2.6 Operational Management Duties and Responsibilities. Subject to the limitations set forth in this Agreement and the applicable Budget, the Stadium Manager, or person or persons designated by the Stadium Manager, shall perform the following (or cause the same to be performed) throughout the Term hereof after the Commencement Date:

2.6.1 Continue to perform all services and obligations provided under Section 2.4, unless such services or obligations are not applicable to the ongoing management of the Stadium after the Commencement Date;

2.6.2 Manage and operate the Stadium and any properties or assets ancillary thereto and contract for their use in a manner that will assure that the Stadium is maintained in the Required Condition and operated as a quality multi-purpose public sports, public assembly, exhibit and entertainment facility to a standard of quality comparable to other similar Stadiums, and that will promote the Stadium; *provided, however,* each of StadCo and the Stadium Authority acknowledges that parts of the Stadium may be in need of capital upgrades and the obligations of the Stadium Manager under this Agreement shall be performable only to the extent sums are available from budgeted sources or otherwise for such purposes;

2.6.3 Subject to all limitations and exclusions contemplated by the Major Contracts, establish and maintain calendars and schedules for Events and other activities at the Stadium in accordance with the Scheduling Procedures;

2.6.4 Subject to all limitations and exclusions contemplated by the Major Contracts, and to the extent requested by the Stadium Authority and StadCo, coordinate (and participate in where necessary or applicable) all advertising, licensing, promotional activities, marketing, and public relations for or at the Stadium, with a view toward maximizing the Stadium's revenues from such activities; and, negotiate, execute, and perform all contracts, use agreements, licenses and other agreements (i) for the use of advertising space in or about the Stadium and all advertising rights of whatever kind or nature related to the Stadium or (ii) for the sale, promotion, marketing and use of all names, trademarks, tradenames, logos and similar intangible property relating to the Stadium; *provided, however,* that nothing set forth in this Agreement shall grant to the

Stadium Manager any rights, or impose on the Stadium Manager any duties, in connection with any rights that have been granted to or reserved for the benefit of any other party under the terms of any Major Contract (*provided, however, the Stadium Manager shall have the right to utilize the Stadium to announce upcoming events*);

2.6.5 Provide for the sale of food, beverages, souvenirs, novelties and programs at the Stadium through concessionaires selected by StadCo and the Stadium Authority or the Stadium Manager at the request of StadCo and the Stadium Authority, to the extent such matters are not within the authority of another party under a Major Contract, and further to the extent deemed necessary by the Stadium Manager, or as otherwise determined by the Stadium Manager;

2.6.6 Identify, select, train and supervise the Stadium Manager's staff, and maintain a sufficient staff to perform fully the Stadium Manager's obligations under this Agreement;

2.6.7 Intentionally deleted;

2.6.8 Pay, or cause to be paid, on or before the dates such payments are due (or, to the extent prudent operating practices require, such later date as is consistent with such practices) all Manager Operating Expenses from funds available for that purpose under Article 5, any Stadium Authority Operating Expenses (to the extent so directed by Stadium Authority) from funds available for that purpose under Article 5, and/or any StadCo Operating Expenses (to the extent so directed by StadCo) from funds available for that purpose under Article 5; the Stadium Manager shall also perform such other services as may be required under Article 5 on behalf of each of the Stadium Authority and StadCo with respect to Manager Operating Expenses, Stadium Authority Operating Expenses and/or StadCo Operating Expenses to be paid through applicable financing documents;

2.6.9 Subject to the terms of the Major Contracts, devise and implement policies, procedures, and regulations reasonably designed to keep the Stadium in good order and condition, and maintain and repair the Stadium (including all furniture, fixtures, equipment, parking lots, landscaped areas and all other properties and assets that are part of the Stadium) in good operating order and condition at all times;

2.6.10 Subject to the terms of the Major Contracts and subject to the availability of funds for such purposes, maintain, operate, repair, and generally oversee all plumbing, electrical, gas, lighting, and HVAC systems at the Stadium, and coordinate all communications with utilities and other providers of utility-type services;

2.6.11 Coordinate all traffic and parking issues related to daily and event activity consistent with the requirements of the Public Safety Plan;

2.6.12 Maintain and operate a security force (e.g., through subcontracts or otherwise) to safeguard the Stadium and users of the Stadium; and consult, advise and take other appropriate actions with respect to the implementation and operation of a computerized security system for the Stadium;

2.6.13 Develop and implement a trash removal program for the Stadium and the Stadium Site consistent with Mitigation Measures and Conditions of Approval;

2.6.14 Acquire, install, maintain, and operate a computer system and network for the Stadium and its staff and for use generally in performing the Stadium Manager's duties hereunder;

2.6.15 Provide appropriate human resources services to accommodate Stadium Manager employees serving the Stadium, including providing and managing benefit programs for such employees;

2.6.16 Maintain appropriate cash handling systems, banking and account management programs and systems and all related support systems;

2.6.17 Staff and operate a full-time ticket office at the Stadium on behalf of StadCo and, to the extent agreed by the Parties in accordance with the Stadium Lease, the Stadium Authority, and develop and implement plans and policies for ticket services systems;

2.6.18 Intentionally deleted;

2.6.19 To the extent any Budget has specific funding for this item or StadCo, the Stadium Authority or a third party provides funding for such purposes and so directs Stadium Manager, prepare bid packages for presentations for specialty events, exhibitions, collegiate, amateur and professional sporting events and other events to be held at the Stadium;

2.6.20 Notify (i) StadCo, with respect to the Stadium Operations Budget, and (ii) the Stadium Authority with respect to the Annual Stadium Authority Budget, of any expected material variations from budgeted line item revenues and/or expense projections as promptly as is practicable after the Stadium Manager becomes aware of such likely variation from such budgeted amounts as set forth in any such Budget previously delivered to StadCo and/or the Stadium Authority;

2.6.21 In general, perform all such services and functions as StadCo and the Stadium Authority may reasonably request in order to maintain, operate, market, utilize and improve the Stadium and the Stadium Site; *provided, however*, that to the extent any such services or functions are beyond the reasonable contemplation of the parties as of the Commencement Date, the Stadium Manager shall not be obligated to perform any such additional services or functions without adequate reimbursement for additional expenses incurred by it thereby and an appropriate adjustment of Management Fees in connection therewith;

2.6.22 To the extent requested by the Stadium Authority and StadCo, manage the solicitation of private parking lot owners for the use of parking spaces for all or certain NFL Events and Stadium Authority Events, and require that the parking lot owner obtain an Off-Site Parking Permit pursuant to Chapter 18.86 of the Santa Clara Municipal Code;

2.6.23 Subject to all limitations and exclusions contemplated by the Major Contracts, and to the extent requested by the Stadium Authority and StadCo, coordinate (and participate in where necessary or applicable) in the selection of a Stadium Parking Operator and oversee its operations; and

2.6.24 Furnish all services necessary to accomplish the foregoing requirements of this Section 2.6.

2.7 No Construction or Design Responsibilities. Notwithstanding the Stadium Manager's review of and recommendations, if any, with respect to any of the designs, plans, and specifications of the Stadium, the Stadium Manager will not have any responsibility to StadCo, the Stadium Authority or any other person for or authority concerning the same and will not supervise or be responsible in any manner for the past, current, or, unless expressly undertaken by the Stadium Manager, future construction of improvements or renovations related to the Stadium. The parties acknowledge and agree that as to any such matters (except for future construction the management of which is expressly undertaken by the Stadium Manager) the Stadium Manager is not and shall not be responsible for the selection of architects, contractors, subcontractors, or suppliers; the prosecution of any work; the compliance of any work with the plans and specifications for the Stadium or Legal Requirements; the completeness, adequacy, accuracy, reasonableness, or appropriateness of those plans or specifications; or otherwise with respect to the construction, improvement or renovation of the Stadium. StadCo and the Stadium Authority acknowledge that the Stadium Manager's recommendations, if any, are based solely upon the Stadium Manager's practical experience in the operation of public assembly facilities similar to the Stadium. Without limiting the generality of the foregoing, StadCo and the Stadium Authority acknowledge that the Stadium Manager does not have the expertise to perform structural analysis on the structure and other elements of the Stadium and the same is not typically included as a Manager Operating Expense, but shall be included as a Manager Operating Expense to the extent set forth in an Budget or as otherwise directed by StadCo and the Stadium Authority. StadCo and the Stadium Authority acknowledge and agree to look to the contractor, subcontractors, architects, engineers and other design professionals for all matters related to the design, construction, improvement, or renovation of any such construction work and not to the Stadium Manager.

2.8 Adjustments for Certain Unanticipated Developments. In the event that StadCo and the Stadium Authority, without the Stadium Manager's approval, designate the Stadium to include properties or structures not contemplated by the parties as of the Agreement Effective Date, and the inclusion of such additional properties or structures could impose material amounts of unreimbursed operating costs on the Stadium Manager, then in any such event StadCo and the Stadium Authority will in good faith review and act upon any Budget amendments that the Stadium Manager may propose in accordance with this Agreement in order to equitably increase the amounts payable to the Stadium Manager if the scope of the Stadium Manager's obligations under this Agreement and its costs of providing additional services are increased due to such adjustments; *provided, however*, the terms of this Section 2.8 shall not authorize either StadCo or the Stadium Authority to impose on the Stadium Manager any additional duties that are not within the Stadium Manager's expertise.

2.9 Standard of Care. Subject to the limitations set forth in this Agreement, the Budget, and the Stadium Lease, the Stadium Manager shall exercise prudent, commercially reasonable good faith efforts in managing and operating the Stadium in accordance with the terms hereof so as to (a) maintain the Stadium in the Required Condition and operate the Stadium as a quality NFL and multi-purpose public sports, public assembly, exhibit and entertainment facility, to a standard of quality comparable to other similar facilities (except that the parties recognize that portions of the Stadium may be in need of capital upgrades); (b) control Manager Operating Expenses, StadCo Operating Expenses and Stadium Authority Operating Expenses; and (c) maximize Operating Revenues.

2.10 Duty and Liability. The Stadium Manager shall owe to each of StadCo and the Stadium Authority a duty to perform the obligations specified to be provided on their respective behalf under this Agreement and to conduct the management and operation of the Stadium at all times with integrity and good faith and in a manner which in the good faith judgment of the Stadium Manager is in the best interests of the Stadium, StadCo and the Stadium Authority and consistent with the terms of this Agreement. The Stadium Manager shall not be liable, responsible, or accountable in damages or otherwise to either StadCo or the Stadium Authority for any act or omission that is within the scope of its authority under this Agreement, except for acts or omissions of the Stadium Manager not in good faith or involving gross negligence or willful misconduct; *provided, however*, the Stadium Manager shall not be liable for damages and other amounts to the extent such items are covered by insurance proceeds or other third party payments.

2.11 Compliance with the Law; Duty. Subject to the applicable Budget and availability of funds provided to the Stadium Manager therefor, the Stadium Manager shall comply in all material respects with all Legal Requirements (including any Legal Requirements to obtain permits and licenses and keep them in effect). The Stadium Manager shall perform its obligations hereunder in conformity with the standard to which an operator of a comparable multi-purpose public sports, public assembly, exhibit and entertainment facility would operate, given the limitations of the Budget and other limitations on the Stadium Manager's authority set forth herein. Subject to the foregoing, the Stadium Manager shall promptly and fully discharge all of its obligations under this Agreement. StadCo and the Stadium Authority acknowledge and recognize that the Stadium Manager's duties under this Section 2.11 are subject to the limits set forth (a) in Section 2.12 with regard to the provision of funds and (b) in other provisions of this Agreement with regard to limitations on the Stadium Manager's authority hereunder imposed in connection with the Major Contracts.

2.12 Funding Limitations. Notwithstanding anything to the contrary set forth in this Agreement, StadCo and the Stadium Authority recognize and agree that performance by the Stadium Manager of its responsibilities under this Article 2, Article 3 or elsewhere in this Agreement (other than the Stadium Manager's obligation to advance funds during the Transitional Period in accordance with an agreed Transitional Budget and as may be provided under Section 5.3 hereof) is in all respects subject to and expressly conditioned upon StadCo and the Stadium Authority's provision of funds to the Stadium Manager for such purposes as hereinafter provided to enable the Stadium Manager to fulfill such responsibilities; *provided, however*, in no event shall the Stadium Manager be obligated to apply the Management Fees to the payment of operating costs and expenses.

ARTICLE 3

MARKETING, PROMOTION AND BOOKING SERVICES FOR NON-NFL EVENTS

3.1 Engagement of Stadium Manager. The Stadium Authority, solely in its own capacity and not on behalf of StadCo, hereby exclusively engages the Stadium Manager to perform marketing, promotion and booking services with respect to Non-NFL Events at the Stadium as provided herein and in the Stadium Lease (the "Marketing and Booking Services"). In consideration for the Marketing and Booking Services, the Stadium Authority will pay the Stadium Manager the Marketing and Booking Fee as provided in Section 7.3. StadCo shall, on its own behalf, market, promote and book all NFL Events and Tenant Incidental Uses at the Stadium.

3.2 Marketing and Booking Duties and Responsibilities. Subject to the limitations set forth in this Agreement and the applicable Budget, the Stadium Manager, or person or persons designated by the Stadium Manager or selected in accordance with Section 3.3.1, shall, on behalf of the Stadium Authority only, perform the following (or cause the same to be performed) throughout the Term hereof after the Commencement Date and, to the extent consistent with the Transitional Budget, prior to the Commencement Date:

3.2.1 Subject to all limitations and exclusions contemplated by the Major Contracts, and consistent with any guidelines as may be adopted from time to time in the Marketing Plan, use commercially reasonable efforts to market, promote, schedule and book Non-NFL Events and other activities at the Stadium in accordance with the Scheduling Procedures; and negotiate, execute, and perform all contracts, use agreements, licenses and other agreements (i) with persons who desire to schedule events, performances, telecasts, broadcasts or other transmissions in, from or to the Stadium or who desire otherwise to use the Stadium or any part thereof or (ii) that pertain to the use, operation and occupancy of the Stadium or any part thereof, other than contracts, use agreements, licenses and other agreements StadCo has the right to negotiate, execute and perform under the Stadium Lease; and

3.2.2 Prepare, and provide to the Stadium Authority, the Marketing Plan required by Section 4.10.

3.3 Replacement Rights.

3.3.1 Following the end of the second Fiscal Year, if, after any succeeding full Fiscal Year, the Stadium Manager has, in the reasonable judgment of the Stadium Authority, materially failed to implement the provisions of the Marketing Plan so as to materially and adversely affect the marketing, promotion and booking of Non-NFL Events and/or Net Income from Non-NFL Events, the Stadium Authority may provide the Stadium Manager with written notice of such fact, with a copy to StadCo. Within thirty (30) days after receipt of such notice, the Stadium Manager will make appropriate staff available upon reasonable notice to meet the Stadium Authority at the Stadium to discuss strategies which may be implemented, either mutually or by the Stadium Manager on behalf of the Stadium Authority, to improve the marketing, promotion and

booking of Non-NFL Events. Within sixty (60) days after such meeting, the Stadium Manager shall submit a written plan to the Stadium Authority detailing the specific measures discussed and agreed at such meeting to address such performance issues, which plan shall be subject to the approval of the Stadium Authority (the "Correction Plan"). Within thirty (30) days after the Stadium Authority's receipt of the Correction Plan, the Stadium Authority and the Stadium Manager shall meet at a mutually agreeable time to discuss, review and finalize the Correction Plan. To the extent adoption of the Correction Plan requires any amendments to the Annual Stadium Authority Budget, such amendment will be agreed upon by the Stadium Manager and the Stadium Authority. If, notwithstanding the adoption of the Correction Plan, after two (2) additional Fiscal Years, the Stadium Manager has, in the reasonable judgment of the Stadium Authority, materially failed to implement the provisions of the Marketing Plan so as to materially and adversely affect the marketing, promotion and booking of Non-NFL Events and/or Net Income from Non-NFL Events, the Stadium Authority shall have the right to direct the Stadium Manager to subcontract the marketing and booking of Non-NFL Events on behalf of the Stadium Authority to a third-party provider of such services selected jointly by the Stadium Manager and the Stadium Authority (the "Non-NFL Event Replacement Right"). If the Stadium Manager and the Stadium Authority cannot agree on a replacement provider of such services, the Stadium Manager and the Stadium Authority shall resolve such disagreement in accordance with the Dispute Resolution Procedures. If the Stadium Authority exercises the Non-NFL Event Replacement Right, the Marketing and Booking Fee will not be paid to the Stadium Manager for the period that a third party provider is providing the Marketing and Booking Services in accordance with this Article 3.

3.3.2 If, at any time following the end of the first Fiscal Year, the Stadium Manager does not, in the reasonable judgment of the Stadium Authority, meet the Stadium Authority's reasonable expectations with respect to the management of the Stadium (other than with respect to the marketing, promotion and booking of Non-NFL Events as addressed above in Section 3.3.1), the Stadium Authority may provide the Stadium Manager with written notice of such fact, with a copy to StadCo. Within thirty (30) days after receipt of such notice, the Stadium Manager will make appropriate staff available upon reasonable notice to meet with the Stadium Authority and StadCo at the Stadium to discuss strategies which may be implemented, either mutually or by the Stadium Manager on behalf of the Stadium Authority on the one hand and StadCo on the other hand, to improve the management of the Stadium. Within sixty (60) days after such meeting, the Stadium Manager shall submit a written plan to the Stadium Authority, with a copy to StadCo, detailing the specific measures discussed and agreed at such meeting to address such performance issues, which plan shall be subject to the approval of the Stadium Authority and StadCo (the "Management Correction Plan"). Within thirty (30) days after the Stadium Authority's receipt of the Management Correction Plan, the Stadium Authority, StadCo and the Stadium Manager shall meet at a mutually agreeable time to discuss, review and finalize the Management Correction Plan. To the extent adoption of the Management Correction Plan requires any amendments to the Annual Stadium Authority Budget, such amendment will be agreed upon by the Stadium Manager and the Stadium Authority. If, notwithstanding the adoption of the Management Correction Plan, after two (2) additional Fiscal Years, in the reasonable

judgment of the Stadium Authority, the Stadium Authority's reasonable expectations with respect to the management of the Stadium continue not to be satisfied, the Stadium Authority, StadCo and the Stadium Manager may together agree in writing to the termination of this Agreement; provided, that all amounts then outstanding under the Management Company Revolving Loan provided in accordance with Section 5.3 hereof and all other amounts owed to the Stadium Manager hereunder shall then immediately be due and payable; and following the payment by the Stadium Authority of all amounts due thereunder and hereunder, this Agreement shall terminate. Notwithstanding anything herein to the contrary, no termination under this Section 3.3.2 shall be effective until such time as the Stadium Manager and StadCo have jointly agreed on a management arrangement for the Stadium for the period following such termination. If the Stadium Manager and the Stadium Authority cannot agree on a management arrangement for the Stadium for the period following a termination under this Section 3.3.2, the Stadium Manager and the Stadium Authority shall resolve such disagreement in accordance with the Dispute Resolution Procedures.

ARTICLE 4

RECORDS, ACCOUNTS, BUDGETS AND REPORTS

4.1 Records. The Stadium Manager shall maintain complete and accurate books and records relating to the Net Income from Non-NFL Events, in accordance with generally accepted accounting and management practices, consistently applied. The Stadium Manager shall maintain complete and accurate books and records relating to the operations of the Stadium and its services provided hereunder, including all Stadium Authority Revenue, Shared Stadium Expenses, Stadium Authority Expenses, Net Income from Non-NFL Events, the cost of Capital Repairs, distributions to and from the Operating Expense Reserve and Stadium Capital Expenditure Reserve, any additional information required to prepare the Annual Statement of Stadium Operations and, to the extent so directed by either StadCo or the Stadium Authority, StadCo Operating Expenses and Stadium Authority Operating Expenses, respectively (collectively, "Stadium Records").

4.2 Annual Statement of Stadium Operations. Within ninety (90) days following each Fiscal Year, the Stadium Manager shall furnish to the Stadium Authority and StadCo a statement for such Fiscal Year, prepared by a qualified, third-party certified public accountant selected by StadCo and approved by the Stadium Authority, setting forth such information as specified in the Stadium Lease (the "Annual Statement of Stadium Operations"). In connection with the Annual Statements of Stadium Operations, the Stadium Authority and StadCo shall have the Audit rights more particularly described in the Stadium Lease.

4.3 Accounting Procedures. It is the intention of the parties to eliminate distortions in the recognition of income, to the extent practicable, so that the exercise of discretion in the timing of receipts and expenditures from year to year is minimized. Accordingly, the accounting system of the Stadium Manager shall always be maintained in accordance with GAAP, on an accrual basis, consistently applied.

4.4 Intentionally Deleted.

4.5 Stadium Operation and Maintenance Plan. The Stadium Manager shall be responsible for preparing the Stadium Operation and Maintenance Plan in accordance with the terms and conditions of the Stadium Lease, including the Annual Shared Stadium Expense Budget, Annual Public Safety Budget and the Capital Expenditure Plan, each of which shall be presented annually to the Stadium Authority and StadCo for their respective consideration and approval as described in the Stadium Lease.

4.6 Annual Operating Budget. The Stadium Manager will prepare an annual operating budget for the Stadium for each Fiscal Year (the "Stadium Operations Budget") to meet the scope of services and objectives under this Agreement; such Stadium Operations Budget may include such other information as may be requested by StadCo and the Stadium Authority. The Stadium Operations Budget will include an annual Stadium Authority Budget (the "Annual Stadium Authority Budget"); which meets the scope of services performed by the Stadium Manager on behalf of the Stadium Authority and includes all Stadium Authority Expenses in connection with the Stadium, identifies, among other things, all Stadium Manager's actual costs and expenses in connection with services provided to the Stadium Authority hereunder, any Manager Operating Expenses allocable to the Stadium Manager's services on behalf of the Stadium Authority, including all Manager Operating Expenses allocable to the Marketing and Booking Services, the Stadium Authority's share of amounts in the Annual Shared Expense Budget, and the Stadium Authority's allocable share of the Base Management Fee and all of the Marketing and Booking Fee. The Stadium Operations Budget will also include an annual StadCo Budget (the "StadCo Budget"), which meets the scope of services performed by the Stadium Manager on behalf of StadCo and includes all StadCo Operating Expenses in connection with the services covered by this Agreement, any Stadium Manager Operating Expenses allocable to the Stadium Manager's services on behalf of StadCo, StadCo's share of amounts in the Annual Shared Expense Budget, and StadCo's allocable share of the Base Management Fee. The StadCo Budget shall be subject to the prior review and approval of StadCo; the Annual Stadium Authority Budget shall be subject to the prior review and approval of the Stadium Authority and the Stadium Manager (x) to the extent that the Management Company Revolving Loan described in Section 5.3 below remains in effect and (y) notwithstanding any exercise by the Stadium Authority of the Non-NFL Event Replacement Right. Prior to each Fiscal Year, the Stadium Manager shall submit each Stadium Operations Budget to StadCo and each Annual Stadium Authority Budget to the Stadium Authority for review and approval. Within forty-five days after receipt of a draft Budget from the Stadium Manager, the recipient shall notify the Stadium Manager of any proposed changes, and with such changes as are made, if any, said Budget shall become an approved Budget. The Stadium Authority and StadCo shall provide the Stadium Manager with any information required for the Stadium Manager to prepare the Stadium Operations Budget, including but not limited to information regarding Stadium Authority Operating Expenses and StadCo Operating Expenses.

4.7 Adoption of the Annual Shared Stadium Expense Budget. As part of the annual Stadium Operations Budget, an annual budget for Shared Stadium Expenses (the "Annual Shared Stadium Expense Budget") shall be adopted annually by the Stadium Authority and StadCo in accordance with the provisions of the Stadium Lease. Prior to each Fiscal Year, the Stadium Manager shall deliver to the Stadium Authority and StadCo, for review and comment, a detailed draft budget of Shared Stadium Expenses for such Fiscal Year ("Draft Shared Stadium Expense Budget"), together with a good faith and reasonable projection of Shared Stadium

Expenses over the succeeding five (5) year period. Within forty-five (45) days following the Parties' receipt of the Draft Shared Stadium Expense Budget ("**Budget Comment Period**"), each Party shall provide comments to the Draft Shared Stadium Expense Budget and, specifically, StadCo shall specify whether any of the line items included in the Draft Shared Stadium Expense Budget should be excluded from Shared Stadium Expenses and whether, and to the extent, the amount of any agreed-upon line items should be reduced, all of the foregoing to be based on StadCo's reasonable business judgment consistent with the requirement that the Premises, the South Parking Lot, the South Access Road and the Bridges be maintained in the Required Condition and, as to Public Safety Costs, consistent with the requirements of the Public Safety Plan. If the Stadium Authority and/or StadCo disapprove all or any portion of the Draft Shared Stadium Expense Budget, their comments shall describe with reasonable specificity the basis for such disapproval and, if applicable, the changes that would be necessary to resolve their objections. If the Stadium Authority and StadCo cannot agree on the Draft Shared Stadium Expense Budget, then the Parties will meet and confer in a good faith effort to resolve such disagreement in accordance with the Dispute Resolution Procedures.

4.8 Draft Capital Expenditure Plan. The Capital Expenditure Plan shall be adopted annually by the Stadium Authority as part of the Stadium Operation and Maintenance Plan, subject to the mutual approval of the Stadium Authority and StadCo. Prior to each Fiscal Year, the Stadium Manager shall deliver to the Stadium Authority and StadCo, for review and comment, a detailed draft projection of Capital Expenditures for such Fiscal Year, as well as a five (5) year projection of anticipated Capital Expenditures ("**Draft Capital Expenditure Plan**"). The Draft Capital Expenditure Plan (a) shall contain the Stadium Manager's proposed Capital Repairs to be made to the Premises during the upcoming Fiscal Year, (b) shall describe in reasonable detail any material discrepancies between the Stadium Manager's proposed Capital Expenditures for such Fiscal Year and the five (5) year projection of anticipated Capital Expenditures included in the previous year's Capital Expenditure Plan, and (c) shall include any Capital Expenditures for public safety that the Stadium Manager proposes be made consistent with the then approved Public Safety Plan. Within forty-five (45) days following the Parties' receipt of the Draft Capital Expenditure Plan ("**Capital Plan Comment Period**"), each Party shall provide comments to the Draft Capital Expenditure Plan based on their respective reasonable business judgment consistent with the requirement that the Premises be maintained in the Required Condition and, as to Public Safety Costs, consistent with the requirements of the Public Safety Plan. If either Party disapproves all or any portion of the Draft Capital Expenditure Plan, their comments shall describe with reasonable specificity the basis for such disapproval and the changes that would be necessary to resolve their objections. If the Stadium Authority and StadCo cannot agree on the Draft Capital Expenditure Plan for the applicable Lease Year, then the Parties will meet and confer in a good faith effort to resolve such disagreement in accordance with the Dispute Resolution Procedures.

4.9 Intentionally Deleted.

4.10 Marketing Plan. Until the exercise of any Non-NFL Event Replacement Right, the Stadium Operation and Maintenance Plan shall include a marketing plan setting forth in reasonable detail the Stadium Manager's plans to develop, implement and monitor marketing, booking, advertising and promotion of Non-NFL Events for the Stadium, which marketing plan shall be mutually agreed upon by the Stadium Manager and the Stadium Authority (the

"Marketing Plan"). If the Stadium Authority exercises the Non-NFL Event Replacement Right, the Stadium Authority and the Stadium Manager will develop a similar plan with the third-party provider.

4.11 Transitional Budget. The Parties hereto acknowledge and agree that the funds necessary to fund and pay the operating costs and expenditures projected in the Transitional Budget shall be advanced by the Stadium Manager. To the extent the actual operating costs and expenditures for the Transitional Period exceed those projected in the Transitional Budget, the Stadium Manager shall submit an amended Transitional Budget, which shall be subject to the prior approval of StadCo and the Stadium Authority. StadCo and the Stadium Authority acknowledge and agree that in no event will the Stadium Manager be responsible for actual operating costs and expenditures in excess of amounts it has agreed to fund in the Transitional Budget, and in the event any such additional expenditures are required and funds are not provided therefor, the Stadium Manager's responsibilities are subject to the limitations set forth in Section 2.12 of this Agreement.

4.12 Ownership of Documents. Except as provided below, title to all form documents and software developed by the Stadium Manager in connection with the performance of its obligations under this Agreement shall vest in StadCo and the Stadium Authority upon their creation and will remain the property of StadCo and the Stadium Authority; *provided*, that all amounts due to the Stadium Manager under this Agreement have been paid in full. Notwithstanding the foregoing, (i) any use of such software for other projects and/or any use of uncompleted software for any purpose shall be at StadCo and the Stadium Authority's sole risk and without liability to the Stadium Manager; (ii) the Stadium Manager may make and retain copies of all such form documents and/or software for its own use; and (iii) the Stadium Manager shall have an unrestricted right to use the forms, concepts, and information embodied in any such documents and/or software in other projects; *provided, however*, that StadCo and the Stadium Authority shall have sole rights in and to, and shall not be required to share with the Stadium Manager, any software or other proprietary materials for which a license fee has been paid as a Manager Operating Expense. Notwithstanding anything in this Section 4.12 to the contrary, title to the following form documents and software whether or not developed by the Stadium Manager in connection with the performance of its obligations under this Agreement shall vest solely in StadCo, and only StadCo shall have the right to make or retain copies thereof: (i) football or game day systems and data, including Ticket information, incident reports and data, operating systems in any way related to, or used in connection with, season ticket holder information, and documents and software used to obtain or collect security information and medical and employee information, including, but not limited to, the building operations system ISS 24/7; (ii) NFL Event driven data; and (iii) any other documents and/or software the Stadium Manager and StadCo expressly agree in writing will solely belong to StadCo. StadCo and the Stadium Authority acknowledge that the Stadium Manager may use in performance of its services under this Agreement for StadCo and the Stadium Authority certain forms, concepts, and other information proprietary to the Stadium Manager. Nothing herein is to be construed to limit the Stadium Manager's use of its proprietary information in the future or to convey any rights in the Stadium Manager's proprietary information to StadCo and the Stadium Authority.

ARTICLE 5

FUNDS, ACCOUNTS AND MANAGEMENT COMPANY REVOLVING LOAN

5.1 Operating Receipts.

(a) To the extent that Stadium Manager collects any Operating Receipts with respect to any Non-NFL Event, it shall deposit them in an account maintained by the Stadium Manager in the name of the Stadium Authority in an Acceptable Bank (the "Stadium Authority Deposit Account"); to the extent that there are any Manager Operating Expenses directly related to such Non-NFL Event then currently payable, or there are amounts then due and owing to performers and promoters relating to such Non-NFL Event, the Stadium Manager may apply all or a portion of the Operating Receipts related to such Non-NFL Event to such Manager Operating Expenses or the payment of such amounts. The Stadium Manager shall promptly deposit the balance of such Operating Receipts in such account of the Stadium Authority as the Stadium Authority may designate in writing from time to time.

(b) To the extent that Stadium Manager collects any Operating Receipts on behalf of StadCo, it shall deposit them in an account maintained by the Stadium Manager in the name of StadCo in an Acceptable Bank (the "StadCo Deposit Account"); to the extent that there are any Manager Operating Expenses directly related to the event producing such Operating Receipts then currently payable, the Stadium Manager may apply all or a portion of said Operating Receipts to such Manager Operating Expenses or the payment of such amounts. The Stadium Manager shall promptly deposit the balance of such Operating Receipts in such account of StadCo as StadCo may designate in writing from time to time.

5.2 Operating Fund.

5.2.1 *Establishment of Fund.* In order to provide funds necessary to permit the Stadium Manager to perform its obligations hereunder, the Stadium Manager shall receive from each of StadCo and Stadium Authority amounts for funding Manager Operating Expenses and other amounts incurred on their respective behalf as provided in the StadCo Budget and the Annual Stadium Authority Budget, respectively. The Stadium Manager will deposit any such amounts, upon receipt, in two separate interest-bearing accounts, in an Acceptable Bank to be held and administered by the Stadium Manager in the Stadium Manager's name (the "Operating Fund"). The Operating Fund may only be used in the manner and for the purposes specified in this Section 5.2; and in no event shall StadCo and the Stadium Authority be required to maintain any specified level of funding in the Operating Fund other than such amount as each has approved in any Budget or agreed to in connection with any amendment of a previously approved Budget.

5.2.2 *Application of Operating Fund.* Monies in the respective accounts of the Operating Fund and any interest thereon shall be applied first to the payment of StadCo's and the Stadium Authority's respective Management Fees accrued through the end of the prior month and thereafter to any Manager Operating Expenses then accrued. The balance shall be retained in the respective accounts of the Operating Fund as a reserve for payment of future Manager Operating Expenses. If, at the end of any Fiscal Year, there

shall be a balance in an account of the Operating Fund in an amount in excess of the sum of (a) allocable Management Fees and Manager Operating Expenses for the first month of the ensuing Fiscal Year, plus (b) amounts StadCo or the Stadium Authority, as appropriate, has agreed to retain in the respective account of the Operating Fund in the applicable Budget, the Stadium Manager shall disburse such excess to StadCo or the Stadium Authority, as appropriate, on or before the fifteenth (15th) day of such month, subject to the provisions of Article 7 below. If after the first day of any month the amount of monies on deposit in a respective account of the Operating Fund and available for that purpose shall be insufficient for the payment of the Operating Expenses then due or budgeted to become due during such month, StadCo and the Stadium Authority shall promptly advance the amount of such insufficiency to the Stadium Manager upon notice of such insufficiency from the Stadium Manager or, if no such transfer is made by the Stadium Authority, the Stadium Manager may draw on the Management Company Revolving Loan to the extent required for expenses which may be funded with draws under the Management Company Revolving Loan in accordance with the Revolving Credit Agreement.

5.2.3 *Application to Emergency Needs.* If at anytime or from time to time, by reason of any occurrence of an Emergency Expenditure, monies on deposit in an account of the Operating Fund are insufficient to pay the Manager Operating Expenses then due; or to fund budgeted Capital Expenditures; or to pay for replacements or repairs necessary to correct any condition that jeopardizes the structural soundness of the Stadium, threatens the public safety, or poses an imminent threat of major damage to property, or to prevent a violation of law; or to pay any other expenses StadCo and/or the Stadium Authority may agree to pay; then in such event the Stadium Manager may pay from either account of the Operating Fund the amount required. The Stadium Manager shall immediately notify StadCo and the Stadium Authority of such transfer; StadCo and the Stadium Authority agree that, upon such notice, they shall follow the applicable Stadium Lease provisions relating to their payment of and approvals for such Emergency Expenditures. If there are insufficient funds in the Operating Fund, StadCo and/or the Stadium Authority, as applicable in accordance with the terms of the Stadium Lease, shall promptly advance the amount for which such party is responsible to the Stadium Manager or, if no such transfer is made by the Stadium Authority for costs owing by it, the Stadium Manager may draw on the Management Company Revolving Loan to the extent required for expenses which may be funded with draws under the Management Company Revolving Loan in accordance with the Revolving Credit Agreement.

5.2.4 The provisions of this Section 5.2 shall only apply to the extent they do not conflict with applicable cash management procedures contained in financing documents for the Stadium; to the extent required, this Agreement shall be modified to conform to such procedures.

5.3 Management Company Revolving Loan. The Stadium Manager has agreed to provide the Management Company Revolving Loan to the Stadium Authority to fund certain expenses incurred on behalf of the Stadium Authority in accordance with the terms and conditions of the Revolving Credit Agreement. A copy of the Revolving Credit Agreement executed in connection with the Management Company Revolving Loan is attached as Exhibit

A. As set forth in Section 4.6 hereof, as long as the Management Company Revolving Loan remains in effect or there is any amount still outstanding thereunder, the Annual Stadium Authority Budget shall be subject to the prior review and approval of the Stadium Manager, which approval shall be in the Stadium Manager's sole and absolute discretion. The Stadium Manager's review and approval right with respect to the Annual Stadium Authority Budget includes the right to review the Annual Stadium Authority Budget on a line item basis and to object to any item it does not believe is reasonably necessary. At no time will the Stadium Manager be obligated to fund any item under the Revolving Credit Agreement that the Stadium Manager has not reviewed and approved in the Stadium Manager's sole and absolute discretion in accordance with this Section 5.3. In the event that this Agreement terminates and the Revolving Credit Agreement remains in effect, the Stadium Authority shall continue to provide any and all back-up documentation, records, and other information reasonably requested by the Stadium Manager in connection with the Management Company Revolving Loan. This Section 5.3 shall survive expiration or earlier termination of this Agreement.

5.4 Invoicing under Financing Documents. To the extent required under applicable financing documents, the Stadium Manager shall prepare such requisitions or other invoice and/or disbursement requests as may be required for the payment of Manager Operating Expenses or Stadium Authority Operating Expenses or StadCo Operating Expenses payable by StadCo and the Stadium Authority, respectively, from any depository bank or collateral agent holding the funds available therefor under the terms of the applicable financing documents.

5.5 No Obligation of the Stadium Manager to Advance Funds. To the extent of the Transitional Budget and as otherwise limited by this Agreement, the Stadium Manager shall pay all Transitional Period Expenses, subject to StadCo and the Stadium Authority's obligations to reimburse the Stadium Manager for Transitional Period Expenses under Sections 2.12 and 7.1. To the extent responsible therefor under the Stadium Operations Budget and the Stadium Lease, each of StadCo and the Stadium Authority shall be solely responsible for and shall promptly pay, or provide funds (including through any use of funds held by a depository bank or collateral agent as referenced in Section 5.4 above) to the Stadium Manager to enable the Stadium Manager to pay Manager Operating Expenses and Capital Expenditures on its behalf, in each case in accordance with applicable Budgets, and to pay Emergency Expenditures on its behalf. Except with regard to Transitional Period Expenses detailed in the Transitional Budget agreed by Stadium Manager or otherwise agreed to by the Parties and amounts drawn under the Revolving Credit Agreement, the Stadium Manager shall not be obligated to make any advance of its own funds to or for the account of either StadCo or the Stadium Authority or to pay any sums incurred for the performance of services or goods delivered to the Stadium, nor shall the Stadium Manager be obligated to incur any liability or obligation for the account of either StadCo or the Stadium Authority. Each of StadCo and the Stadium Authority shall provide to the Stadium Manager from time to time all such sums as are needed to pay their respective shares of Manager Operating Expenses and any StadCo Operating Expenses and Stadium Authority Operating Expenses, respectively, of the Stadium which are not paid from Operating Receipts available for that purpose, subject to the budgeting procedures and other limitations set forth in this Agreement. Each of StadCo and the Stadium Authority covenants and agrees to pay all Transitional Period Expenses and Manager Operating Expenses attributable to the services performed by Stadium Manager on its behalf and to provide funds to allow for the payment of all Manager Operating Expenses or Capital Expenditures incurred by the Stadium Manager under

any contract or agreement executed or entered into by the Stadium Manager in accordance with this Agreement. Each of StadCo and the Stadium Authority shall at all times be responsible for and, to the fullest extent permitted by California law, shall, hold the Stadium Manager harmless from and against any operating loss incurred by the Stadium Manager in performing services on their respective behalf in any Fiscal Year in accordance with the terms of this Agreement.

ARTICLE 6

POWER AND FUNCTIONS

6.1 Authority of the Stadium Manager. The Stadium Manager shall have the exclusive right and authority to exercise, or delegate the exercise of, all rights, powers and duties conferred or imposed on the Stadium Manager in this Agreement, subject only to the limitations expressly set forth in this Agreement.

6.2 Property. All property and equipment purchased with StadCo and the Stadium Authority's respective funds for use in the Stadium shall be and shall remain the property of StadCo and the Stadium Authority, as applicable, and title to such property and equipment shall remain with StadCo and the Stadium Authority, as applicable. All property and equipment purchased with Stadium Manager's funds for use in the Stadium or brought to the Stadium by Stadium Manager shall be and shall remain the property of the Stadium Manager. The Stadium Manager will provide each of StadCo and the Stadium Authority with an accurate annual inventory of all property owned by the Stadium Manager, StadCo and the Stadium Authority, respectively, that is located at the Stadium and purchased after the Commencement Date. Further, the Stadium Manager shall exercise in its good faith efforts to prepare and maintain an inventory of the property located at the Stadium as of the Commencement Date.

6.3 Capital Improvements. Except for the Capital Expenditures set forth in the applicable Budget and Emergency Expenditures, the Stadium Manager shall have no authority to make any Capital Expenditures without the prior written consent of StadCo and the Stadium Authority.

6.4 Contracts. The Stadium Manager shall have the contracting authority on behalf of the Stadium Authority and/or StadCo that the Stadium Authority and/or StadCo grants to the Stadium Manager from time to time via separate agreement.

6.5 Employees.

6.5.1 Employees now or hereafter hired by the Stadium Manager in connection with the management services provided by the Stadium Manager hereunder shall be employees of the Stadium Manager and not of either StadCo or the Stadium Authority, although the employment costs of such employees (including, without limitation, wages, salary, benefits, and the costs of complying with local, state, and federal employment laws) shall be an Operating Expense. The Stadium Manager shall have complete and absolute discretion and authority with respect to the number, functions, qualifications, compensation and other terms and conditions relating to its employees.

6.5.2 Following approval by StadCo and the Stadium Authority, which shall not be unreasonably withheld, the Stadium Manager shall select the General Manager who, no later than the Commencement Date, will be placed on site at the Stadium. The General Manager shall be and remain an employee of the Stadium Manager. If at any point during the Term either StadCo or the Stadium Authority has concerns related to the General Manager, StadCo, the Stadium Authority and the Stadium Manager shall meet to discuss those concerns and, subject to applicable employment laws with respect to such matter, attempt to reach agreement as to a plan to address such concerns.

6.6 Purchase of Supplies and Services. Subject to the limitations set forth or referenced herein, the Stadium Manager shall have full authority and discretion as to the purchase of all equipment, materials, supplies and inventories reasonably required by it for performance of its services under this Agreement, but shall endeavor to make all such purchases at the best price available taking into account circumstances known to the Stadium Manager and considering the quantities required and the quality desired, at the time available for the delivery and the sources of supply whenever possible as part of a volume purchase by the Stadium Manager. The Stadium Manager may acquire property or services from or otherwise transact business with its Affiliates for any of the goods to be purchased or services to be performed by it under this Agreement but only if the prices charged and services rendered are competitive with those obtainable from others rendering comparable services in the field. With respect to the purchase of goods or services, the Stadium Manager will comply with all applicable Legal Requirements.

6.7 Settlement of Claims. The Stadium Manager agrees to comply with such reasonable procedures regarding settlement of claims as are included in the Stadium Operation and Maintenance Plan from time to time and as incorporated in all then-applicable Budgets.

ARTICLE 7

FEES AND EXPENSES

7.1 Transitional Period Expenditures.

7.1.1 Transitional Period Expenses shall be treated as Manager Operating Expenses during the first Fiscal Year of this Agreement and shall be included in, and reimbursed to the Stadium Manager in accordance with, the respective Budgets as agreed by the Stadium Authority and StadCo upon their adoption in accordance with Article 4 hereof. The parties acknowledge that the Stadium Manager shall have no obligation to incur any Capital Expenditures or Emergency Expenditures during the Transitional Period.

7.1.2 Other than the reimbursement provided for in Subsection 7.1.1 above, StadCo and the Stadium Authority shall not be obligated to pay the Stadium Manager any additional management fee or other compensation for the Stadium Manager's services hereunder during the Transitional Period.

7.2 Base Management Fees. For services to be performed by the Stadium Manager on their behalf, the Stadium Authority and StadCo shall jointly pay to the Stadium Manager for

each Fiscal Year following the Commencement Date, or pro rata portion thereof, a base fee (the "Base Management Fee"), such fee to be paid in each year after the Commencement Date in twelve (12) monthly installments on the first Business Day of each month. The Base Management Fee shall be prorated for any partial Fiscal Year during such period, including any prorations applicable to the Fiscal Year in which the Commencement Date occurs. The Base Management Fee shall be payable at the rate of Four Hundred Thousand and No/100 Dollars (\$400,000.00) per year for each period from and after the Commencement Date through the end of the Term. The Base Management Fee payable to the Stadium Manager under this Section 7.2 shall be increased annually at the close of the first Fiscal Year and every Fiscal Year thereafter (the "Adjustment Date") by a percentage equal to three percent (3%) of the then current Base Management Fee, as adjusted.

7.3 Marketing and Booking Fee. In addition to the Base Management Fee payable to the Stadium Manager under Section 7.2 above, the Stadium Authority (and not StadCo) shall pay to the Stadium Manager a fee, which may include an incentive component, for its Marketing and Booking Services performed pursuant to Article 3 hereof (the "Marketing and Booking Fee"). The terms of such Marketing and Booking Fee, including but not limited to the timing of payment thereof, the amount and/or any formula used in the calculation thereof, and any escalation factor with respect thereto, shall be agreed by each of the parties hereto in writing. Notwithstanding the foregoing, except as may otherwise be agreed by the parties hereto, if the Stadium Authority exercises any Non-NFL Event Replacement Right under Section 3.3.1, the Stadium Manager will not be entitled to the Marketing and Booking Fee described in this Section 7.3 after the effective date of such exercise.

7.4 Stadium Manager Expenses. The Stadium Authority and StadCo, as applicable and as set forth in their respective Budget comprising a portion of the Stadium Operations Budget, shall provide funds in accordance with Article 5 hereof to pay any Manager Operating Expenses and any other of the Stadium Manager's actual costs and expenses in connection with its services provided hereunder.

ARTICLE 8

TERMINATION

8.1 Termination for Cause.

8.1.1 The Stadium Authority may terminate this Agreement for cause by written notice upon the occurrence of any of the following: (i) fraud or intentional and material misrepresentation by or at the direction of the Stadium Manager in connection with this Agreement; (ii) misappropriation or conversion of any funds received pursuant to this Agreement by or at the direction of the Stadium Manager; or (iii) willful misconduct of the Stadium Manager resulting in an Event of Default, which Event of Default is not cured in accordance with Article 11 hereof. Except as set forth in this Section 8.1.1, the Stadium Authority may not terminate this Agreement without obtaining StadCo's prior written consent.

8.1.2 StadCo may terminate this Agreement for cause by written notice upon the occurrence of an Event of Default by the Stadium Manager, which Event of Default is not cured in accordance with Article 11 hereof.

8.1.3 The Stadium Manager may terminate this Agreement for cause by written notice upon the occurrence of an Event of Default by the Stadium Authority or StadCo, which Event of Default is not cured in accordance with Article 11 hereof.

8.2 Automatic Termination. This Agreement shall terminate automatically, without action or notice by any party, upon the occurrence of any of the following: the Stadium Manager files or has filed against it a voluntary or involuntary petition in bankruptcy or a voluntary or involuntary petition or an answer seeking reorganization, an arrangement, readjustment of its debts, or for any other relief under the Bankruptcy Code, as amended, or under any other state or federal insolvency act or law not dismissed within sixty (60) days thereof, or any action by the Stadium Manager indicating its consent to, approval of, or acquiescence to the appointment of a receiver or trustee for all or a substantial part of its property; the making by such party of an assignment for the benefit of creditors, the inability of the Stadium Manager, or its admission in writing of its inability, to pay its debts as they mature, or the liquidation, dissolution, or termination of the corporate or partnership existence of the Stadium Manager.

8.3 Partial Termination. If the Stadium Authority exercises the Stadium Authority Put Right under the Stadium Lease, all of the Stadium Authority's rights and obligations under this Agreement shall terminate automatically on the Tenant Season Expansion Date except those rights and obligations that expressly survive termination of the Agreement, the Stadium Authority shall not longer be a party to this Agreement and this Agreement shall remain in full force and effect between StadCo and the Stadium Manager.

8.4 Termination Upon Termination of Stadium Lease. If the Stadium Lease expires or is otherwise terminated, StadCo may terminate this Agreement by delivering written notice of such termination to the Stadium Manager and the Stadium Authority, which termination shall be effective immediately upon delivery of such notice of termination.

8.5 Surrender of Funds and Improvements. Upon expiration or termination of this Agreement, the Stadium Manager shall promptly surrender the Stadium to StadCo and the Stadium Authority, leaving all equipment, supplies, manuals, books, records, and inventories that are the property of StadCo or the Stadium Authority or were purchased from funds made available by StadCo or the Stadium Authority, and shall deliver to StadCo and the Stadium Authority, or give them full control over, their respective monies, funds and accounts remaining hereunder; and StadCo and the Stadium Authority shall each immediately thereupon make all payments due the Stadium Manager as set forth in this Agreement.

ARTICLE 9

INSURANCE

9.1 Stadium Manager Insurance. The Stadium Manager shall be a named insured on the Stadium Property Insurance Policy required under the Stadium Lease. The Stadium Manager has no obligation under this Agreement to maintain additional insurance coverage.

9.2 StadCo Insurance. From and after the Commencement Date and during the remainder of the Term, StadCo shall maintain the insurance coverage required under the Stadium Lease pursuant to the terms set forth therein.

9.3 Stadium Authority Insurance. From and after the Commencement Date and during the remainder of the Term, the Stadium Authority shall maintain the insurance coverage required under the Stadium Lease pursuant to the terms set forth therein.

9.4 Waiver of Subrogation. The parties release each other and their respective authorized representatives from any claims for damages and from any right of recovery to any person, the Stadium or any fixtures, personal property, improvements and alterations of any party in or about the Stadium that are caused by or result from risks insured against (or that would be insured against without taking into account applicable deductible amounts) under any insurance policies carried by the parties under this Agreement, whether or not the cause thereof results from the negligence (whether ordinary or gross) of any party to this Agreement or their authorized representatives. The parties agree to cause the issuers of the insurance policies required to be maintained by them hereunder to include waivers of the rights of recovery and subrogation.

9.5 Survival. All obligations of the parties under this Article 9 shall survive the expiration or early termination of this Agreement.

ARTICLE 10

REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Stadium Manager Representations, Warranties and Covenants. The Stadium Manager represents and warrants to, and covenants with, the other parties hereto as follows:

10.1.1 Organization; Authorization. The Stadium Manager is a limited liability company, duly organized and validly existing under the laws of the State of Delaware; the Stadium Manager has all requisite power and authority to enter into this Agreement; and the execution, delivery and consummation of this Agreement by the Stadium Manager have been duly authorized.

10.1.2 No Violation. The execution, delivery and performance of this Agreement by the Stadium Manager will not result in the breach of or constitute a default under any loan or credit agreement or any other agreement, instrument, judgment or decree, to which the Stadium Manager is a party or by which the Stadium Manager or its assets may be bound or affected. All consents and approvals of any Person (including

members of the Stadium Manager) required in connection with the Stadium Manager's execution, delivery and performance of this Agreement have been obtained.

10.1.3 Litigation. Other than as disclosed by the Stadium Manager to the other parties hereto, no suit is pending against the Stadium Manager which could have a material adverse affect upon the Stadium Manager's performance under this Agreement. There are no outstanding judgments against the Stadium Manager which could have a material adverse affect upon the Stadium Manager's performance under this Agreement.

10.1.4 No Conflicts. This Agreement is not prohibited by, and does not conflict with, any other agreement, judgment or decree to which the Stadium Manager is a party or is otherwise subject.

10.1.5 No Violation of Laws. As of the Agreement Effective Date, the Stadium Manager has received no notice asserting any noncompliance in any material respect by the Stadium Manager with Applicable Law relating to the transactions contemplated hereby, and the Stadium Manager is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other Governmental Authority which is in any respect material to the transactions contemplated hereby.

10.2 StadCo Representations, Warranties and Covenants. StadCo represents and warrants to, and covenants with, the other parties hereto as follows:

10.2.1 Organization; Authorization. StadCo is a limited liability company, duly organized and validly existing under the laws of the State of Delaware; StadCo has all requisite power and authority to enter into this Agreement; and the execution, delivery and consummation of this Agreement by StadCo have been duly authorized.

10.2.2 No Violation. The execution, delivery and performance of this Agreement by StadCo will not result in the breach of or constitute a default under any loan or credit agreement, or any other agreement, instrument, judgment or decree, to which StadCo is a party or by which StadCo or its assets may be bound or affected. All consents and approvals of any Person (including members of StadCo) required in connection with StadCo's execution, delivery and performance of this Agreement have been obtained.

10.2.3 Litigation. Other than as disclosed by StadCo to the other parties hereto, no suit is pending against StadCo which could have a material adverse affect upon StadCo's performance under this Agreement. There are no outstanding judgments against StadCo which could have a material adverse affect upon StadCo's performance under this Agreement.

10.2.4 No Conflicts. This Agreement is not prohibited by, and does not conflict with, any other agreement, judgment or decree to which StadCo is a party or is otherwise subject.

10.2.5 No Violation of Laws. As of the Agreement Effective Date, StadCo has received no notice asserting any noncompliance in any material respect by StadCo with Applicable Law relating to the transactions contemplated hereby; and StadCo is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other Governmental Authority which is in any respect material to the transactions contemplated hereby.

10.3 Stadium Authority Representations, Warranties and Covenants. The Stadium Authority represents and warrants to, and covenants with, the other parties hereto as follows:

10.3.1 Authority. The execution, delivery and performance of this Agreement by the Stadium Authority have been duly authorized by the Stadium Authority, and no additional or further act by any other Governmental Authority is required to authorize such execution, delivery and performance.

10.3.2 No Conflicts. This Agreement is not prohibited by, and does not conflict with, any other agreement, judgment or decree to which the Stadium Authority is a party or is otherwise subject.

10.3.3 No Violation of Laws. As of the Agreement Effective Date, the Stadium Authority has received no notice asserting any noncompliance in any material respect by the Stadium Authority with Applicable Law relating to the transactions contemplated hereby; and the Stadium Authority is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other Governmental Authority which is in any respect material to the transactions contemplated hereby.

10.3.4 Litigation. Other than as disclosed by the Stadium Authority to the other parties hereto, no suit is pending against the Stadium Authority which could have a material adverse affect upon the Stadium Authority's performance under this Agreement. There are no outstanding judgments against the Stadium Authority which could have a material adverse affect upon the Stadium Authority's performance under this Agreement.

10.4 Additional Documents and Approval. Each of the parties hereto, whenever and as often as each shall be reasonably requested to do so by any other party hereto, shall execute or cause to be executed any additional documents, take any additional actions and grant any additional approvals consistent with the provisions of this Agreement as may be necessary or expedient to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement.

10.5 Notice of Matters. If any of the parties hereto acquires knowledge of any matter which may constitute a breach of any of its representations, warranties or covenants set forth herein which arises after the Agreement Effective Date, it shall promptly give notice of the same to the other parties hereto.

10.6 Compliance with Laws. During the Term, each of the parties hereto shall, in connection with this Agreement and its respective use of, and the exercise of its respective rights with respect to, the Stadium, comply with all Applicable Laws.

10.7 Survival of Covenants and Warranties. All covenants, representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement. No action taken pursuant to or related to this Agreement shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, condition or agreement herein.

ARTICLE 11

DEFAULT AND REMEDIES

11.1 Events of Default. Each of the following shall constitute an "Event of Default" under this Agreement:

11.1.1 Failure to pay when due any amount required to be paid under this Agreement, if the failure continues for thirty (30) days after notice has been given to the breaching party; and

11.1.2 Failure to perform any other obligation under this Agreement, if the failure to perform is not cured within thirty (30) days after the earlier of the breaching party having actual knowledge of such failure to perform and written notice having been given to the breaching party; *provided, however,* that if the breach is of a type that cannot reasonably be cured within such thirty (30) day period, an Event of Default shall not be deemed to have occurred if the breach is such that it can reasonably be expected to be cured within one hundred twenty (120) days after notice, the breaching party begins to cure the breach within the thirty (30) day period and diligently and in good faith continues to pursue the cure of the breach and such breach is in fact cured within such one hundred twenty (120) day period.

11.2 Interest on Delinquent Payments. Interest shall accrue on any sums not paid when due from the date on which a default notice is given until paid at an annual rate equal to the lesser of twelve percent (12%) per annum or the maximum non-usurious rate of interest permitted by Applicable Law.

11.3 Notice of Breach. Each party shall promptly notify the other party of any act or omission believed to be a breach of this Agreement. In order to be effective for purposes of Section 11.1, a notice of a breach must state that it is a notice of breach and must specify in detail the act or omission alleged to constitute a breach of this Agreement.

11.4 Rights of Non-Breaching Party. If an Event of Default occurs and is not waived in writing by the non-breaching party, then the non-breaching party shall have the following remedies, which are not exclusive but cumulative, in addition to any other remedies now or later allowed by law or in equity:

11.4.1 The right to cure, at the breaching party's cost and expense, any Event of Default and recover such costs, together with interest thereon as provided in Section 11.2 and reasonable attorneys' fees and costs of court;

11.4.2 The right to sue to collect any sums not paid when due, together with interest accrued thereon as provided in Section 11.2 and reasonable attorneys' fees and costs of court incurred in collecting the same;

11.4.3 The right to sue to collect damages suffered by the non-breaching party by reason of the occurrence of an Event of Default other than breach in the payment of money, together with reasonable attorneys' fees and costs of court incurred in such proceedings;

11.4.4 To the extent provided in Article 8, the right to terminate this Agreement;
or

11.4.5 The right to injunctive relief including seeking specific performance of the breached obligation, together with reasonable attorneys' fees and costs of court incurred in such proceedings.

11.5 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Event of Default or any other Event of Default.

11.6 Costs, Expenses and Fees. In the event of any litigation, arbitration or other dispute resolution proceeding in connection with this Agreement, involving a claim by any party hereto against any other party hereto (a "Proceeding"), (i) no party shall be entitled to advances from or to be reimbursed from Operating Receipts for any costs or expenses incurred by it in such Proceeding, including reasonable attorneys' fees or costs; (ii) no such costs and expenses shall be treated as Operating Expenses; (iii) the prevailing party in such Proceeding shall be entitled to be reimbursed for all costs and expenses incurred in such Proceeding, including reasonable attorneys' fees and costs as may be fixed by the court or the arbitrator, in such manner and from such parties as may be directed by such court or arbitrator; and (iv) any award granted to a party in such Proceeding shall be treated as the sole property of such party.

ARTICLE 12

INDEMNIFICATION

12.1 Stadium Manager Indemnifications.

12.1.1 Stadium Authority. Except to the extent attributable to (i) the negligence or willful misconduct of the Stadium Authority or any of its agents, employees, officials or other representatives; (ii) any failure by the Stadium Authority to make any advance or payment required to be made by the Stadium Authority under this Agreement; and/or (iii) any Event of Default by the Stadium Manager (for which the Stadium Authority shall have the remedies described in this Agreement), the Stadium Manager shall defend, indemnify and hold the Stadium Authority and its agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the services provided hereunder by the Stadium

Manager to the Stadium Authority. Any and all costs and expenses incurred by the Stadium Manager to discharge its obligations under this Section 12.1.1 shall be included as Manager Operating Expenses, unless such costs or expenses result from the gross negligence of the Stadium Manager or any of its agents, employees, officials or other representatives and in which event, such costs and expenses shall be borne solely by the Stadium Manager. The Stadium Authority shall defend, indemnify and hold the Stadium Manager and its agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to (i) the negligence or willful misconduct of the Stadium Authority or any of its agents, employees, officials or other representatives; (ii) any failure by the Stadium Authority to make any advance or payment required to be made by the Stadium Authority under this Agreement.

12.1.2 StadCo. Except to the extent attributable to (i) the negligence or willful misconduct of StadCo or any of its agents, employees, officials or other representatives; (ii) any failure by StadCo to make any advance or payment required to be made by StadCo under this Agreement; and/or (iii) any Event of Default by the Stadium Manager (for which StadCo shall have the remedies described in this Agreement), the Stadium Manager shall defend, indemnify and hold StadCo and its agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the services provided hereunder by the Stadium Manager to StadCo at any time during which StadCo and the Stadium Manager are not Controlled by the same Person. Any and all costs and expenses incurred by the Stadium Manager to discharge its obligations under this Section 12.1.2 shall be included as Manager Operating Expenses, unless such costs or expenses result from the gross negligence of the Stadium Manager or any of its agents, employees, officials or other representatives and in which event, such costs and expenses shall be borne solely by the Stadium Manager. At any time during which StadCo and the Stadium Manager are not Controlled by the same Person StadCo shall defend, indemnify and hold the Stadium Manager and its agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to (i) the negligence or willful misconduct of StadCo or any of its agents, employees, officials or other representatives or (ii) any failure by StadCo to make any advance or payment required to be made by StadCo under this Agreement.

12.1.3 Survival. The provisions of this Article 12 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 13

ASSIGNMENT

The Stadium Manager shall not transfer or attempt to transfer the Stadium Manager's duties and obligations under this Agreement without the prior consent of each of the Stadium Authority and StadCo, and any such transfer or attempted transfer to which the Stadium Authority and StadCo do not consent pursuant to this Section 13 shall be void. Notwithstanding the foregoing or anything in this Agreement to the contrary, the Stadium Manager may transfer all or any portion of its duties and obligations under this Agreement to an Affiliate without

obtaining the prior consent of the Stadium Authority or StadCo. Nothing in this Article 13 shall be construed or deemed to limit or restrict the Stadium Manager's rights to assign, pledge or otherwise transfer the Stadium Manager's rights to receive Management Fees without the consent of the Stadium Authority or StadCo.

ARTICLE 14

LENDER PROTECTION

14.1 StadCo Lender's Protection.

14.1.1 Stadium Authority Estoppel Certificates for StadCo. The Stadium Authority shall from time to time, within fifteen (15) Business Days after receipt from StadCo of a request therefor, deliver to StadCo (or to such other party as StadCo may designate in such request, including any lender providing or considering providing financing to StadCo), a certificate, signed by the Stadium Authority stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Stadium Authority's knowledge after reasonable inquiry, there exists (or with the passage of time and/or the giving of notice there will exist) any Event of Default by StadCo and, if so, the nature of such Event of Default; and (iv) such other information pertaining to this Agreement and then available to the public as StadCo may reasonably request. StadCo may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

14.1.2 Stadium Manager Estoppel Certificates for StadCo. The Stadium Manager shall from time to time, within fifteen (15) Business Days after receipt from StadCo of a request therefor, deliver to StadCo (or to such other party as StadCo may designate in such request, including any lender providing or considering providing financing to StadCo), a certificate, signed by the Stadium Manager stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Stadium Manager's knowledge after reasonable inquiry, there exists (or with the passage of time and/or the giving of notice there will exist) any Event of Default by StadCo and, if so, the nature of such Event of Default; and (iv) such other information pertaining to this Agreement and then available to the public as StadCo may reasonably request. StadCo may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

14.1.3 Assignment of StadCo Rights. StadCo shall have the right, without any additional consent or approval of the other parties hereto, to assign to any lender providing financing to StadCo, as security for such financing, the rights of StadCo under this Agreement. StadCo shall, not later than thirty (30) days after such assignment becomes effective, give the other parties hereto notice (the "Notice of StadCo Assignment") of such assignment, and the Notice of StadCo Assignment shall include the name and address of the assignee (the "StadCo Assignee"). Each of the other parties hereto agrees to, upon request therefor from StadCo and/or StadCo Assignee, deliver to

StadCo Assignee an acknowledgement, executed by the Stadium Authority and the Stadium Manager of receipt of a given Notice of StadCo Assignment. Nothing in this Section 14.1.3 shall alter, amend, reduce or excuse StadCo from performing StadCo's obligations under this Agreement.

Following receipt of a Notice of StadCo Assignment, neither the Stadium Authority nor the Stadium Manager shall enter into or consent to any amendment, modification or termination of this Agreement without the prior consent of the StadCo Assignee named in such Notice of StadCo Assignment.

StadCo hereby authorizes and directs each of the other parties hereto, following such other party's receipt of (i) a Notice of StadCo Assignment; (ii) StadCo Assignee's notice of a default by StadCo under the terms and conditions of the financing secured by the assignment described in such Notice of StadCo Assignment; and (iii) StadCo Assignee's request for payment, to make any payments to be made by such other party to StadCo under this Agreement directly to StadCo Assignee. No such other party shall have any obligation to verify or investigate the existence of any claimed default described in the StadCo Assignee's notice.

14.1.4 Notices to StadCo Assignee. Following receipt from StadCo of a Notice of StadCo Assignment, each of the other parties hereto shall, contemporaneously with giving any notice to StadCo under this Agreement, send a copy of such notice to the StadCo Assignee named in such Notice of StadCo Assignment addressed to such StadCo Assignee at the address of such StadCo Assignee set forth in such Notice of StadCo Assignment.

14.1.5 StadCo Assignee's Right to Cure StadCo Event of Default. Following the receipt by a party hereto (other than StadCo) from StadCo of a Notice of StadCo Assignment, the StadCo Assignee named therein shall have the right, but not the obligation, to cure any Event of Default by StadCo, whether then existing or thereafter arising. No such party shall exercise any remedy under this Agreement or otherwise with respect to any such Event of Default by StadCo until at least thirty (30) days after such party has given such StadCo Assignee notice of such Event of Default and StadCo Assignee's right to cure such Event of Default; *provided, however*, that if the breach is not the failure to pay when due any amount required to be paid under this Agreement and is of a type that cannot reasonably be cured within such thirty (30) day period, an Event of Default shall not be deemed to have occurred if the breach is such that it can reasonably be expected to be cured within one hundred twenty (120) days after notice, the StadCo Assignee begins to cure the breach within the thirty (30) day period and diligently and in good faith continues to pursue the cure of the breach and such breach is in fact cured within such one hundred twenty (120) day period.

If a StadCo Assignee succeeds to the interest of StadCo under this Agreement, such StadCo Assignee shall not be (i) bound by any amendment, modification or termination of this Agreement entered into after the date on which the Notice of StadCo Assignment was given made without such StadCo Assignee's written consent, or (ii) bound by, or liable for the cure of, any failure by StadCo to perform any obligation under this Agreement that arose prior to the date on which such StadCo Assignee succeeded to the interest of StadCo under this Agreement.

14.2 Stadium Authority Lender's Protection.

14.2.1 StadCo Estoppel Certificates for Stadium Authority. StadCo shall from time to time, within fifteen (15) Business Days after receipt from the Stadium Authority of a request therefor, deliver to the Stadium Authority (or to such other party as the Stadium Authority may designate in such request, including any lender providing or considering providing financing to the Stadium Authority), a certificate, signed by StadCo stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to StadCo's knowledge after reasonable inquiry, there exists (or with the passage of time and/or the giving of notice there will exist) any Event of Default by the Stadium Authority and, if so, the nature of such Event of Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Stadium Authority may reasonably request. The Stadium Authority may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

14.2.2 Stadium Manager Estoppel Certificates for the Stadium Authority. The Stadium Manager shall from time to time, within fifteen (15) Business Days after receipt from the Stadium Authority of a request therefor, deliver to the Stadium Authority (or to such other party as the Stadium Authority may designate in such request, including any lender providing or considering providing financing to the Stadium Authority), a certificate, signed by the Stadium Manager stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Stadium Manager's knowledge after reasonable inquiry, there exists (or with the passage of time and/or the giving of notice there will exist) any Event of Default by the Stadium Authority and, if so, the nature of such Event of Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Stadium Authority may reasonably request. The Stadium Authority may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

14.2.3 Assignment of Stadium Authority Rights. The Stadium Authority shall have the right, without any additional consent or approval of the other parties hereto, to assign to any lender providing financing to the Stadium Authority, as security for such financing, the rights of the Stadium Authority under this Agreement. The Stadium Authority shall, not later than thirty (30) days after such assignment becomes effective, give the other parties hereto notice (the "Notice of Stadium Authority Assignment") of such assignment, and the Notice of Stadium Authority Assignment shall include the name and address of the assignee (the "Stadium Authority Assignee"). Each of the other parties hereto agrees to, upon request therefor from the Stadium Authority and/or Stadium Authority Assignee, deliver to Stadium Authority Assignee an acknowledgement, executed by StadCo and the Stadium Manager of receipt of a given Notice of Stadium Authority Assignment. Nothing in this Section 14.2.3 shall alter, amend, reduce or excuse the Stadium Authority from performing the Stadium Authority's obligations under this Agreement.

Following receipt of a Notice of Stadium Authority Assignment, neither StadCo nor the Stadium Manager shall enter into or consent to any amendment, modification or termination of this Agreement without the prior consent of the Stadium Authority Assignee named in such Notice of Stadium Authority Assignment.

The Stadium Authority hereby authorizes and directs each of the other parties hereto, following such other party's receipt of (i) a Notice of Stadium Authority Assignment; (ii) Stadium Authority Assignee's notice of a default by the Stadium Authority under the terms and conditions of the financing secured by the assignment described in such Notice of Stadium Authority Assignment; and (iii) Stadium Authority Assignee's request for payment, to make any payments to be made by such other party to the Stadium Authority under this Agreement directly to Stadium Authority Assignee. No such other party shall have any obligation to verify or investigate the existence of any claimed default described in the Stadium Authority Assignee's notice.

14.2.4 Notices to Stadium Authority Assignee. Following receipt from the Stadium Authority of a Notice of Stadium Authority Assignment, each of the other parties hereto shall, contemporaneously with giving any notice to the Stadium Authority under this Agreement, send a copy of such notice to the Stadium Authority Assignee named in such Notice of Stadium Authority Assignment addressed to such Stadium Authority Assignee at the address of such Stadium Authority Assignee set forth in such Notice of Stadium Authority Assignment.

14.2.5 Stadium Authority Assignee's Right to Cure Stadium Authority Event of Default. Following the receipt by a party hereto (other than the Stadium Authority) from the Stadium Authority of a Notice of Stadium Authority Assignment, the Stadium Authority Assignee named therein shall have the right, but not the obligation, to cure any Event of Default by the Stadium Authority, whether then existing or thereafter arising. No such party shall exercise any remedy under this Agreement or otherwise with respect to any such Event of Default by the Stadium Authority until at least thirty (30) days after such party has given such Stadium Authority Assignee notice of such Event of Default and Stadium Authority Assignee's right to cure such Event of Default; *provided, however,* that if the breach is not the failure to pay when due any amount required to be paid under this Agreement and is of a type that cannot reasonably be cured within such thirty (30) day period, an Event of Default shall not be deemed to have occurred if the breach is such that it can reasonably be expected to be cured within one hundred twenty (120) days after notice, the Stadium Authority Assignee begins to cure the breach within the thirty (30) day period and diligently and in good faith continues to pursue the cure of the breach and such breach is in fact cured within such one hundred twenty (120) day period.

If a Stadium Authority Assignee succeeds to the interest of the Stadium Authority under this Agreement, such Stadium Authority Assignee shall not be (i) bound by any amendment, modification or termination of this Agreement entered into after the date on which the Notice of Stadium Authority Assignment was given made without such Stadium Authority Assignee's written consent, or (ii) bound by, or liable for the cure of, any failure by the Stadium Authority to

perform any obligation under this Agreement that arose prior to the date on which such Stadium Authority Assignee succeeded to the interest of the Stadium Authority under this Agreement.

14.3 Stadium Manager Lender's Protection.

14.3.1 Stadium Authority Estoppel Certificates for Stadium Manager. The Stadium Authority shall from time to time, within fifteen (15) Business Days after receipt from the Stadium Manager of a request therefor, deliver to the Stadium Manager (or to such other party as the Stadium Manager may designate in such request, including any lender providing or considering providing financing to the Stadium Manager), a certificate, signed by the Stadium Authority stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Stadium Authority's knowledge after reasonable inquiry, there exists (or with the passage of time and/or the giving of notice there will exist) any Event of Default by the Stadium Manager and, if so, the nature of such Event of Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Stadium Manager may reasonably request in such request. The Stadium Manager may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

14.3.2 StadCo Estoppel Certificates for Stadium Manager. StadCo shall from time to time, within fifteen (15) Business Days after receipt from the Stadium Manager of a request therefor, deliver to the Stadium Manager (or to such other party as the Stadium Manager may designate in such request, including any lender providing or considering providing financing to the Stadium Manager), a certificate, signed by StadCo stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to StadCo's knowledge after reasonable inquiry, there exists (or with the passage of time and/or the giving of notice there will exist) any Event of Default by the Stadium Manager and, if so, the nature of such Event of Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Stadium Manager may reasonably request. The Stadium Manager may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

14.3.3 Assignment of Stadium Manager Rights. The Stadium Manager shall have the right, without any additional consent or approval of the other parties hereto, to assign to any lender providing financing to the Stadium Manager, as security for such financing, the rights of the Stadium Manager to receive Management Fees under this Agreement. The Stadium Manager shall, not later than thirty (30) days after such assignment becomes effective, give the other parties hereto notice (the "Notice of Stadium Manager Assignment") of such assignment, and the Notice of Stadium Manager Assignment shall include the name and address of the assignee (the "Stadium Manager Assignee"). Each of the other parties hereto agrees to, upon request therefor from the Stadium Manager and/or the Stadium Manager Assignee, deliver to the Stadium Manager Assignee an acknowledgement, executed by the Stadium Authority and StadCo,

of receipt of a given Notice of Stadium Manager Assignment. Nothing in this Section 14.3.3 shall alter, amend, reduce or excuse the Stadium Manager from performing the Stadium Manager's obligations under this Agreement.

Following receipt of a Notice of Stadium Manager Assignment, neither the Stadium Authority nor StadCo shall enter into or consent to any amendment, modification or termination of this Agreement without the prior consent of the Stadium Manager Assignee named in such Notice of Stadium Manager Assignment.

The Stadium Manager hereby authorizes and directs each of the other parties hereto, following such other party's receipt of (i) a Notice of Stadium Manager Assignment; (ii) the Stadium Manager Assignee's notice of a default by the Stadium Manager under the terms and conditions of the financing secured by the assignment described in such Notice of Stadium Manager Assignment; and (iii) the Stadium Manager Assignee's request for payment, to make any payments to be made by such other party to the Stadium Manager under this Agreement directly to the Stadium Manager Assignee. Neither the Stadium Authority nor StadCo shall have any obligation to verify or investigate the existence of any claimed default described in the Stadium Manager Assignee's notice.

14.3.4 Notices to Stadium Manager Assignee. Following receipt from the Stadium Manager of a Notice of Stadium Manager Assignment, each of the other parties hereto shall, contemporaneously with giving any notice to the Stadium Manager under this Agreement, send a copy of such notice to the Stadium Manager Assignee named in such Notice of Stadium Manager Assignment and addressed to the address set forth in such Notice of Stadium Manager Assignment.

14.3.5 Stadium Manager Assignee's Right to Cure Stadium Manager Event of Default. Following the receipt by a party hereto (other than the Stadium Manager) from the Stadium Manager of a Notice of Stadium Manager Assignment, the Stadium Manager Assignee named therein shall have the right to cure any Event of Default by the Stadium Manager, whether then existing or thereafter arising. Neither the Stadium Authority nor StadCo shall exercise any remedy under this Agreement or otherwise with respect to any such Event of Default by the Stadium Manager until at least thirty (30) days after such party has given such Stadium Manager Assignee notice of such Event of Default and the Stadium Manager Assignee's right to cure such Event of Default; *provided, however,* that if the breach is not the failure to pay when due any amount required to be paid under this Agreement and is of a type that cannot reasonably be cured within such thirty (30) day period, an Event of Default shall not be deemed to have occurred if the breach is such that it can reasonably be expected to be cured within one hundred twenty (120) days after notice, the Stadium Manager Assignee begins to cure the breach within the thirty (30) day period and diligently and in good faith continues to pursue the cure of the breach and such breach is in fact cured within such one hundred twenty (120) day period.

If a Stadium Manager Assignee succeeds to the interest of the Stadium Manager under this Agreement, such Stadium Manager Assignee shall not be (i) bound by any amendment, modification or termination of this Agreement entered into after the date on which the Notice of

Stadium Manager Assignment was given made without such Stadium Manager Assignee's consent, or (ii) bound by, or liable for the cure of, any failure by the Stadium Manager to perform any obligation under this Agreement that arose prior to the date on which such Stadium Manager Assignee succeeded to the interest of the Stadium Manager under this Agreement.

ARTICLE 15

MISCELLANEOUS

15.1 Amendment; Waiver. No alteration, amendment or modification hereof shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Agreement. The failure of any party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by any party hereto of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such party.

15.2 Consent. Unless otherwise specifically provided herein, no consent or approval by any party hereto permitted or required under the terms of this Agreement shall be valid unless the same shall be in writing, signed by the party by or on whose behalf such consent or approval is given. Whenever in this Agreement the consent or approval of any party hereto is required, unless expressly stated to the contrary (e.g., by phrases such as "sole discretion"), the granting of such consent or approval shall be governed by a standard of reasonableness. If any party hereto contends that such standard has not been met, the matter shall be resolved pursuant to the Dispute Resolution Procedures.

15.3 Severability. If any article, section, subsection, term or provision of this Agreement, or the application thereof to any party or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement, or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15.4 Binding Effect. Except as may otherwise be provided herein to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto, and their respective permitted successors and assigns.

15.5 Relationship of Parties. No partnership or joint venture is established between or among the parties hereto under this Agreement, or any other agreement referred to in this Agreement.

15.6 Notices. 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 in Exhibit B attached hereto or at such other address as such Party shall designate by written notice to the other Party and may be (a) sent by registered or certified U.S. Mail with return receipt requested, (b) delivered personally (including delivery by private courier services) or (c) sent by facsimile (with confirmation of such notice) to the Party entitled thereto. Such notices shall be deemed to be duly given or made (i) three (3) Business Days after posting if mailed as provided, (ii) 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 (iii) 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 shall have the right at any time and from time to time to specify additional parties ("Additional Addressees") to whom notice under this Agreement must be given, by delivering to the other Parties five (5) days' notice thereof setting forth the address(es) for each such Additional Addressee.

A party giving a notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response or invoice under this Agreement shall, contemporaneously with the giving of the same, give a copy of such notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response or invoice to each party hereto that is not a named recipient thereof.

15.7 Applicable Law. This Agreement has been prepared in the State of California and shall be governed in all respects by the laws of the State of California.

15.8 Time is of the Essence. Time is of the essence of this Agreement and every term or performance hereunder.

15.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

15.10 Entire Agreement; Conflict. This Agreement supersedes any prior understanding or written or oral agreements between the parties hereto respecting the within subject matter and contains the entire understanding among the parties with respect thereto. In the event of any conflict between any provision in the Recitals to this Agreement and any provision in any Article of this Agreement, the provision in the Article shall govern.

15.11 Saturday, Sunday or Holiday. If the final date of any period provided for herein for the performance of an obligation or for the taking of any action falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day.

15.12 Confidentiality of Proprietary Information. The parties hereto acknowledge that certain records and information of or in possession of the Stadium Manager and/or StadCo relating to the use, management and/or operation of the Stadium that are audited, examined or inspected by the Stadium Authority and/or StadCo pursuant to this Agreement, are or will be proprietary and will place the Stadium at a competitive disadvantage if disclosed to competitors and potential users of the Stadium. The parties hereto therefore agree that, at all times during the

Term (as may be extended) and subject to Applicable Law, the parties hereto shall take all precautions reasonably necessary to ensure that such proprietary information is not released or disclosed to Persons other than the parties hereto without the prior consent of the party to which such information pertains. Each of the parties hereto further agrees to notify the other parties hereto upon receipt of a request for disclosure of any such proprietary information so that each party hereto may take appropriate actions to protect such proprietary action.

15.13 Attorneys' Fees. In the event of any controversy, claim or dispute between or among the parties arising from or relating to this Agreement, the prevailing party or parties shall be entitled to recover reasonable costs, expenses and attorneys' fees. For all purposes of this Agreement and any other documents relating to this Agreement, the terms "attorneys' fees" or "counsel fees" shall be deemed to include paralegals and legal assistants' fees, and wherever provision is made herein or therein for the payment of attorneys' or counsel fees or expenses, such provision shall include such fees and expenses (and any applicable sales taxes thereon) incurred in any and all arbitration, judicial, bankruptcy, reorganization, administrative or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced or after entry of a final judgment.

15.14 Force Majeure. Failure in performance by any party hereunder shall not be deemed an Event of Default, and the non-occurrence of any condition hereunder shall not give rise to any right otherwise provided herein, when such failure or non-occurrence is due to Force Majeure. An extension of time for the performance by any party hereunder attributable to Force Majeure shall be limited to the period of delay due to such Force Majeure, which period shall be deemed to commence from the time of the commencement of the Force Majeure.

15.15 Agreed Extensions. Times of performance under this Agreement may also be extended as mutually agreed upon in writing by the parties hereto. However, any failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default hereunder.

15.16 Liability Limitation. Notwithstanding and prevailing over any contrary provision of, or implication in, this Agreement, no member, elected official, official, employee, agent, or consultant of the Stadium Authority, and no direct or indirect equity holder, officer, employee or agent of the Stadium Manager or StadCo shall be liable to any other party hereto, or any successors in interest thereof, in the event of any Event of Default or other breach by the Stadium Authority, the Stadium Manager or StadCo, for any amount which may become due to such other party or any successors in interest thereof, or on any other obligation under the terms of this Agreement, except any such obligations which result from their criminal acts with respect hereto (i.e., acts which would constitute crimes were they prosecuted therefor and convicted thereof). Notwithstanding and prevailing over any contrary provision of, or implication in, this Agreement, no party hereto (the "Innocent Party") shall be liable to any other party hereto, or any successor in interest thereto, in the event of any Event of Default or other breach under this Agreement by any party other than the Innocent Party.

15.17 Survival. All duties and obligations of each party hereto that, by their terms, are to be performed after the Agreement Termination Date shall survive the expiration or other termination of this Agreement.

15.18 Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any third person, and this Agreement shall not be deemed to have conferred any rights, express or implied, upon any third Person.

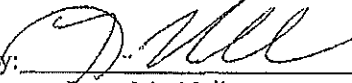
15.19 Stadium Authority Approval. Whenever this Agreement calls for Stadium Authority approval, consent, or waiver, the written approval, consent, or waiver of the Executive Director, or his or her designee, shall constitute the approval, consent, or waiver of the Stadium Authority, without further authorization required from the Board. The Stadium Authority shall authorize the Executive Director, or his or her designee, in this Agreement 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.

15.20 Affiliated Parties. The Stadium Authority hereby acknowledges that the Stadium Manager is an Affiliate of StadCo.

IN WITNESS WHEREOF, the parties have hereunto set their hands to be effective as of the Agreement Effective Date.

STADIUM MANAGER:

FORTY NINERS STADIUM
MANAGEMENT COMPANY LLC, a
Delaware limited liability company

By: 
Name: Larry MacNeil
Title: Vice President and Chief Financial
Officer

[Signatures continued on following page]

[Signature Page to Management Agreement (ManagementCo)]

STADCO:

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

By: 

Name: Larry MacNeil

Title: Vice President and Chief Financial
Officer

[Signatures continued on following page]

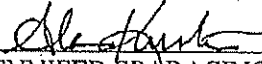
[Signature Page to Management Agreement (StadCo)]

SANTA CLARA STADIUM AUTHORITY,
a joint exercise of powers entity,
created through Government Code Sections 6500 *et seq.*

APPROVED AS TO FORM:

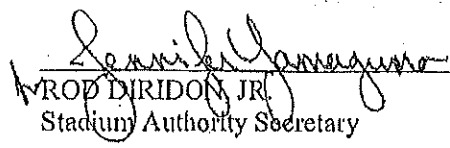


RICHARD E. NOSKY, JR.,
Stadium Authority General Counsel



JENNIFER SPARACINO
Executive Director

ATTEST:



ROB DIRIDON, JR.
Stadium Authority Secretary

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

[Signature Page to Management Agreement (Stadium Authority)]

EXHIBIT "A" TO STADIUM MANAGEMENT AGREEMENT

EASTV48059840.12

FIRST AMENDMENT TO STADIUM MANAGEMENT AGREEMENT
(SANTA CLARA FORTY NINERS STADIUM)

This First Amendment to Management Agreement (this "**First Amendment**") is made and entered into as of November 13, 2012 by and between the Santa Clara Stadium Authority, a joint exercise of powers entity, created through Government Code Section 6500 *et seq.* ("**Stadium Authority**"), Forty Niners Stadium Management Company LLC, a Delaware limited liability company ("**Stadium Manager**"), and Forty Niners SC Stadium Company, LLC, a Delaware limited liability company ("**StadCo**"). Stadium Authority, Stadium Manager, and StadCo collectively are sometimes referred to herein as the "**Parties**," and each of Stadium Authority, Stadium Manager, and StadCo individually is sometimes referred to herein as a "**Party**."

RECITALS

A. Stadium Authority and StadCo entered into that Stadium Lease Agreement effective as of March 28, 2012 (the "**Stadium Lease**"), whereby StadCo obtained a leasehold interest from Stadium Authority in the Stadium Site located in Santa Clara County, California.

B. The Parties entered into that certain Stadium Management Agreement effective as of March 28, 2012 (the "**Existing Management Agreement**"), whereby each of Stadium Authority and StadCo engaged Stadium Manager to provide management services for the Stadium on its respective behalf in accordance with the Stadium Lease, including oversight of the day-to-day operations and maintenance of the Stadium.

C. The Parties now desire to amend the Existing Management Agreement to establish the terms of the Marketing and Booking Fee, to clarify the contracting and procurement authority of the Stadium Manager, and to make certain other amendments, all subject to, and on the basis of, the terms, covenants and conditions hereinafter set forth. The Existing Management Agreement, as amended by this First Amendment, is sometimes referred to herein as the "**Management Agreement**".

AGREEMENT

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree as follows:

1. Recitals; Effective Date.

1.1 Recitals. The provisions of the Recitals above are fully incorporated herein by this reference.

1.2 Effective Date. Unless otherwise specifically provided herein, all provisions of this First Amendment shall be effective as of the date of execution set forth under the Stadium Authority's signature below.

2. Delegation of Contracting Authority.

2.1 Stadium Procurement Contracts. In addition to contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Stadium Authority hereby agrees that the Stadium Manager shall have full authority and discretion to select the providers, and to negotiate, approve, enter into and administer contracts with such providers on behalf of the Stadium Authority, for the purchase of supplies, materials and equipment, and for services, relating to the Stadium and its operations ("**Stadium Procurement Contracts**"), as and to the extent the Executive Director has authority to enter into such Stadium Procurement Contracts pursuant to Sections 17.30.010 through 17.30.180 of the Santa Clara City Code ("**SCCC**"), as approved on first reading by the Santa Clara City Council on November 13, 2012. Manager shall provide the Stadium Authority with information, including the contracting party and the contract amount, regarding all Stadium Procurement Contracts entered into with contract amounts greater than \$100,000 within thirty (30) days of entering into any such contract. The foregoing constitutes the Executive Director's delegation to the Stadium Manager, pursuant to Section 17.30.010(c) of the SCCC, of the authority granted to the Executive Director to enter into such Stadium Procurement Contracts. If the ordinance adopting Sections 17.30.010 through 17.30.180 of the SCCC approved on November 13, 2012 does not become effective by January 31, 2013, this Section 2 shall be of no further force or effect.

2.2 Standard Form Contracts. All Stadium Procurement Contracts shall contain terms and conditions generally consistent with those contained in approved forms of procurement agreement ("**Standard Procurement Agreements**"), the initial forms of which, including alternative provisions and forms for different types of agreements, the Parties will reasonably cooperate to develop promptly following the Effective Date. The Standard Procurement Agreements shall be based on the City of Santa Clara's existing forms of procurement contract as of the Effective Date, as the same may be modified to reflect terms and conditions particular to the Stadium and Stadium Events; provided, however, that the Standard Procurement Agreements may be modified from time to time upon the Parties' mutual approval. If the Stadium Manager desires at any time, in furtherance of the purchasing guidelines described in Paragraph 2.1 above or otherwise, to enter into any contract on behalf of the Stadium Authority with terms or conditions that materially differ from the then approved Standard Procurement Agreements, the Stadium Manager shall obtain the Executive Director's prior approval of such terms or conditions, which approval shall not be unreasonably withheld, conditioned, or delayed.

2.3 Transactions with Affiliates. The Stadium Manager may acquire property or services from or otherwise transact business with its Affiliates for any of the goods to be purchased or services to be performed by it under the Management Agreement, but only if the prices charged and services rendered are competitive with those obtainable from others rendering comparable services in the field.

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3. Marketing and Booking Non-NFL Events.

3.1 Stadium Manager's Rights and Responsibilities. Section 3.2 of the Existing Management Agreement is hereby deleted and the following provisions of this Paragraph 3 shall apply to the marketing and booking of Non-NFL Events at the Stadium.

3.2 Marketing Plan; Contracting Authority. The Stadium Manager, or a person or persons designated by the Stadium Manager or selected in accordance with Section 3.3.1 of the Existing Management Agreement, shall, following the Effective Date, and throughout the Term of the Management Agreement, prepare and provide the Stadium Authority with the Marketing Plan required by Section 4.10 of the Existing Management Agreement. In addition, subject to all limitations and exclusions contemplated by the Major Contracts, on behalf of the Stadium Authority only (not StadCo), (a) the Stadium Manager shall use commercially reasonable efforts, consistent with the Marketing Plan, to market, promote, schedule and book Non-NFL Events and other activities at the Stadium in accordance with the Scheduling Procedures; and (b) without limiting, and in addition to, the Stadium Manager's rights granted pursuant to Paragraphs 2 and 4 hereof and any separate contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Stadium Authority hereby agrees that the Stadium Manager shall have full authority and discretion (i) to determine which Non-NFL Events, including performances, telecasts, broadcasts or other transmissions in, from or to the Stadium, or any part thereof, shall be booked from time to time in accordance with the Scheduling Procedures; (ii) to negotiate, execute and perform all contracts, use agreements, licenses and other agreements with the persons who desire to conduct such Non-NFL Events or who desire otherwise to use the Stadium or any part thereof; other than contracts, use agreements, licenses and other agreements that StadCo has the right to negotiate, execute and perform under the Stadium Lease.

3.3 Quarterly Status Meetings. The Stadium Manager and the Executive Director shall, at the request of the Executive Director, at a mutually convenient time, meet and confer no less often than quarterly during the Term of the Management Agreement to report on the status of the Stadium Manager's activities pursuant to Paragraph 3.2 above and the then approved Marketing Plan, including, without limitation, the status of Stadium Manager's marketing and promotional efforts, the status of any ongoing negotiations with respect to Non-NFL Events, financial performance and other matters relating to past Non-NFL Events, development of the Marketing Plan for the succeeding fiscal year, and such other similar or other topics as the Stadium Authority may request. In addition, and without limiting the Stadium Manager's obligation to provide an Annual Statement of Stadium Operations pursuant to Section 4.2 of the Existing Management Agreement, the Stadium Manager shall furnish the Executive Director, within 45 days of each Non-NFL event with attendance projected to exceed 25,000 and on a quarterly basis for all other events, such written revenue or other reports relating to Non-NFL Events as the Parties may agree from time to time.

3.4 Marketing and Booking Fee.

3.4.1 In addition to the Base Management Fee payable by the Stadium Authority and StadCo pursuant to Section 7.2 of the Existing Management Agreement, Section 7.3 of the Existing Management Agreement provides that the Stadium Authority (and not

StadCo) shall pay to the Stadium Manager a "Marketing and Booking Fee" on terms to be agreed upon. The Stadium Authority and the Stadium Manager hereby agree that the Marketing and Booking Fee, which shall be paid by the Stadium Authority annually in arrears on or before the thirtieth (30th) day following the date on which the Annual Statement of Stadium Operations for the subject Fiscal Year has been delivered by the Stadium Manager, shall be calculated as follows:

(a) For the first three (3) Fiscal Years (including any partial Fiscal Year) if and to the extent that Net Income from Non-NFL Events for a particular Fiscal Year exceeds the Marketing and Booking Fee Benchmark (as defined in Paragraph 3.4.1(c) below) applicable to such Fiscal Year, then the Marketing and Booking Fee shall equal the marginal rate set forth below, multiplied by the applicable amount by which the Net Income from Non-NFL Events for such Fiscal Year exceeds the applicable Marketing and Booking Fee Benchmark:

FIRST THREE (3) FISCAL YEARS	
Amount by which Net Income from Non-NFL Events exceeds Marketing and Booking Fee Benchmark	Marginal Rate
\$1 - \$1,000,000	5%
\$1,000,001 - \$2,000,000	10%
\$2,000,001-\$7,000,000	15%
\$7,000,001 and above	20%

(b) Commencing with the fourth (4th) Fiscal Year and continuing thereafter during the Term of the Management Agreement, if and to the extent that Net Income from Non-NFL Events for a particular Fiscal Year exceeds the Marketing and Booking Fee Benchmark applicable to such Fiscal Year, then the Marketing and Booking Fee shall equal the marginal rate set forth below, multiplied by the applicable amount by which the Net Income from Non-NFL Events for such Fiscal Year exceeds the applicable Marketing and Booking Fee Benchmark;

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FOLLOWING THE THIRD (3RD) FISCAL YEAR	
Amount by which Net Income from Non-NFL Events exceeds Marketing and Booking Fee Benchmark	Marginal Rate
\$1 - First Tier Ceiling*	10%
First Tier Ceiling* - Second Tier Ceiling*	15%
Second Tier Ceiling* and above	20%

*As defined in Paragraph 3.4.1(c) below.

(c) For the first (1st) Fiscal Year, the Marketing and Booking Fee Benchmark will equal Five Million Dollars (\$5,000,000.00). The Marketing and Booking Fee Benchmark will increase annually at the close of the first Fiscal Year and every Fiscal Year thereafter by a percentage equal to three percent (3%) of the then current Marketing and Booking Fee Benchmark, as adjusted. The First Tier Ceiling means the sum of \$2,000,000, increased annually at the close of the fourth Fiscal Year and every Fiscal Year thereafter by a percentage equal to three percent (3%) of the then current First Tier Ceiling, as adjusted. The Second Tier Ceiling means the sum of \$4,000,000, increased annually at the close of the fourth Fiscal Year and every Fiscal Year thereafter by a percentage equal to three percent (3%) of the then current Second Tier Ceiling, as adjusted.

By way of illustration only, if the Net Income from Non-NFL Events for the first (1st) Fiscal Year equals \$15,000,000, then the Marketing and Booking Fee shall equal \$1,500,000 (i.e., of the \$10,000,000 that Net Income from Non-NFL Events exceeds the \$5,000,000 Marketing and Booking Fee Benchmark for the 1st Fiscal Year, the Marketing and Booking Fee shall equal \$50,000 or 5% of the 1st \$1,000,000, \$100,000 or 10% of the next \$1,000,000, \$750,000 or 15% of the next \$5,000,000, and \$600,000 or 20% of the next \$3,000,000).

4. Parking Agreements.

4.1 Off-Site Parking. In accordance with Section 2.6.22 of the Existing Management Agreement, the Parties agree that, without limiting, and in addition to, the Stadium Manager's rights granted pursuant to Paragraphs 2 and 3 above and any separate contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Stadium Manager shall have full authority and discretion to select the off-site private parking locations for Stadium Events, and to negotiate, approve, enter into and administer contracts with the private parking lot owners for the use of their parking spaces for all or certain of such Stadium Events which agreements may also make provision, to the extent available, for additional parking for surrounding properties that would be paid for by such properties ("Private Parking Agreements"). At the quarterly meeting

described in Paragraph 3.3 above, the Stadium Manager shall report on the status of such Private Parking Agreements, the status of any ongoing negotiations with private parking lot owners, and the financial performance and other matters relating to the off-site private parking locations for Stadium Authority Events, and such other similar or other topics as the Stadium Authority may request.

4.2 Parking Operator. In accordance with Section 2.6.23 of the Existing Management Agreement, the Parties hereby agree that the Stadium Manager shall have the primary right and responsibility from time to time (a) to solicit and select the Stadium Parking Operator (as defined in the Stadium Lease); and (b) to negotiate, enter into and administer, on behalf of the Stadium Authority and StadCo, the Stadium Parking Management Agreement (as defined in the Stadium Lease). The Stadium Authority shall have the right to reasonably approve any Stadium Parking Operator and the Stadium Parking Management Agreement. In accordance with Paragraph 7.4.2(a) of the Stadium Lease, the Stadium Manager agrees to meet regularly with the Stadium Authority to provide updates regarding the progress in identifying the Stadium Parking Operator, and to receive input from the Stadium Authority regarding the process for selection and the terms and conditions of the Stadium Parking Management Agreement.

5. Concessions Agreement.

5.1 Defined Terms. Capitalized terms used in this Paragraph and not otherwise defined are defined in the Concessions Operations Agreement dated as of July 25, 2012, by and between the Stadium Manager and Volume Services, LLC (the "Stadium Concessions Agreement").

5.2 Local Restaurants. Without limiting, and in addition to, the Stadium Manager's contracting authority granted pursuant to preceding provisions of this First Amendment and any separate contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Parties agree that, in furtherance of the Stadium Manager's rights reserved pursuant to Section 3.1(u) of the Stadium Concessions Agreement, the Stadium Manager shall have full authority and discretion to negotiate, approve, enter into and administer contracts relating to the sale of Refreshments and/or Merchandise through a limited number of established local restaurants and branded franchises. If such rights are exercised, the Manager will use reasonable efforts to give reasonable consideration to local independent restaurants interested in providing such Refreshments at the Stadium, with particular consideration given to restaurants located in the City of Santa Clara.

5.3 Annual Minimum Payment. If, for any Fiscal Year, the Annual Minimum Payment payable by the Concessionaire pursuant to the Stadium Concessions Agreement exceeds the applicable amount of Manager Commissions for such Fiscal Year set forth on Exhibit E thereto, then StadCo and the Stadium Authority agree that, for purposes of Article 5 of the Existing Management Agreement, the Stadium Manager shall collect the amount of such excess on behalf of StadCo, and shall deposit the amount of such excess in the StadCo Deposit Account. The Parties acknowledge and agree that, without limiting the provisions of Paragraph 7.3.2 of the Stadium Lease, all Manager Commissions payable with respect to any Non-NFL Events shall, as provided in Section 5.1 of the Existing Management Agreement, be deposited

into the Stadium Authority Deposit Account; and all Manager Commissions payable with respect to NFL Events shall, as provided in Section 5.1 of the Existing Management Agreement, be deposited into the StadCo Deposit Account.

5.4 Pre-NFL Season Menu Tasting. In accordance with Section 6.11(c) of the Stadium Concessions Agreement, the Parties acknowledge that, prior to each NFL season, Concessionaire shall provide a tasting of Refreshments proposed to be offered in the Suites and Club Areas for the upcoming season at a reception for all Suite holders, media partners and a limited number of Club Area seat holders; and that such Refreshments shall be provided by Concessionaire at no cost, except that, if more than 1,000 Club Area seat holders participate in any such tasting, then Refreshments shall be provided by Concessionaire at no cost only to the first 1,000 Club Area seat holders, and Refreshments provided to any additional Club Area seat holders shall be provided at cost plus 10%. StadCo agrees that the cost of Refreshments provided to any such additional Club Area seat holders shall constitute a StadCo Expense for purposes of the Management Agreement.

6. Annual Stadium Authority Budget – Dispute Resolution. The sixth sentence in Section 4.6 of the Management Agreement is hereby deleted and replaced with the following four sentences:

"Within forty-five (45) days after receipt of a draft StadCo Budget from the Stadium Manager, StadCo shall notify the Stadium Manager of any proposed changes and with such changes as are made, if any, such StadCo Budget shall become an approved StadCo Budget. Within forty-five (45) days after receipt of a draft Annual Stadium Authority Budget ("**Draft Stadium Authority Budget**") from the Stadium Manager, the Stadium Authority shall approve or disapprove in writing such Draft Stadium Authority Budget and, if the Stadium Authority disapproves all or any portion of the Draft Stadium Authority Budget, the notice of disapproval shall describe with reasonable specificity the basis for such disapproval and, if applicable, the changes that would be necessary to resolve the objections. So long as the Stadium Manager has approval rights over the Annual Stadium Authority Budget as described above, then if the Stadium Authority and the Stadium Manager cannot agree on the Draft Stadium Authority Budget, the Stadium Authority and the Stadium Manager will meet and confer in a good faith effort to resolve such disagreement in accordance with the Dispute Resolution Procedures. With such changes as are made in accordance with the Dispute Resolution Procedures, if any, such Draft Stadium Authority Budget shall become an approved Annual Stadium Authority Budget."

7. Stadium Manager Not a Public Agency. . Notwithstanding the Stadium Manager's services to the Stadium Authority, all duties provided by the Stadium Manager on behalf of StadCo, which is not a public entity, are not subject to the Political Reform Act, Cal. Gov. Code § 81000, *et seq.*, the Bagley-Keene Opening Meeting Act, Cal. Gov. Code § 11120, and the Public Records Act, Cal. Gov. Code § 6250, *et seq.*, among other laws relating to public agencies (the "Public Agency Laws"). Records maintained by the Stadium Manager that do not pertain to the Stadium Authority Season or Non-NFL Events are private and confidential and any procurement or contracting action taken by the Stadium Manager solely on behalf of StadCo are

similarly undertaken on behalf of a non-public entity and are not subject to the Public Agency Laws. The Stadium Manager shall use reasonable efforts to maintain separate records for the Tenant Season and the Stadium Authority Season and for NFL Events and Non-NFL Events, in order to effectively protect the confidentiality of records relating solely StadCo.

8. NRG Agreements. The Stadium Manager shall, on behalf of StadCo only (and not the Stadium Authority), have full authority and discretion to negotiate, approve, enter into and administer contracts (collectively, as the same may be amended, supplemented or extended from time to time, the "NRG Agreements") with [NRG SOLAR SC STADIUM LLC], a Delaware limited liability company, or its affiliates ("NRG"), for the purpose of (a) allowing NRG to operate and maintain a solar energy facility on a portion of the Stadium Site ("SEF") and (b) providing the electricity generated from the SEF for the operation of the Stadium, subject to the following terms and conditions:

8.1 Termination. StadCo shall have the sole right and authority to exercise, or cause the Stadium Manager to exercise, any right to terminate the NRG Agreements, or any of them, prior to the expiration date thereof, and StadCo shall be solely responsible for any termination payment or fee owing to NRG on account of any such early termination.

8.2 StadCo Expenses. StadCo shall be solely responsible for the cost of the electricity generated from the SEF for the operation of the Stadium, and such cost shall constitute a StadCo Expense; provided, however, that electricity generated from the SEF and used for the operation of the Stadium during the Stadium Authority Season shall be billed to, and paid by, the Stadium Authority at the rate that would have been payable had such electricity been purchased from Silicon Valley Power.

8.3 Indemnification. The Parties acknowledge that the Solar Site License Agreement to be entered into by the Stadium Authority in accordance with NRG Agreements ("Solar Site License Agreement") above imposes various duties and obligations that could result in liability of the Stadium Authority to NRG, including, without limitation, liability for interference with energy output as a result of shading, liability for temporary or permanent removal of NRG's equipment in connection with maintenance and repairs to the Stadium, liability arising from a default by the Stadium Authority, and certain indemnity obligations. StadCo and the Stadium Authority hereby agree that, as between them, the terms, conditions and limitations contained in Paragraph 23.8 of the Stadium Lease shall govern with respect to any such liability arising under the Solar Site License Agreement; and, further, the Stadium Manager hereby agrees that, as between all of the Parties, the terms, conditions and limitations contained in Article 12 of the Existing Management Agreement shall govern with respect to any such liability arising under the Solar Site License Agreement. Without limiting the foregoing, and notwithstanding the provisions of Section 12.1.1 of the Existing Agreement, any and all costs incurred during the term of the Management Agreement pursuant to Section 8(b) of the Solar Site License Agreement to reimburse Licensee for damages, expenses, and losses on account of the interruption of NRG's operations shall be treated as StadCo Operating Expenses, except to the extent such costs or expenses are attributable to (i) the negligence or willful misconduct of the Stadium Authority or any of its agents, employees, officials or other representatives other than Stadium Manager; or (ii) any failure by the Stadium Authority to make any advance or payment required to be made by the Stadium Authority under this Agreement.

The Stadium Authority hereby agrees to the foregoing provisions of this Paragraph 8 and specifically, with respect to the provision of electrical service to the Stadium pursuant to the NRG Agreements and the Solar Site License Agreement, waives the requirement contained in Paragraph 7.7.5 of the Stadium Lease that Silicon Valley Power shall be the exclusive provider of electrical service to the Stadium.

9. Miscellaneous.

9.1 Ratification. Except as modified by this First Amendment, all of the terms, conditions and provisions of the Existing Management Agreement shall remain in full force and effect and are hereby ratified and confirmed.

9.2 Conflict. To the extent the terms of the Existing Management Agreement and this First Amendment are inconsistent, the terms of this First Amendment shall control.

9.3 Entire Agreement. This First Amendment contains the entire agreement of the Parties with respect to the subject matter hereof. It is understood that there are no oral agreements between the Parties affecting the Existing Management Agreement as hereby amended, and this First Amendment supersedes and cancels any and all previous negotiations, representations, agreements and understandings, if any, between the Parties and their respective agents with respect to the subject matter thereof, and none shall be used to interpret or construe the Management Agreement.

9.4 Authority. Each signatory of this First Amendment represents hereby that he or she has the authority to execute and deliver it on behalf of the party hereto for which such signatory is acting.

9.5 Counterparts. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. This First Amendment may be executed by a party's signature transmitted by facsimile ("fax") or by electronic mail in portable document format ("pdf"), and copies of this First Amendment executed and delivered by means of faxed or pdf signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All Parties hereto may rely upon faxed or pdf signatures as if such signatures were originals. Any Party executing and delivering this First Amendment by fax or pdf shall promptly thereafter deliver a counterpart of this First Amendment containing said party's original signature. All Parties hereto agree that a faxed or pdf signature page may be introduced into evidence in any proceeding arising out of or related to this First Amendment as if it were an original signature page.

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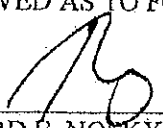
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IN WITNESS WHEREOF, the Parties have entered into this First Amendment, as of the day and year first written above.

SANTA CLARA STADIUM AUTHORITY
a joint exercise of powers entity, created through Government Code Section 6500 *et seq.*

APPROVED AS TO FORM

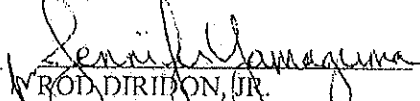


RICHARD E. NOSKY, JR.
Authority General Counsel



RONALD E. GARRATT
Interim Executive Director
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

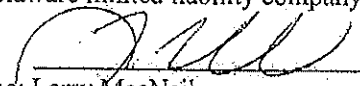
ATTEST:



ROD DIRIDON, JR.
Authority Secretary

November 13, 2012
Date Approved by the Stadium Authority

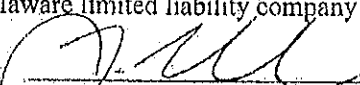
FORTY NINERS SC STADIUM COMPANY, LLC,
a Delaware limited liability company

By: 

Name: Larry MacNeil
Title: Vice President

4949 Centennial Boulevard
Santa Clara, CA 95054
Telephone: (408) 562-4949
Fax Number: (408) 727-4937

FORTY NINERS MANAGEMENT COMPANY LLC,
a Delaware limited liability company

By: 

Name: Larry MacNeil
Title: Vice President

4949 Centennial Boulevard
Santa Clara, CA 95054
Telephone: (408) 562-4949
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SECOND AMENDMENT TO STADIUM MANAGEMENT AGREEMENT
(SANTA CLARA FORTY NINERS STADIUM)

This Second Amendment to Management Agreement (this "Second Amendment") is made and entered into as of May 9, 2013 by and between the Santa Clara Stadium Authority, a joint exercise of powers entity, created through Government Code Section 6500 *et seq.* ("Stadium Authority"), Forty Niners Stadium Management Company LLC, a Delaware limited liability company ("Stadium Manager"), and Forty Niners SC Stadium Company, LLC, a Delaware limited liability company ("StadCo"), Stadium Authority, Stadium Manager, and StadCo collectively are sometimes referred to herein as the "Parties," and each of Stadium Authority, Stadium Manager, and StadCo individually is sometimes referred to herein as a "Party."

RECITALS

A. Stadium Authority and StadCo entered into that Stadium Lease Agreement effective as of March 28, 2012 (the "Stadium Lease"), whereby StadCo obtained a leasehold interest from Stadium Authority in the Stadium Site located in Santa Clara County, California.

B. The Parties entered into that certain Stadium Management Agreement effective as of March 28, 2012 (the "Original Management Agreement"), whereby each of Stadium Authority and StadCo engaged Stadium Manager to provide management services for the Stadium on its respective behalf in accordance with the Stadium Lease, including oversight of the day-to-day operations and maintenance of the Stadium.

C. The Parties entered into that certain First Amendment to Stadium Management Agreement effective as of November 13, 2012 (the "First Amendment").

E. The Parties now desire to further amend the Management Agreement as provided herein. The Original Management Agreement, as amended by the First Amendment and this Second Amendment, is sometimes referred to herein as the "Management Agreement".

AGREEMENT

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree as follows:

1. Recitals; Effective Date.

1.1 Recitals. The provisions of the Recitals above are fully incorporated herein by this reference.

1.2 Effective Date. Unless otherwise specifically provided herein, all provisions of this Second Amendment shall be effective as of the date of execution set forth under the Stadium Authority's signature below.

2. Definitions.

2.1 Section 1.1 of the Management Agreement is hereby amended to add the following new defined terms:

"Major Event" shall have the meaning set forth in the Naming Rights Agreement.

"Naming Rights Agreement" means that certain Naming Rights Agreement dated as of MAY 9, 2013 between the Stadium Authority Agreement and the Naming Rights Partner.

"Naming Rights Partner" shall have the meaning set forth in the Naming Rights Agreement.

"Three Year Period" shall have the meaning set forth in the Naming Rights Agreement.

3. Stadium Manager Representations, Warranties and Covenants.

3.1 Major Events. A new Section 10.1.6 is hereby added to the Management Agreement as follows:

10.1.6 Major Events. During each Three Year Period, no less than thirty-six (36) Major Events shall be held at the Stadium; provided, however, that (i) the covenant set forth in this Section 10.1.6 shall be for the sole benefit of the Stadium Authority, (ii) in the event of a breach of such covenant, Stadium Manager shall pay to the Stadium Authority (or at the direction of the Stadium Authority, directly to the Naming Rights Partner), as liquidated damages for such breach, the amount actually and properly refunded by the Stadium Authority to the Naming Rights Partner (or properly deducted by the Naming Rights Partner from the Rights Fees otherwise payable under the Naming Rights Agreement) under the Naming Rights Agreement on account of such breach, and (iii) notwithstanding any other provision of this Agreement, such liquidated damages shall be the Stadium Authority's sole remedy for any breach of this Section 10.1.6.

4. Miscellaneous.

4.1 Ratification. Except as modified by this Second Amendment, all of the terms, conditions and provisions of the Original Management Agreement, as amended by the First Amendment, shall remain in full force and effect and are hereby ratified and confirmed.

4.2 Conflict. To the extent the terms of the Original Management Agreement, as amended by the First Amendment, and this Second Amendment are inconsistent, the terms of this Second Amendment shall control.

4.3 Entire Agreement. This Second Amendment contains the entire agreement of the Parties with respect to the subject matter hereof. It is understood that there are no oral agreements between the Parties affecting the Management Agreement as hereby amended, and this Second Amendment supersedes and cancels any and all previous negotiations, representations, agreements and understandings, if any, between the Parties and their respective agents with respect to the subject matter thereof, and none shall be used to interpret or construe the Management Agreement.

4.4 Authority. Each signatory of this Second Amendment represents hereby that he or she has the authority to execute and deliver it on behalf of the party hereto for which such signatory is acting.

4.5 Counterparts. This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. This Second Amendment may be executed by a party's signature transmitted by facsimile ("fax") or by electronic mail in portable document format ("pdf"), and copies of this Second Amendment executed and delivered by means of faxed or pdf signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All Parties hereto may rely upon faxed or pdf signatures as if such signatures were originals. Any Party executing and delivering this Second Amendment by fax or pdf shall promptly thereafter deliver a counterpart of this Second Amendment containing said party's original signature. All Parties hereto agree that a faxed or pdf signature page may be introduced into evidence in any proceeding arising out of or related to this Second Amendment as if it were an original signature page.

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IN WITNESS WHEREOF, the Parties have entered into this Second Amendment, as of the day and year first written above.


SANTA CLARA STADIUM AUTHORITY

a joint exercise of powers entity, created through Government Code Section 6500 *et seq.*

APPROVED AS TO FORM



RICHARD E. NOSKY, JR.
Authority General Counsel

ATTEST: 

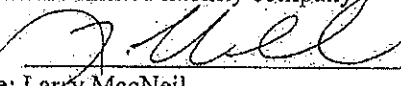
ROD DIRIDON, JR.
Authority Secretary



JULIO J. FUENTES *Council Approved*
Executive Director *on May 9, 2013*
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

5/16/13
Date


FORTY NINERS SC STADIUM COMPANY, LLC,
a Delaware limited liability company

By: 

Name: Larry MacNeil
Title: Executive Vice President

4949 Centennial Boulevard
Santa Clara, CA 95054
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FORTY NINERS MANAGEMENT COMPANY LLC,
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By: 

Name: Larry MacNeil
Title: Executive Vice President

4949 Centennial Boulevard
Santa Clara, CA 95054
Telephone: (408) 562-4949
Fax Number: (408) 727-4937

**THIRD AMENDMENT TO STADIUM MANAGEMENT AGREEMENT
(SANTA CLARA FORTY NINERS STADIUM)**

This Third Amendment to Management Agreement (this "Third Amendment") is made and entered into as of June 19, 2013 by and between the Santa Clara Stadium Authority, a joint exercise of powers entity, created through Government Code Section 6500 *et seq.* ("Stadium Authority"), Forty Niners Stadium Management Company LLC, a Delaware limited liability company ("Stadium Manager"), and Forty Niners SC Stadium Company LLC, a Delaware limited liability company ("StadCo"). Stadium Authority, Stadium Manager, and StadCo collectively are sometimes referred to herein as the "Parties," and each of Stadium Authority, Stadium Manager, and StadCo individually is sometimes referred to herein as a "Party."

RECITALS

A. Stadium Authority and StadCo entered into that Stadium Lease Agreement effective as of March 28, 2012, as amended and restated by that certain Amended and Restated Stadium Lease Agreement executed simultaneously with the execution of this Agreement (as amended and restated, and as further amended from time to time, the "Stadium Lease"), whereby StadCo obtained a leasehold interest from Stadium Authority in the Stadium Site located in Santa Clara County, California.

B. The Parties entered into that certain Stadium Management Agreement effective as of March 28, 2012 (the "Original Management Agreement"), whereby each of Stadium Authority and StadCo engaged Stadium Manager to provide management services for the Stadium on its respective behalf in accordance with the Stadium Lease, including oversight of the day-to-day operations and maintenance of the Stadium.

C. The Parties entered into that certain First Amendment to Stadium Management Agreement effective as of November 13, 2012 (the "First Amendment").

D. The Parties entered into that certain Second Amendment to Stadium Management Agreement effective as of May 9, 2013 (the "Second Amendment").

E. The Parties now desire to further amend the Management Agreement as provided herein. The Original Management Agreement, as amended by the First Amendment, the Second Amendment, and this Third Amendment, is sometimes referred to herein as the "Management Agreement."

AGREEMENT

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto and each of them do agree as follows:

1. Recitals; Effective Date.

1.1 Recitals. The provisions of the Recitals above are fully incorporated herein by this reference.

1.2 Effective Date. Unless otherwise specifically provided herein, all provisions of this Third Amendment shall be effective as of the date of execution set forth under the Stadium Authority's signature below.

2. Amendment of Exhibit A. Exhibit A to the Management Agreement is hereby deleted in its entirety and the Exhibit A attached hereto, and incorporated herein by this reference, is substituted in its place.

3. Miscellaneous.

3.1 Ratification. Except as modified by this Third Amendment, all of the terms, conditions and provisions of the Original Management Agreement, as amended by the First Amendment and the Second Amendment, shall remain in full force and effect and are hereby ratified and confirmed.

3.2 Conflict. To the extent the terms of the Original Management Agreement, as amended by the First Amendment and the Second Amendment, and this Third Amendment are inconsistent, the terms of this Third Amendment shall control.

3.3 Entire Agreement. This Third Amendment contains the entire agreement of the Parties with respect to the subject matter hereof. It is understood that there are no oral agreements between the Parties affecting the Management Agreement as hereby amended, and this Third Amendment supersedes and cancels any and all previous negotiations, representations, agreements and understandings, if any, between the Parties and their respective agents with respect to the subject matter thereof, and none shall be used to interpret or construe the Management Agreement.

3.4 Authority. Each signatory of this Third Amendment represents hereby that he or she has the authority to execute and deliver it on behalf of the Party hereto for which such signatory is acting.

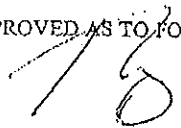
3.5 Counterparts. This Third Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. This Third Amendment may be executed by a Party's signature transmitted by facsimile ("fax") or by electronic mail in portable document format ("pdf"), and copies of this Third Amendment executed and delivered by means of faxed or pdf signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All Parties hereto may rely upon faxed or pdf signatures as if such signatures were originals. Any Party executing and delivering this Third Amendment by fax or pdf shall promptly thereafter deliver a counterpart of this Third Amendment containing said Party's original signature. All Parties hereto agree that a faxed or pdf signature page may be introduced into evidence in any proceeding arising out of or related to this Third Amendment as if it were an original signature page.

IN WITNESS WHEREOF, the Parties have caused this Third Amendment to Management Agreement to be executed by their duly appointed representatives as of the date first above written.


STADIUM AUTHORITY:

SANTA CLARA STADIUM AUTHORITY,
a joint exercise of powers entity,
created through Government Code Sections 6500 *et seq.*

APPROVED AS TO FORM:



RICHARD E. NOSKY, JR.
Stadium Authority Counsel



JULIO J. FUENTES
Executive Director

ATTEST:



ROD DIRIDON, JR.
Secretary

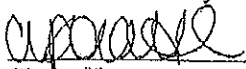
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Facsimile: (408) 241-6771

[Signatures continued on next page]

[Signatures to Third Amendment to Management Agreement continued from previous page]

STADCO:

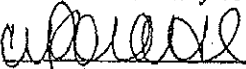
FORTY NINERS SC STADIUM COMPANY LLC,
a Delaware limited liability company

By: 
Name: Cipora Herman
Title: Chief Financial Officer

4949 Marie P. DeBartolo Way
Santa Clara, CA 95054
Telephone: (408) 562-4949
Fax Number: (408) 727-4937

STADIUM MANAGER:

FORTY NINERS MANAGEMENT COMPANY LLC,
a Delaware limited liability company

By: 
Name: Cipora Herman
Title: Chief Financial Officer

4949 Marie P. DeBartolo Way
Santa Clara, CA 95054
Telephone: (408) 562-4949
Fax Number: (408) 727-4937

EXHIBIT A

REVOLVING CREDIT AGREEMENT

[Attached.]

Exhibit A

REVOLVING CREDIT AGREEMENT

This REVOLVING CREDIT AGREEMENT (this "Agreement"), dated as of March 28, 2012 (the "Effective Date"), as amended and restated as of June 19, 2013 (the "Takeout Closing Date"), is between the SANTA CLARA STADIUM AUTHORITY, a joint exercise of powers entity created through California Government Code sections 6500 *et seq.* (the "Stadium Authority") and FORTY NINERS STADIUM MANAGEMENT COMPANY LLC, a Delaware limited liability company ("ManagementCo"); each of the Stadium Authority and ManagementCo is a "Party" to this Agreement, and together they are the "Parties").

ARTICLE I DEFINITIONS

SECTION 1.1 Defined Terms. The following terms (whether or not underscored) when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

"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.

"Annual Stadium Authority Budget" is defined in the Management Agreement; provided, however, that in no event shall such budget include, for purposes of this Agreement, any amounts in respect of Excluded Claims or any Stadium Authority Discretionary Expenses.

"Applicable Laws" is defined in the Stadium Lease.

"Authority Loan" means the loans from FinanceCo to the Stadium Authority under the applicable Authority Loan Agreement.

"Authority Loan Agreement" means the Authority Loan Credit Agreement, as amended and restated as of the Takeout Closing Date, as such may be further amended, supplemented, restated, extended or otherwise modified from time to time, together with any successor document between FinanceCo and the Stadium Authority documenting the Authority Loan made by FinanceCo to the Stadium Authority.

"Authority Loan Credit Agreement" means that certain credit agreement, dated as of the Effective Date, among FinanceCo, the Stadium Authority and Goldman Sachs Bank USA, as administrative agent thereunder.

"Authority Loan Maturity Date" means the original "maturity date" of the Authority Loan, as provided under the Authority Loan Agreement, without extension or deferment thereof by agreement, forbearance, judicial order or otherwise.

"Authority Revenues" means all Stadium Authority Revenue, exclusive of revenues from the Non-NFL Ticket Surcharge deposited in the Discretionary Fund and the City of Santa Clara Senior and Youth Program Fee.

"Authority Takeout Financing" means any replacement, refunding or refinancing of all or a portion of the Authority Loan from financing sources other than a loan from FinanceCo.

"Authority Takeout Financing Documents" means the definitive agreements, notes, instruments, certificates and other documents of the Stadium Authority evidencing any Authority Takeout Financing(s) then in effect.

"Available Funds" means Authority Revenues, including without limitation those that are on deposit in the Stadium Authority's accounts (including reserve accounts) held by any depository bank, the Collateral Trustee with respect to the Authority Loan Agreement or any collateral agent under the security documentation in connection with the Authority Loan Agreement or any Authority Takeout Financing(s), as applicable, and amounts on deposit in the Operating Expense Reserve (or any functionally equivalent account), that can be used to pay Stadium Authority Operating Expenses.

"Borrowing Notice" is defined in Section 2.2.

"Business Day" is defined in the Authority Loan Agreement, and such definition is incorporated herein by reference and shall continue to herein apply following the Authority Loan Maturity Date notwithstanding any difference in the definition thereof (or in the definition of any analogous term) in any Authority Takeout Financing Documents.

"Casualty" is defined in the Stadium Lease.

"City" and "Santa Clara" mean the City of Santa Clara, California.

"City of Santa Clara Senior and Youth Program Fee" is defined in the Stadium Lease.

"Commitment Amount" means \$25,000,000.00.

"Condemnation Event" is defined in the Stadium Lease.

"Covered Stadium Authority Operating Expenses" means Stadium Authority Operating Expenses exclusive of (a) that portion of any scheduled debt service on any Permitted Landlord Financing that constitutes payments on the Loan due on or after the Maturity Date; (b) any Stadium Authority Discretionary Expenses; (c) amounts in respect of Excluded Claims and (d) other costs and expenses paid or payable by the Stadium Authority and not included in the approved Annual Stadium Authority Budget.

"Default Rate" is defined in Section 2.3(d).

"Early Repayment Date" is defined in Section 3.1(a).

"Effective Date" is defined in the preamble.

"Environmental Laws" is defined in the Stadium Lease.

"Event of Default" is defined in Section 7.1.

"Excess Revenues" is defined in the Stadium Lease.

"Excluded Claims" is defined in the Stadium Lease.

"FinanceCo" means Stadium Funding Trust, a special purpose Delaware statutory trust.

"Fiscal Year" is defined in the Management Agreement.

"Governmental Authority" is defined in the Stadium Lease.

"Ground Lease" is defined in the Stadium Lease.

"Highest Lawful Rate" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the Applicable Laws which are presently in effect or, to the extent allowed by law, under such Applicable Laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than Applicable Laws now allow.

"Interest Payment Date" means the last day of each "Interest Period" applicable to the Loan, as such periods are determined pursuant to Section 2.3(a); provided, that each Loan Payment Date, and each date of a Loan prepayment pursuant to Section 3.3(a), shall also be Interest Payment Dates, and any Interest Payment Date which would otherwise occur after the Termination Date shall be such Termination Date.

"Interest Period" means, commencing on the Effective Date and until, but excluding, the Maturity Date, each period of three (3) calendar months (provided, that no such Interest Period shall extend beyond the Maturity Date).

"Loan" and "Loans" are defined in Section 2.1(a).

"Loan Payment Date" is defined in Section 3.2(a).

"Management Agreement" means that certain Stadium Management Agreement, dated as of March 28, 2012, by and among the Stadium Authority, ManagementCo and the Tenant, as amended on November 13, 2012, and June 19, 2013, and as it may be further amended, restated, supplemented or otherwise modified from time to time.

"ManagementCo" is defined in the preamble.

"Maturity Date" means the earlier to occur of (i) the Stated Maturity Date and (ii) the Early Repayment Date.

"Non-NFL Ticket Surcharge" is defined in the Stadium Lease.

"Note" is defined in Section 3.5.

"Operating Expense Reserve" is defined in the Stadium Lease.

"Permitted Landlord Financing" is defined in the Stadium Lease.

"Prime Rate" means the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty (30) largest banks), as in effect from time to time (which Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer).

"StadCo Obligations Agreement" means that certain StadCo Obligations Agreement, dated as March 28, 2012, by and between the Tenant and the Stadium Authority, as amended and restated on June 19, 2013 and as it may be amended, restated, supplemented or otherwise modified from time to time.

"Stadium Authority" is defined in the preamble.

"Stadium Authority Discretionary Expenses" is defined in the Stadium Lease.

"Stadium Authority Operating Expenses" is defined in the Management Agreement.

"Stadium Authority Put Right" is defined in the Stadium Lease.

"Stadium Authority Revenue" is defined in the Stadium Lease.

"Stadium Capital Expenditure Reserve" is defined in the Stadium Lease.

"Stadium Complex" is defined in the Stadium Lease.

"Stadium DDA" means the Disposition and Development Agreement (Stadium Lease), dated as of December 13, 2011, between the Stadium Authority and the Tenant, as successor to Forty Niners Stadium, LLC.

"Stadium Lease" means that certain Stadium Lease Agreement, dated as of March 28, 2012, by and between the Stadium Authority and the Tenant, as amended and restated on June 19, 2013 and as it may be amended, restated, supplemented or otherwise modified from time to time.

"Stated Maturity Date" means the date of the expiration of the term (as extended) of the Stadium Lease or the termination of the Stadium Lease (other than as a result of StadCo's default thereunder).

"Takeout Closing Date" is defined in the preamble.

"Tenant" means Forty Niners SC Stadium Company LLC, a Delaware limited liability Company.

"Tenant's Put Right Payment" is defined in the Stadium Lease.

"Tenant Season Expansion Date" is defined in the Stadium Lease.

ARTICLE II THE LOANS

SECTION 2.1 The Commitments.

(a) ManagementCo agrees, on the terms and subject to the conditions hereinafter set forth, to make loans (the "Loans" and, in the aggregate, the "Loan") to the Stadium Authority from time to time during the period from the date hereof until, but excluding, the earlier of (i) the Stated Maturity Date, (ii) the expiration of the term (as extended) of the Management Agreement or the termination of the Management Agreement (other than termination "for cause" as provided in the proviso to Section 3.1(b)); (iii) the date of the occurrence of the Tenant Season Expansion Date; and (iv) the date notice of the acceleration of the Loan is given by ManagementCo to the Stadium Authority following an uncured Event of Default pursuant to Section 7.1, solely for the purpose of enabling the Stadium Authority to pay Covered Stadium Authority Operating Expenses to the extent (and only to the extent, including pursuant to the terms of the Authority Loan and any Authority Takeout Financing(s), as applicable) that Available Funds are not otherwise available therefor.

(b) The aggregate amount of the Loan outstanding from time to time may not exceed \$25,000,000.00 (the "Commitment Amount"). Subject to the terms hereof, the Stadium Authority may from time to time borrow, prepay and re-borrow amounts pursuant hereto.

SECTION 2.2 Making the Loans. Each of the Loans shall be made on at least two (2) Business Days' (as defined below) written notice from the Stadium Authority to ManagementCo (each such writing, a "Borrowing Notice") specifying the proposed date (which must be a Business Day) and amount of such Loan. Not later than 12:00 noon (Santa Clara time) on the date of such Loan and upon fulfillment of the conditions set forth in Sections 4.1 and 4.2, ManagementCo will make the proceeds of such Loan available to the Stadium Authority in immediately available funds by depositing the amount thereof into the account of, or otherwise in accordance with the directions of, the Stadium Authority set forth in the Borrowing Notice. Additionally, to the extent that amounts are advanced to the Stadium Authority by ManagementCo, or by the Tenant for the account of ManagementCo, under the security documentation executed and delivered in connection with the Authority Loan Agreement or any Authority Takeout Financing(s), or by ManagementCo pursuant to the terms of the Management Agreement, as the case may be, including without limitation by inter-account transfer, the Stadium Authority shall be deemed to have delivered a Borrowing Notice, and ManagementCo shall be deemed to have made a Loan, on such date and in the amount so advanced.

SECTION 2.3 Interest Rate; Default Rate of Interest.

(a) Interest Accrual. Interest shall accrue for each calendar day on the principal amount of the Loan outstanding at the beginning of such day at the Prime Rate

determined on the last day of each Interest Period or, if such day is not a Business Day, the immediately preceding Business Day.

(b) Interest Payments and Compounding. All accrued and unpaid interest on the Loan shall be due and payable, in immediately available funds to or at the direction of ManagementCo, on each Interest Payment Date; provided, that accrued interest on the Loan which is not paid on any regular Interest Payment Date (other than the Maturity Date) shall be added to the outstanding principal balance of the Loan as of such day up to the Commitment Amount and shall thereafter bear interest as principal.

(c) Default Rate of Interest. The Stadium Authority promises to pay interest, on demand after the occurrence of an Event of Default, from the date of such Event of Default until the date on which the same is cured or waived by ManagementCo hereunder, on the outstanding amount of the Loan and, to the extent permitted by Applicable Laws, on overdue interest, at a rate of interest which is three percent (3%) in excess of the rate of interest otherwise payable on the outstanding Loan; provided, that in no event shall the rate of interest on the outstanding Loan exceed the Highest Lawful Rate.

ARTICLE III TERMS OF PAYMENT

SECTION 3.1 Term of the Loan; Termination of Management Agreement.

(a) The otherwise unpaid principal of and any current and accrued interest on the Loan shall be due and payable in full on the earlier of (i) the Stated Maturity Date; (ii) the date of, and as a condition to, the occurrence of the Tenant Season Expansion Date; (iii) the date of the termination of the Management Agreement prior to the end of its term (other than termination "for cause" as provided in the proviso to Section 3.1(b)), and (iv) the date notice of the acceleration of the Loan is given by ManagementCo to the Stadium Authority following an uncured Event of Default pursuant to Section 7.1 (each date in clauses (ii) through (iv), the "Early Repayment Date"). The term of this Agreement shall be automatically extended if and to the extent that the term of the Management Agreement is extended, unless the Parties shall agree otherwise in writing.

(b) This Agreement may be terminated by either Party upon or at any time following the termination of the Management Agreement for any reason, including without limitation (x) by mutual agreement of the parties to the Management Agreement pursuant to Section 3.3.2 thereof and (y) a default by any party to the Management Agreement; provided, however, that upon termination of the Management Agreement by the Stadium Authority "for cause" in accordance with Section 8.1.1 thereof, this Agreement shall not be terminated and ManagementCo shall continue to provide Loans to the extent provided in this Agreement and unless and until a third party engaged as the replacement "Stadium Manager" assumes all contractual obligations of ManagementCo hereunder; provided further, in the event and to the extent ManagementCo continues to provide Loans, ManagementCo shall continue to have the right, to the same extent it had under the Management Agreement prior to its termination, to approve the Annual

Stadium Authority Budget for each subsequent Fiscal Year during the continuation of this Agreement.

SECTION 3.2 Repayment of the Loan.

(a) Beginning on the first September 1st in the first full Fiscal Year following ManagementCo's making of a Loan under this Agreement and continuing through each September 1st thereafter so long as any balance on the Loan remains outstanding (each such September 1st is referred to as a "Loan Payment Date"), the Stadium Authority shall make annual payments to ManagementCo equal to the lesser of (i) the Excess Revenue, if any, for the prior Fiscal Year, and (ii) the outstanding aggregate balance under the Loan.

(b) Annual payments made shall be applied first to accrued interest currently due and then to principal amounts due. Notwithstanding any provision herein to the contrary, all outstanding principal and accrued interest shall be due and payable under the Loan as set forth in Section 3.1(a).

SECTION 3.3 Prepayments; Stadium Authority's Exercise of Put Right.

(a) The Stadium Authority may prepay the outstanding amount of the Loan, in whole or in part, on any Business Day, with accrued interest to the date of such prepayment on the principal amount prepaid.

(b) Upon the Stadium Authority's exercise of the Stadium Authority Put Right pursuant to the applicable terms of the Stadium Lease and the resulting acceleration of the Note pursuant to Section 3.1(a) hereof, the Stadium Authority shall disburse to ManagementCo not later than the Tenant Season Expansion Date the then-outstanding balances, if any, of the Stadium Capital Expenditure Reserve and Operating Expense Reserve up to the then-outstanding balance of the Loan, which monies shall be applied to the Stadium Authority's remaining outstanding indebtedness under the Note. If any balance on the Note shall thereafter remain, the Stadium Authority shall, unless ManagementCo is paid directly by StadCo, pay off such remaining amount out of the proceeds of the Tenant's Put Right Payment, and this Agreement shall terminate.

SECTION 3.4 Payments and Computations.

(a) The Stadium Authority shall make each payment hereunder not later than 12:00 noon (Santa Clara time) on the day when due in lawful money of the United States (in freely transferable United States dollars) in immediately available funds to or at the direction of ManagementCo.

(b) All computations of interest will be made by ManagementCo on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Each computation by ManagementCo of interest hereunder will be conclusive and binding for all purposes, absent manifest error.

(c) Whenever any payment to be made hereunder or under the Note or any other instrument delivered hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time will, in such case, be included in the computation of payment of interest.

SECTION 3.5 Evidence of Debt. The Stadium Authority's indebtedness to ManagementCo resulting from each Loan made from time to time hereunder will be evidenced by the Stadium Authority promissory note (the "Note"), in substantially the form of Exhibit A, delivered to ManagementCo pursuant to clause (a) of Section 4.1. The Stadium Authority hereby irrevocably authorizes ManagementCo to make (or cause to be made) appropriate notations on the grid attached to the Note (or on a continuation of such grid attached to the Note and made a part thereof), which notations, if made, will evidence the date of, the outstanding principal of, and the interest rate applicable to, all Loans evidenced thereby, and for each Interest Payment Date until the Maturity Date the amount of then due and unpaid interest compounded as added principal of the Loan as of such date. Failure to record any notation on such grid (or on such continuation), or any error with respect thereto, will not, however, limit or otherwise affect the Stadium Authority's obligations hereunder or under the Note to make payments of principal of or interest on the Loans when due. ManagementCo will also maintain such book(s) of account evidencing the Stadium Authority's indebtedness to ManagementCo resulting from each Loan made from time to time and the amounts of principal and interest payable and paid from time to time hereunder. In any legal Action or Proceeding in respect of this Agreement, the entries made in such book(s) of account will be conclusive evidence of the existence and amounts of the Stadium Authority's obligations to ManagementCo therein recorded.

ARTICLE IV CONDITIONS PRECEDENT

SECTION 4.1 Condition Precedent to Initial Loan. ManagementCo's obligation to make the initial Loan hereunder is subject to the condition precedent that ManagementCo receives, prior to or concurrently with the making of such Loan, the following documents and instruments, each dated the date of such Loan, in form and substance satisfactory to ManagementCo:

- (a) The Note.
- (b) A certificate of an authorized representative of the Stadium Authority, dated the date of such initial Loan, certifying as to:
 - (i) resolutions of the governing board of the Stadium Authority then in full force and effect authorizing the execution, delivery and performance of this Agreement, the Note and any other documents and instruments to be executed hereunder, and
 - (ii) the incumbency and true signatures of the representatives of the Stadium Authority duly authorized to sign this Agreement, the Note and any other documents and instruments to be delivered hereunder.

(c) A favorable opinion of counsel to the Stadium Authority, to the effect that this Agreement and the Note constitute the legal, valid and binding obligations of the Stadium Authority enforceable against the Stadium Authority in accordance with their respective terms, subject to only (i) the limitations on the sources of repayment of the Loans as described herein and (ii) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and is subject to the effect of general principles of equity (regardless of whether considered in a proceeding in equity or at law), and addressing such other matters as ManagementCo may reasonably request.

SECTION 4.2 Conditions Precedent to All Loans. ManagementCo's obligation to make each Loan (including the initial Loan) shall be subject to the further conditions precedent that on the date of such Loan:

(a) The following statements shall be true, and each delivery or deemed delivery of the applicable Borrowing Notice for such Loan shall constitute a representation and warranty by the Stadium Authority that on the date of such Loan such statements are true:

(i) the representations and warranties contained in Section 5.1 are true and correct on and as of the date of such Loan as though made on and as of such date;

(ii) the Stadium Authority does not and will not without the making of the Loan have adequate Available Funds to pay Covered Stadium Authority Operating Expenses, and all monies loaned to the Stadium Authority under this Agreement shall be used solely to pay Covered Stadium Authority Operating Expenses;

(iii) the Stadium Lease and, subject to Section 3.1(b), the Management Agreement, remain in full force and effect, and no default (or event that with notice or the passage of time would become a default) on the part of the Stadium Authority exists under the Stadium Lease or the Management Agreement; and

(iv) no event has occurred and is continuing, or would result from such Loan, which constitutes an Event of Default by the Stadium Authority or would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

(b) ManagementCo will have received such other approvals and/or documents as ManagementCo may reasonably request, and all such approvals and documents shall be in form and substance satisfactory to ManagementCo.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

SECTION 5.1 Representations and Warranties. The Stadium Authority represents and warrants as follows as of each of the Effective Date and the Takeout Closing Date:

(a) Each individual executing and delivering this Agreement on behalf of the Stadium Authority has all requisite power and authority to execute and deliver the same and to bind the Stadium Authority hereunder.

(b) The Stadium Authority is a joint exercise of powers entity, created through California Government Code sections 6500 *et seq.*, 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) 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 and under the Note. No consent to the execution and delivery of this Agreement by the Stadium Authority or the performance by the Stadium Authority 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) 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) 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 Stadium Authority's joint powers agreement or any other formation documents of the Stadium Authority, (ii) any Applicable Laws binding upon or applicable to the Stadium Authority, or (iii) any material agreements to which the Stadium Authority is a party that are related to the development or operation of the Stadium Complex, including but not limited to the Ground Lease.

(f) Unless otherwise disclosed in writing to ManagementCo prior to the Effective Date, 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 that would, if adversely determined, materially and adversely affect the Stadium Authority or the Stadium or the Stadium Authority's ability to perform its obligations under this Agreement or to develop and operate the Stadium. For the purpose of this subsection (f),

the Stadium Authority's actual knowledge means the actual knowledge of the Executive Director.

ARTICLE VI COVENANTS

SECTION 6.1 Affirmative Covenants. So long as any Loan remains unpaid (including following the appointment of a Replacement Stadium Manager, in which case all covenants of the Stadium Authority set forth herein shall survive the termination of ManagementCo as the Stadium manager until the Loan is repaid in full and retired) or ManagementCo has any commitment hereunder to make Loans to the Stadium Authority, and unless ManagementCo otherwise consents in writing:

(a) The Stadium Authority shall promptly pay or cause to be paid all amounts payable by it hereunder and under the Note according to the terms hereof and thereof and shall duly perform each of its obligations hereunder and under the Note.

(b) The Stadium Authority shall comply in all respects with (x) the operative provisions of Article 14 of the Stadium Lease, (y) all such loan and security documents executed and delivered in connection with the Authority Loan Agreement or any Authority Takeout Financing(s), as applicable, to which the Stadium Authority is a party and which are then in effect and (z) the StadCo Obligations Agreement.

(c) The Stadium Authority shall preserve and maintain its existence in its current form and its powers, rights and privileges in the State of California.

(d) The Stadium Authority shall conduct its affairs and carry on its business and operations in such manner as to comply with any and all Applicable Laws (including, without limitation, all Environmental Laws) if the failure to comply could have a material adverse effect on the ability of the Stadium Authority to repay when due its obligations under this Agreement and the Note; provided, that nothing herein shall require the Stadium Authority to comply with, observe and conform to any such law, order, regulation or requirement of any Governmental Authority so long as the validity thereof shall be contested in good faith.

(e) The Stadium Authority will permit ManagementCo, from time to time as often as may be reasonably requested during regular business hours and upon not less than five (5) Business Days' prior written notice, to inspect the books and records of the Stadium Authority and make copies and extracts of such books and records that relate to the Stadium Authority's performance under this Agreement and the Note and discuss the affairs, finances and accounts of the Stadium Authority with, and to be advised as to the same by, its officials, all in connection with the performance by the Stadium Authority of its obligations hereunder and under the Note.

(f) The Stadium Authority will notify ManagementCo in writing, promptly after the same shall have become known to the Stadium Authority or any official of the Stadium Authority upon whom process has been served, of any Action or Proceeding at law or in equity or by or before any governmental instrumentality or other agency that, if

adversely determined, might materially affect the validity or enforceability of this Agreement and/or the Note or materially impair the ability of the Stadium Authority to perform its obligations under this Agreement and/or the Note.

(g) The Stadium Authority, upon obtaining notice or knowledge thereof, shall give prompt notice in writing to ManagementCo of the occurrence of any Event of Default and of any other development, financial or otherwise, which would be likely to materially adversely affect the ability of the Stadium Authority to perform its obligations hereunder or under the Note.

(h) The Stadium Authority shall cause the proceeds from the Loans made hereunder to be used solely for the purposes set forth in Section 2.1(a).

(i) The Stadium Authority will not agree or consent to any amendment, supplement or modification of, nor waive any provision of, the Ground Lease, the Stadium Lease, the Management Agreement, the Annual Stadium Authority Budget or any loan or security document executed and delivered in connection with the Authority Loan Agreement or any Authority Takeout Financing(s), as applicable, to which the Stadium Authority is a party and which is then in effect which, singularly or in the aggregate, would, or, with the passage of time, could, materially adversely affect the ability of the Stadium Authority to perform its obligations under this Agreement and/or the Note without the prior written consent of ManagementCo.

(j) The Stadium Authority shall furnish, or cause to be furnished, to ManagementCo such financial and other information with respect to the Stadium Authority, the Loan and the Stadium Complex as ManagementCo may reasonably request from time to time.

ARTICLE VII EVENTS OF DEFAULT

SECTION 7.1 Events of Default. If any of the following events ("Events of Default") occurs and is continuing:

(a) the Stadium Authority fails to pay any installment of principal of or interest on any Loan when due, or any other amounts payable hereunder or on the Note when due;

(b) any representation or warranty made by the Stadium Authority in or in connection with this Agreement shall prove to have been incorrect in any material respect when made;

(c) the Stadium Authority fails to perform or observe any covenant or agreement contained in clauses (a), (b), (c), (h), (i) or (k) of Section 6.1;

(d) the Stadium Authority fails to perform or observe any other term, covenant or agreement contained in this Agreement on its part to be performed or

observed and any such failure remains unremedied for thirty (30) days after written notice thereof is given to the Stadium Authority by ManagementCo;

(e) the Stadium Authority shall generally not pay its debts as such debts become due, or shall admit in writing the Stadium Authority's inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Stadium Authority seeking to adjudicate the Stadium Authority a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of the Stadium Authority's debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for the Stadium Authority or for any substantial part of the Stadium Authority's property; or Stadium Authority shall take any action to authorize any of the actions set forth above in this clause (e); or

(f) any "event of default" shall have occurred and be continuing under the Ground Lease, or any "event of default" shall have occurred and be continuing under the Stadium Lease or the Management Agreement with the Stadium Authority as the defaulting party, and the applicable cure period shall have elapsed;

then, and in any such event, ManagementCo may, by notice to the Stadium Authority, (x) declare its commitment under Section 2.1 to make Loans to be terminated, whereupon the same will forthwith terminate; and (y) declare the Loans and all indebtedness evidenced by the Note, all interest thereon and all other amounts payable under this Agreement (or any other document or instrument delivered in connection herewith) to be forthwith due and payable, whereupon:

(i) the Early Repayment Date will be deemed to have occurred; and

(ii) the Loans and all indebtedness evidenced by the Note, all such interest and all such amounts will become and be forthwith due and payable, all without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Stadium Authority.

ARTICLE VIII MISCELLANEOUS

SECTION 8.1 Amendments, Etc. No amendment to or waiver of any provision of this Agreement, the Note or any other document or instrument delivered in connection herewith, nor consent to any departure by the Stadium Authority therefrom, will in any event be effective unless the same is in writing and signed by ManagementCo, and then such amendment, waiver or consent will be effective only in the specific instance and for the specific purpose for which given.

SECTION 8.2 Notices, Etc. All notices and other communications provided for hereunder must be in writing (including telecopy communication) and mailed or telecopied or delivered, if to the Stadium Authority, at its address at:

1500 Warburton Avenue

Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771
Attn: Executive Director

and if to ManagementCo, at its address at:

4949 Centennial Boulevard
Santa Clara, CA 95054
Telephone: (408) 562-4949
Fax Number: (408) 727-4937
Attn: Chief Financial Officer

or, as to each of the Stadium Authority and ManagementCo, at such other address as designated by the Stadium Authority or ManagementCo in a written notice to the other. All such notices and communications will, when mailed or telecopied, be effective when deposited in the mails or receipt of telecopy transmission is confirmed, respectively, addressed as aforesaid, except that notices to ManagementCo will not be effective until received by ManagementCo.

SECTION 8.3 No Waiver; Remedies. No failure on ManagementCo's part to exercise, and no delay on its part in exercising, any right hereunder or under the Note will operate as a waiver thereof; nor will any single or partial exercise of any right hereunder or under the Note or any other document or instrument delivered in connection herewith preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 8.4 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied, except as otherwise stated herein.

SECTION 8.5 Costs and Expenses. The Stadium Authority agrees to pay on demand all costs and expenses, including reasonable legal fees and expenses, in connection with the negotiation, execution, delivery, administration and enforcement of this Agreement, the Note and any other document or instrument delivered hereunder.

SECTION 8.6 Binding Effect; Counterparts. This Agreement, the Note and each other document or instrument delivered in connection herewith shall be binding upon and inure to the benefit of the Stadium Authority and ManagementCo and the Stadium Authority's and ManagementCo's respective successors and assigns, except that the Stadium Authority will not have the right to assign its rights hereunder or any interest herein. ManagementCo may assign to any other person (including any financial institution) all or any part of, or any interest in (including participation interests), its rights and benefits hereunder, and under the Note and each other document or instrument delivered in connection herewith, and to the extent of such assignment such assignee will have the same rights and benefits against the Stadium Authority as it would have had if it were ManagementCo hereunder. This Agreement may be executed by the Stadium Authority and ManagementCo in counterparts, each of which will be deemed to be an original and all of which will constitute but one and the same agreement.

SECTION 8.7 Survival. All representations, warranties, covenants and agreements of the Stadium Authority contained in this Agreement as amended or supplemented from time to time or made in writing in connection herewith shall survive the execution and delivery thereof, and shall survive the termination hereof, and shall continue in full force and effect until payment in full of all the repayment obligations of the Stadium Authority hereunder.

SECTION 8.8 Governing Law. THIS AGREEMENT, THE NOTE AND EACH OTHER DOCUMENT OR INSTRUMENT DELIVERED IN CONNECTION HEREWITH SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA.

SECTION 8.9 Legal Actions. 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. 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 8.09 shall survive the termination of this Agreement.

SECTION 8.10 ManagementCo Not Serving an Advisory or Fiduciary Role. The Stadium Authority acknowledges and agrees that: (i) the primary role of ManagementCo with respect to the Loan is to lend money to the Stadium Authority in an arm's-length, commercial transaction between the Stadium Authority and ManagementCo and that ManagementCo has financial and other interests that differ from those of the Stadium Authority; (ii) ManagementCo is not acting as a municipal advisor, financial advisor, or fiduciary to the Stadium Authority and has not assumed any advisory or fiduciary responsibility to the Stadium Authority with respect to the transaction contemplated by the Loan and the discussions, undertaking and procedures leading thereto; (iii) the only obligations ManagementCo has to the Stadium Authority with respect to the transaction contemplated by the Loan are set forth in this Agreement; and (iv) the Stadium Authority has consulted its own financial and/or municipal legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate. If the Stadium Authority would like a municipal advisor in the Loan transaction that has legal fiduciary duties to the Stadium Authority, then the Stadium Authority is free to engage a municipal advisor to serve in that capacity. If the Stadium Authority has any questions or concerns regarding the foregoing matters it shall make those concerns known to ManagementCo.

SECTION 8.11 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 governing body of the Stadium Authority. The Stadium Authority shall authorize the Executive Director, or his or her

designee, in this Agreement 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 8.12 No Personal Liability. No member, official, councilmember, commissioner, partner, employee, shareholder, member, manager, director or agent of any Party or of 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 8.13 Exculpation of the City. ManagementCo acknowledges that: (a) this Agreement imposes no contractual obligations upon the City, unless, until and only if the City expressly assumes in writing the obligations of the Stadium Authority hereunder; (b) in the event of a default or breach under this Agreement of any kind or nature whatsoever ManagementCo shall not look to the City at the time of the default or breach for a remedy or relief; and (c) the Stadium Authority is not and shall not act as an agent of the City or in any manner contract for or bind the City.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the Takeout Closing Date.

SANTA CLARA STADIUM AUTHORITY,
a joint exercise of powers entity,
created through Government Code Sections 6500 *et seq.*

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
Authority General Counsel

JULIO J. FUENTES
Executive Director

ATTEST:

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

ROD DIRIDON, JR.
Authority Secretary

FORTY NINERS STADIUM
MANAGEMENT COMPANY LLC

By: _____
Name: _____
Title: _____

4949 Centennial Boulevard
Santa Clara, CA 95054
Telephone: (408) 562-4949
Fax Number: (408) 727-4937

EXHIBIT A

AMENDED AND RESTATED PROMISSORY NOTE

\$25,000,000.00

Dated: _____, 20__

FOR VALUE RECEIVED, the undersigned, SANTA CLARA STADIUM AUTHORITY, a joint exercise of powers entity created through California Government Code sections 6500 *et seq.* (the "Stadium Authority"), HEREBY PROMISES TO PAY to the order of FORTY NINERS STADIUM MANAGEMENT COMPANY LLC, a Delaware limited liability company ("ManagementCo") on the Maturity Date (as defined in the Agreement identified and defined below), the principal sum of TWENTY FIVE MILLION UNITED STATES DOLLARS (\$25,000,000.00) or, if less, the then aggregate outstanding principal amount of all Loans (as defined below).

The Stadium Authority also promises to pay interest on the unpaid principal amount of each Loan from the date of such Loan until such principal amount is paid in full, at such interest rates, and payable (or compounded as added principal) at such times, as are specified in the Agreement.

Both principal and interest are payable in lawful money of the United States of America in immediately available funds to or at the direction of ManagementCo, free and clear of, and without deduction for, any and all present and future taxes, levies, imposts, deductions, charges, withholdings and all liabilities with respect thereto, all as set forth in the Agreement. All Loans, and all payments made on account of principal hereof, and any amounts of accrued interest not paid currently and compounded as added principal, will be recorded by ManagementCo and, prior to any transfer hereof, endorsed on the grid attached hereto which is a part of this promissory note.

This promissory note is the Note referred to in, and is entitled to the benefits of, the revolving loan agreement dated March 28, 2012, as amended and restated as of June 19, 2013 (as the same may be further amended, restated or otherwise modified or supplemented from time to time, the "Agreement"), between the Stadium Authority and ManagementCo, which Agreement is to be referred to for the definition of each term not otherwise defined herein and which, among other things:

(a) provides for the making of loans (the "Loans") by ManagementCo to the Stadium Authority from time to time in an aggregate amount not to exceed the dollar amount first above-mentioned, the indebtedness of the Stadium Authority resulting from each such Loan being evidenced by this promissory note; and

(b) contains provisions for acceleration of the Stated Maturity Date (as defined in the Agreement) to an earlier date upon the occurrence of certain stated events and also for optional and mandatory prepayments on account of principal hereof prior to the Maturity Date upon the terms and conditions specified in the Agreement.

THIS NOTE SHALL BE DEEMED TO BE MADE UNDER AND GOVERNED BY
THE INTERNAL LAWS OF THE STATE OF CALIFORNIA.

SANTA CLARA STADIUM AUTHORITY,
a joint exercise of powers entity,
created through Government Code Sections 6500 *et seq.*

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
Authority General Counsel

JULIO J. FUENTES
Executive Director

ATTEST:

1500 Warburton Avenue
Santa Clara, CA95050
Telephone: (408) 615-2210
Facsimile: (408) 241-6771

ROD DIRIDON, JR.
Authority Secretary

Date

ENDORSEMENT

For value received, each of the undersigned hereby endorses to the order of
_____ the attached Amended and Restated Promissory
Note payable to the undersigned.

Dated: _____

FORTY NINERS STADIUM
MANAGEMENT COMPANY LLC

By: _____
Name:
Title:

SANTA CLARA STADIUM AUTHORITY,
a joint exercise of powers entity,
created through Government Code Sections 6500 *et seq.*

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
Authority General Counsel

JULIO J. FUENTES
Executive Director

ATTEST:

1500 Warburton Avenue
Santa Clara, CA95050
Telephone: (408) 615-2210
Facsimile: (408) 241-6771

ROD DIRIDON, JR.
Authority Secretary

Date

**FOURTH AMENDMENT TO STADIUM MANAGEMENT AGREEMENT
(LEVI'S STADIUM)**

This Fourth Amendment to Management Agreement (this "**Fourth Amendment**") is made and entered into as of March 18, 2014 by and between the Santa Clara Stadium Authority, a joint exercise of powers entity, created through Government Code Section 6500 *et seq.* ("**Stadium Authority**"), Forty Niners Stadium Management Company LLC, a Delaware limited liability company ("**Stadium Manager**"), and Forty Niners SC Stadium Company LLC, a Delaware limited liability company ("**StadCo**"). Stadium Authority, Stadium Manager, and StadCo collectively are sometimes referred to herein as the "**Parties**," and each of Stadium Authority, Stadium Manager, and StadCo individually is sometimes referred to herein as a "**Party**."

RECITALS

A. Stadium Authority and StadCo entered into that Stadium Lease Agreement effective as of March 28, 2012, as amended and restated by that certain Amended and Restated Stadium Lease Agreement entered into as of June 19, 2013 (as amended and restated, and as further amended from time to time, the "**Stadium Lease**"), whereby StadCo obtained a leasehold interest from Stadium Authority in the Stadium Site located in Santa Clara County, California.

B. Stadium Authority entered into that Agreement for Stadium Builders License Sales and Related Services ("**SBL Sales Agreement**") as of July 15, 2011 with Legends Premium Sales, LLC ("**Legends**") to provide marketing and sales of Stadium Builders Licenses for the Stadium.

C. The Parties entered into that certain Stadium Management Agreement effective as of March 28, 2012 (the "**Original Management Agreement**"), whereby each of Stadium Authority and StadCo engaged Stadium Manager to provide management services for the Stadium on its respective behalf in accordance with the Stadium Lease, including oversight of the day-to-day operations and maintenance of the Stadium.

D. The Parties entered into that certain First Amendment to Stadium Management Agreement effective as of November 13, 2012 (the "**First Amendment**").

E. The Parties entered into that certain Second Amendment to Stadium Management Agreement effective as of May 9, 2013 (the "**Second Amendment**").

F. The Parties entered into that certain Third Amendment to Stadium Management Agreement effective as of June 19, 2013 (the "**Third Amendment**").

G. The Parties now desire to further amend the Management Agreement as provided herein. The Original Management Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, and this Fourth Amendment, is sometimes referred to herein as the "**Management Agreement**."

H. Capitalized terms used in this Amendment, but not defined in this Amendment or in the Management Agreement, shall have the meanings set forth in the Stadium Lease.

AGREEMENT

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto and each of them do agree as follows:

1. Recitals: Effective Date.

1.1 Recitals. The provisions of the Recitals above are fully incorporated herein by this reference.

1.2 Effective Date. Unless otherwise specifically provided herein, all provisions of this Fourth Amendment shall be effective as of the date of execution set forth under the Stadium Authority's signature below.

2. Amendment of Section 2.6. A new section 2.6.18, which had previously been intentionally omitted, is hereby added to Section 2.6 as follows:

2.6.18 On behalf of the Stadium Authority and not on behalf of StadCo, make recommendations to the Stadium Authority with respect to facilitation of a secondary market for SBLs, monitor and manage any agreements entered into by the Stadium Authority with respect thereto, and coordinate with Legends to transition responsibility from Legends to the Stadium Manager for managing both sold and unsold SBLs upon termination of the SBL Sales Agreement. In addition, from and after the termination of the SBL Sales Agreement: (i) maintain appropriate records of the holder of each SBL, (ii) monitor transfers of SBLs, and, where Stadium Authority approval is required, make recommendations to the Stadium Authority with respect thereto, (iii) oversee the marketing of any unsold or defaulted SBLs in accordance with the direction of the Stadium Authority; (iv) administer and enforce the terms and conditions of the SBLs, (v) manage the provision of services specified in the SBLs; (vi) invoice, collect, account for and distribute the amounts payable under SBL agreements; and (vii) provide information to StadCo, the Team and the sponsors of any Non-NFL Events as reasonably required to enable each of them to fulfill their obligations to the holders of SBLs. The services described in this Section 2.6.18 are hereinafter referred to as the "**SBL Management Services**".

3. Amendment of Section 4.6. The second sentence of Section 4.6 is hereby deleted and replaced with the following:

The Stadium Operations Budget will include an annual Stadium Authority Budget (the "**Annual Stadium Authority Budget**"), which meets the scope of services performed by the Stadium Manager on behalf of the Stadium Authority and includes all Stadium Authority Expenses in connection with the Stadium, identifies, among other things, all Stadium Manager's actual costs and expenses in connection with services provided to the Stadium Authority hereunder, any Manager Operating Expenses allocable to the Stadium Manager's services on

behalf of the Stadium Authority, including all Manager Operating Expenses allocable to both the Marketing and Booking Services and the SBL Management Services, the Stadium Authority's share of amounts in the Annual Shared Expense Budget, and the Stadium Authority's allocable share of the Base Management Fee and all of the Marketing and Booking Fee.

4. Miscellaneous.

4.1 Ratification. Except as modified by this Fourth Amendment, all of the terms, conditions and provisions of the Original Management Agreement, as amended by the First Amendment, the Second Amendment, and the Third Amendment, shall remain in full force and effect and are hereby ratified and confirmed.

4.2 Conflict. To the extent the terms of this Fourth Amendment and the Original Management Agreement, as amended by the First Amendment, the Second Amendment, and the Third Amendment, are inconsistent, the terms of this Fourth Amendment shall control.

4.3 Entire Agreement. This Fourth Amendment contains the entire agreement of the Parties with respect to the subject matter hereof. It is understood that there are no oral agreements between the Parties affecting the Management Agreement as hereby amended, and this Fourth Amendment supersedes and cancels any and all previous negotiations, representations, agreements and understandings, if any, between the Parties and their respective agents with respect to the subject matter thereof, and none shall be used to interpret or construe the Management Agreement.

4.4 Authority. Each signatory of this Fourth Amendment represents hereby that he or she has the authority to execute and deliver it on behalf of the Party hereto for which such signatory is acting.

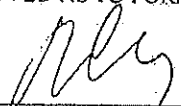
4.5 Counterparts. This Fourth Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. This Fourth Amendment may be executed by a Party's signature transmitted by facsimile ("fax") or by electronic mail in portable document format ("pdf"), and copies of this Fourth Amendment executed and delivered by means of faxed or pdf signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All Parties hereto may rely upon faxed or pdf signatures as if such signatures were originals. Any Party executing and delivering this Fourth Amendment by fax or pdf shall promptly thereafter deliver a counterpart of this Fourth Amendment containing said Party's original signature. All Parties hereto agree that a faxed or pdf signature page may be introduced into evidence in any proceeding arising out of or related to this Fourth Amendment as if it were an original signature page.

IN WITNESS WHEREOF, the Parties have caused this Fourth Amendment to Management Agreement to be executed by their duly appointed representatives as of the date first above written.

STADIUM AUTHORITY:

SANTA CLARA STADIUM AUTHORITY,
a joint exercise of powers entity,
created through Government Code Sections 6500 *et seq.*

APPROVED AS TO FORM:




RICHARD E. NOSKY, JR.
Stadium Authority Counsel



JULIO J. FUENTES
Executive Director

ATTEST:



ROD DIRIDON, JR.
Secretary

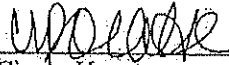
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Facsimile: (408) 241-6771

[Signatures continued on next page]

*[Signatures to Fourth Amendment to Management Agreement continued from
previous page]*

STADCO:


FORTY NINERS SC STADIUM COMPANY LLC,
a Delaware limited liability company

By: 
Name: Cipora Herman
Title: Chief Financial Officer

4949 Marie P. DeBartolo Way
Santa Clara, CA 95054
Telephone: (408) 562-4949
Fax Number: (408) 727-4937

STADIUM MANAGER:

FORTY NINERS MANAGEMENT COMPANY LLC,
a Delaware limited liability company

By: 
Name: Cipora Herman
Title: Chief Financial Officer

4949 Marie P. DeBartolo Way
Santa Clara, CA 95054
Telephone: (408) 562-4949
Fax Number: (408) 727-4937

EXHIBIT B

EXHIBIT B



2015-2016 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

THE CITY OF SANTA CLARA, THE SANTA CLARA STADIUM AUTHORITY, LEVI'S STADIUM, AND MEASURE J

Background

The Santa Clara County Civil Grand Jury (Grand Jury) received a complaint concerning possible nonconformance with certain requirements of The Santa Clara Stadium Taxpayer Protection and Economic Progress Act (Measure J). Allegations were also brought to the Grand Jury's attention concerning the accuracy of time charged by City of Santa Clara (City) employees for stadium business.

The City, with a population of approximately 126,000, is located in Silicon Valley and has a convention center, hotels, the Great America amusement park, and Levi's Stadium (Stadium). The City has an appointed City Manager and part-time elected Mayor and City Council. In addition to serving as members of City committees and agencies, the Mayor and City Council also serve as the voting board of the Santa Clara Stadium Authority (Stadium Authority).

In June 2010, voters of the City passed Measure J, which authorized the formation of the Stadium Authority to oversee the design and construction of the Stadium, to be its owner/landlord, and to oversee all business related to Stadium maintenance and operation. It was also intended to insulate the taxpayers of the City from financial burdens beyond those specified in the ballot measure.

The Stadium Authority entered into a project management agreement with the Forty Niners Santa Clara Stadium Company LLC (StadCo) in accordance with Measure J. The agreement authorized StadCo to direct and manage the design and construction of the new 68,500-seat stadium on City-owned land subject to oversight by the Stadium Authority. The project management agreement also stipulated that the design would be developed by StadCo in consultation with the Stadium Authority and the City, and would be subject to public comment.

Construction began in April 2012, and the Stadium was opened in July 2014. During construction the Stadium Authority leased the stadium to StadCo and sold the stadium naming rights to Levi Strauss & Company. The stadium is now known as Levi's Stadium.

The Stadium Authority's governing board is comprised of the elected Mayor as chairperson and the six elected City Council members. Measure J stipulated that the Executive Director position of the Stadium Authority be the City Manager and the Stadium Authority Counsel be the City Attorney. City employees fill the other three management positions.

Listed below are the board members and managing officers of the Stadium Authority serving when the Grand Jury began its investigation (*no longer serving or currently in a different role).

Governing Board:

- *Jamie Matthews, Chairperson/Mayor
- Dominic J. Caserta, City Council member
- Debi Davis, City Council member
- *Lisa Gillmor, City Council member
- Pat Kolstad, City Council member
- Jerry Marsalli, City Council member
- Teresa O'Neil, City Council member and Vice Mayor

Managing Officers/City Employee Role:

- *Julio J. Fuentes, Executive Director/City Manager
- Richard E. Nosky, Jr., Stadium Authority Counsel/City Attorney
- Rod Diridon, Jr., Secretary/City Clerk, City Auditor
- Gary Ameling, Finance Director, Treasurer, Auditor/City Finance Director
- Ruth Shikada, Assistant Executive Director/Economic Development Officer, Assistant City Manager

Since this Grand Jury investigation began, several changes have been made that directly affect the composition of the Stadium Authority board and management.

- Jamie Matthews resigned as Mayor on February 8, 2016.
- City Council member Lisa Gillmor was appointed Mayor by the City Council on February 17, 2016 to serve the remainder of Jamie Matthews' term expiring November 2018.
- Kathy Watanabe was appointed by the City Council on March 7, 2016 to serve the remainder of Lisa Gillmor's term expiring November 2016.
- On March 3, 2016, Julio Fuentes announced his resignation as City Manager effective May 31, 2016.
- On March 24, 2016, the City Council formally accepted Julio Fuentes' resignation and placed him on paid leave until May 31, 2016.
- Ruth Shikada was appointed Acting City Manager by the City Council effective March 24, 2016.
- Rajeev Batra, Director of Public Works/City Engineer was appointed long-term Acting City Manager by the City Council replacing Ruth Shikada effective April 6, 2016.

Listed below is the Stadium Authority organization as of May 2016 (*new role or person).

Governing Board:

- *Lisa Gillmor, Chairperson/Mayor
- Dominic J. Caserta, City Council member
- Debi Davis, City Council member
- Pat Kolstad, City Council member
- Jerry Marsalli, City Council member
- Teresa O'Neil, City Council member and Vice Mayor
- *Kathy Watanabe, City Council member

Managing Officers/City Employee Role:

- *Rajeev Batra, Acting Executive Director/Acting City Manager
- Richard E. Nosky, Jr., Stadium Authority Counsel/City Attorney
- Rod Diridon, Jr., Secretary/City Clerk and City Auditor
- Gary Ameling, Finance Director, Treasurer, Auditor/Director of Finance, Assistant City Manager
- Ruth Shikada, Assistant Executive Director/Economic Development Officer, Assistant City Manager

The Stadium Authority leased the Stadium to StadCo for an initial term of 40 years with four 5-year lease options. The Stadium Authority has contracted with the Forty Niners Stadium Management Company LLC (ManCo), an affiliate of StadCo, to manage the Stadium. The contract has an initial term of 25 years with a 15-year renewal option. The Stadium Authority pays ManCo for services related to stadium operations on behalf of the Stadium Authority.

Games played during the National Football League (NFL) season (August through January) require City employees to provide public safety and other support activity such as traffic control, parking, crowd control, paramedics, on-call fire, and third party vendors. Additional public safety personnel from other jurisdictions are also required and are contracted for and paid by the City. The City is ultimately reimbursed for these costs.

Other recreational events, parties, and corporate events are also conducted at the Stadium during the NFL season and off-season. All expenses related to these activities are borne by event sponsors. To date, there have been hundreds of these events.

Large-scale events also take place during the NFL season and off-season. Concerts (for example, Taylor Swift and Beyoncé) and sporting events (college football, soccer, WrestleMania, Supercross, and outdoor National Hockey League

games) are the most common. These events require many of the same public safety and support services as NFL games.

Discussion

The Grand Jury investigated the following:

- Financial compliance to Measure J
- Management structure of the Stadium Authority
- Reimbursement process for costs incurred by the City for Stadium business
- Public Safety cost threshold for NFL games

Measure J Compliance

While there have been financial reports and audits related to the operation of the Stadium, to date no audit has been completed to assure City taxpayers that all transactions are in compliance with Measure J. On March 22, 2016, the Stadium Authority approved funding for a third-party Measure J compliance audit.

Stadium Authority Management Structure

The management of the Stadium Authority is performed by City employees serving in the critical positions of Executive Director, Counsel, Finance Director, Treasurer, and Auditor. Measure J specifies that the Executive Director position be filled by the City Manager and the Stadium Authority Counsel position be filled by the City Attorney.

The Grand Jury learned from interviews that these City employees typically spend ten to fifteen percent of their time on Stadium Authority business. During its investigation the Grand Jury was surprised by the significant lack of understanding of Stadium Authority operational and financial details by those responsible for its management. The response to questions such as, "How do you assure that the City's general and enterprise funds are protected from subsidizing the operation and maintenance of Levi's Stadium as stated in Measure J" was consistently "I don't know."

The City's Finance Director also serves as the Stadium Authority's Treasurer and Auditor. The Grand Jury is concerned about the oversight position of auditor being held by the Finance Director. The Stadium Authority should adopt the same structure as the City, where the auditor position is separate and independent from the Finance Director to prevent the appearance of any conflict of interest.

City General Fund Use for Operation and Maintenance of the Stadium

It is unclear whether unreimbursed City general funds are used for Stadium operations and maintenance in violation of Measure J.

The Grand Jury received information that some city employees were told by superiors to improperly charge Stadium activities to the City. The Grand Jury interviewed numerous people but was unable to corroborate this information. A comprehensive Measure J compliance audit should include a review of the billing and tracking procedures used when City employees perform Stadium business.

Public Safety Cost Threshold

Public Safety is both important and expensive for any large event. The increase of worldwide terrorism has resulted in heightened security with related costs that will continue to escalate.

Measure J placed a threshold on public safety cost reimbursements of \$170,000 per NFL game beginning with the 2014 season and increasing four percent annually. StadCo has been reimbursing the City up to this public safety cost threshold. According to publicly available reports, the actual public safety costs for the ten games of the 2014 NFL season exceeded the \$1.7 million threshold by over \$600,000. As stipulated in Measure J Attachment C, Principal Terms of Public Safety Agreement, these overages were paid from the Measure J Stadium Authority Discretionary Fund (Discretionary Fund).

The Discretionary Fund is partially funded by non-NFL ticket surcharges. If the Discretionary Fund exceeds one million dollars, a review of the fund by the Stadium Authority may result in a portion of the declared excess being transferred to the City general fund.

For a concert or other non-NFL events at the Stadium, the City is reimbursed by the promoter for all public safety costs it incurs. These include police, fire, traffic management, and parking support.

A provision in Measure J and the Stadium lease agreement between StadCo and the Stadium Authority provides for a renegotiation of the public safety reimbursement threshold with StadCo after any three consecutive years of public safety cost overages. If the overages continue through the 2016 NFL season, the City may invoke this renegotiation clause.

Conclusions

The Grand Jury was given information that City employee hours spent on Stadium

operations and maintenance may have been improperly allocated to the City. This has also been widely reported in the media. The Grand Jury interviewed many people but was not able to verify this assertion. As discussed above, the City has already begun efforts to have a comprehensive third-party audit of Measure J, and the Grand Jury recommends that the audit include a review of City employees' allocation of time between Stadium and City business.

The Grand Jury is concerned about the oversight position of Stadium Authority Auditor being held by the Stadium Authority Finance Director. The Stadium Authority should adopt the same structure as the City, where the auditor position is separate and independent from that of the finance director to prevent the appearance of any conflict of interest.

If the public safety cost overage continues through the 2016 NFL season, the City should exercise its contractual right under the stadium lease agreement to open negotiations with the Stadium Authority and StadCo for a possible increase in the public safety cost threshold. This is also stated in Measure J.

A comprehensive audit focused on compliance with Measure J and the use of City of Santa Clara general funds should be conducted immediately. The audit should include a review of the billing and tracking procedures used when City employees perform Stadium business. The results of the audit should be presented to the Santa Clara City Council in open session.

Findings and Recommendations

Finding 1

Since the passage of the Santa Clara Stadium Taxpayer Protection and Economic Progress Act (Measure J), there has been no compliance audit. During the course of the Grand Jury's investigation, the Santa Clara Stadium Authority board approved a Measure J compliance audit to be performed by a third party, to be selected.

Recommendation 1a

The Santa Clara Stadium Authority should specify that the compliance audit cover the time period beginning with the passage of Measure J through March 31, 2016, the end of the Stadium Authority fiscal year.

Recommendation 1b

The Santa Clara Stadium Authority should specify that the scope of the compliance audit include whether City of Santa Clara general funds have been used for the operation or maintenance of Levi's Stadium in violation of Measure J.

Recommendation 1c

The Santa Clara Stadium Authority should specify that a Measure J compliance audit include a review of the billing and tracking procedures used when City employees perform Stadium business and how and when the City is reimbursed.

Recommendation 1d

Once the audit is complete, the Santa Clara Stadium Authority should release the results to the public.

Finding 2

The public safety costs incurred during the first two NFL football seasons at Levi's Stadium have exceeded the monetary threshold stated in the Santa Clara Stadium Taxpayer Protection and Economic Progress Act (Measure J).

Recommendation 2

If the public safety cost overage continues through the 2016 NFL season, the City of Santa Clara should seek an adjustment of the public safety cost threshold in accordance with clause 7.5.4(b) of the *Amended and Restated Stadium Lease*

Agreement by and between the Santa Clara Stadium Authority and Forty Niners Santa Clara Stadium Company LLC dated March 28, 2012, As Amended and Restated as of June 19, 2013.

Finding 3

The Santa Clara Stadium Authority's Finance Director, Treasurer, and Auditor positions are currently held by the same individual.

Recommendation 3

The Santa Clara Stadium Authority should adopt the same structure as the City of Santa Clara, where the auditor position is separate and independent from that of the finance director.

Glossary

Forty Niners Santa Clara Stadium Company LLC: a Delaware limited liability company formed as an affiliate of the San Francisco Forty Niners NFL football team.

Forty Niners Stadium Management Company LLC: a Delaware limited liability company formed as an affiliate of the Forty Niners Santa Clara Stadium Company LLC. Also referred to as ManagementCo or Stadium Manager.

Levi's Stadium: a sports venue that may also be used for concerts, other spectator events, and private and corporate events. The stadium is located at 4900 Marie P. DeBartolo Way, Santa Clara, CA 95054.

ManCo: Forty Niners Santa Clara Stadium Management Company LLC.

Measure J: Santa Clara Stadium Taxpayer Protection and Economic Progress Act.

Santa Clara Stadium Authority: The managing entity created by Measure J to construct and own Levi's Stadium while insulating the City of Santa Clara taxpayers from any financial liability deriving from Levi's Stadium construction, maintenance and operation.

Santa Clara Stadium Taxpayer Protection and Economic Progress Act: Ballot Measure J, passed by the voters of the City of Santa Clara in June 2010. This measure altered the City of Santa Clara charter and created the Santa Clara Stadium Authority.

Silicon Valley: An area of California including parts of Santa Clara County, San Mateo County, and Alameda County and containing a large concentration of high-tech companies.

StadCo: Forty Niners Santa Clara Stadium Company LLC.

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Interviews

Eleven interviews were conducted between November 11, 2015 and March 9, 2016.

This report was **ADOPTED** by the 2015-2016 Santa Clara County Civil Grand Jury on this 15 day of June, 2016.



Gil Zamora
Foreperson

EXHIBIT C

EXHIBIT C



December 13, 2018

Mr. Jim Mercurio, Stadium Manager
San Francisco Forty Niners Management Company
4900 Marie P. De Bartolo Way
Santa Clara, California 95054

Sent via Certified Mail, Return Receipt Requested

SUBJECT: Notice to provide Management Correction Plan, Stadium Management Agreement Section 3.3.2

Dear Mr. Mercurio:

This is to provide the San Francisco Forty Niners Management Company (Stadium Manager) with written notice that in the reasonable judgment of the Stadium Authority the Stadium Manager has not met the Stadium Authority's reasonable expectations with respect to the management of the Stadium. In particular Stadium Manager has not reasonably complied with its obligations under the parties' Stadium Management Agreement (Management Agreement) to (1) provide advance communication about and written reports for Non-NFL Events, and (2) comply with contract procurement procedures and restrictions as provided.

Accordingly, Stadium Authority hereby invokes its rights under Section 3.3.2 of the Stadium Management Agreement to demand a timely meeting with Stadium Manager's appropriate staff regarding these issues, and to then receive a written Management Correction Plan as provided under Section 3.3.2.

As explained below, Stadium Manager has not met these contractual obligations, nor its obligations to provide prudent and commercially reasonable good faith standard of care and duties under Sections 2.9 and 2.10 of the Management Agreement. Specifically, Stadium Manager has continually failed to comply with Section 3.3 of the First Amendment to the Stadium Management Agreement, Quarterly Status Meetings:

The Stadium Manager and the Executive Director shall, at the request of the Executive Director, at a mutually convenient time, meet and confer no less often than quarterly during the Term of the Management Agreement to report on the status of the Stadium Manager's activities pursuant to Paragraph 3.2 above and the then approved Marketing Plan, including, without limitation, the status of Stadium Manager's marketing and

MR. JIM MERCURIO, STADIUM MANAGER

Re: Notice for Management Correction Plan, Stadium Management Agreement Section 3.3.2

December 13, 2018

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promotional efforts, the status of any ongoing negotiations with respect to Non-NFL Events, financial performance and other matters relating to past Non-NFL Events, development of the Marketing Plan for the succeeding fiscal year, and such other similar or other topics as the Stadium Authority may request. In addition, and without limiting the Stadium Manager's obligation to provide an Annual Statement of Stadium Operations pursuant to Section 4.2 of the Existing Management Agreement, the Stadium Manager shall furnish the Executive Director, within 45 days of each Non-NFL event with attendance projected to exceed 25,000 and on a quarterly basis for all other events, such written revenue or other reports relating to Non-NFL Events as the Parties may agree from time to time.

Attachment A provides specific examples demonstrating the lack of compliance with reporting on the status of the Stadium Manager's activities including, without limitation, the status of Stadium Manager's marketing and promotional efforts and the status of any ongoing negotiations with respect to Non-NFL Events. The Stadium Authority has made several efforts, dating back to December 2017, to seek improved performance and corrective action and Stadium Manager has not performed in compliance with these requirements. Further, Attachment B provides specific examples demonstrating Stadium Manager's lack of compliance in furnishing written Non-NFL Event revenue reports to the Stadium Authority Executive Director.

Stadium Manager has also failed to comply with Section 2.1 of the First Amendment to the Stadium Management Agreement, Stadium Procurement Contracts:

In addition to contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Stadium Authority hereby agrees that the Stadium Manager shall have full authority and discretion to select the providers, and to negotiate, approve, enter into and administer contracts with such providers on behalf of the Stadium Authority, for the purchase of supplies, materials and equipment, and for services, relating to the Stadium and its operations ("Stadium Procurement Contracts"), as and to the extent the Executive Director has authority to enter into such Stadium Procurement Contracts pursuant to Sections 17.30.010 through 17.30.180 of the Santa Clara City Code ("SCCC"), as approved on first reading by the Santa Clara City Council on November 13, 2012. Manager shall provide the Stadium Authority with information, including the contracting party and the contract amount, regarding all Stadium Procurement Contracts entered into with contract amounts greater than \$100,000 within thirty (30) days of entering into any such contract. The foregoing constitutes the Executive Director's delegation to the Stadium Manager, pursuant to Section 17.30.010(c) of the SCCC, of the authority granted to the Executive Director to enter into such Stadium Procurement Contracts. If the ordinance adopting Sections 17.30.010 through 17.30.180 of the SCCC approved on November 13,

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December 13, 2018

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2012 does not become effective by January 31, 2013, this Section 2 shall be of no further force or effect.

Additionally, Stadium Manager is in violation of Section 17.30.120 of the Santa Clara City Code (City Code), Service contracts – Signature authority:

The Executive Director shall have the authority to execute contracts with third parties for services provided to the Stadium Authority, which shall be exempt from the competitive process, as follows:

(a) The Executive Director, or designee, is authorized to purchase professional, nonprofessional and personal services required by the Stadium Authority and to execute contracts for such services on behalf of the Stadium Authority in contract amounts up to and including two hundred fifty thousand dollars (\$250,000.00) per contract, subject to approved budgetary amount, so long as such persons are specially trained and experienced and competent to perform the special services required. Contracts with a contract amount above this dollar limit shall be referred to the Stadium Authority Board for approval;

(b) The Executive Director is authorized to delegate all or a portion of the authority to execute such service contracts to specified Stadium Authority employees at her/his discretion. Such delegation of authority shall be made in writing;

(c) Such service contracts shall be generally consistent with forms of contracts approved by the Stadium Authority Counsel's office or shall be subject to the final review and approval of the Stadium Authority Counsel's office for form and content;

(d) The maximum amount of the value of the service contracts which the Executive Director or designee is authorized to execute shall be adjusted as needed by resolution of the Stadium Authority Board, with amounts rounded to the nearest five thousand dollar (\$5,000.00) increment;

(e) Notwithstanding anything to the contrary, solicitations for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

Attachment C provides specific examples demonstrating the lack of compliance with both this agreement provision and this section of the City Code.

MR. JIM MERCURIO, STADIUM MANAGER

Re: Notice for Management Correction Plan, Stadium Management Agreement Section 3.3.2

December 13, 2018

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As a result, Stadium Manager has failed its obligations to provide prudent and commercially reasonable good faith standard of care and duties under Sections 2.9 and 2.10 of the Stadium Management Agreement, Standard of Care and Duty and Liability, respectively:

2.9 Standard of Care. Subject to the limitations set forth in this Agreement, the Budget, and the Stadium Lease, the Stadium Manager shall exercise prudent, commercially reasonable good faith efforts in managing and operating the Stadium in accordance with the terms hereof so as to (a) maintain the Stadium in the Required Condition and operate the Stadium as a quality NFL and multi-purpose public sports, public assembly, exhibit and entertainment facility, to a standard of quality comparable to other similar facilities (except that the parties recognize that portions of the Stadium may be in need of capital upgrades); (b) control Manager Operating Expenses, StadCo¹ Operating Expenses and Stadium Authority Operating Expenses; and (c) maximize Operating Revenues.

2.10 Duty and Liability. The Stadium Manager shall owe to each of StadCo and the Stadium Authority a duty to perform the obligations specified to be provided on their respective behalf under this Agreement and to conduct the management and operation of the Stadium at all times with integrity and good faith and in a manner which in the good faith judgment of the Stadium Manager is in the best interests of the Stadium, StadCo and the Stadium Authority and consistent with the terms of this Agreement. The Stadium Manager shall not be liable, responsible, or accountable in damages or otherwise to either StadCo or the Stadium Authority for any act or omission that is within the scope of its authority under this Agreement, except for acts or omissions of the Stadium Manager not in good faith or involving gross negligence or willful misconduct; provided, however, the Stadium Manager shall not be liable for damages and other amounts to the extent such items are covered by insurance proceeds or other third party payments.

For all these reasons, Stadium Authority hereby invokes its rights under Section 3.3.2 of the Stadium Management Agreement to demand a timely meeting with Stadium Manager's appropriate staff regarding these issues of (1) providing advance communication about and sufficient written reports for Non-NFL Events, and (2) complying with contract procurement procedures and restriction, and to then receive a written Management Correction Plan as to each of the two issues, as provided under Section 3.3.2.

This letter summarizes a series of actions that demonstrate that the Stadium Manager has not reasonably complied with its obligations under the parties' Management Agreement and how this lack of compliance impairs the Executive Director with respect to upholding her duties to the Stadium Authority and Stadium Authority Board. This condition was raised at a meeting on

¹ Forty Niners Stadium SC Company LLC

MR. JIM MERCURIO, STADIUM MANAGER

Re: Notice for Management Correction Plan, Stadium Management Agreement Section 3.3.2

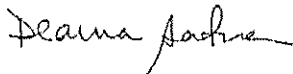
December 13, 2018

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October 4, 2018, with Patty Ingles and Hannah Gordon, where the Executive Director advised in great detail how the Stadium Manager's inadequate performance sets inappropriate limitations on the Executive Director's ability to fulfill her obligations.

Accordingly, please provide available dates for the Section 3.3.2 meeting within 10 business days upon receipt of this correspondence, so it can be scheduled within the 30-day period required under the Stadium Management Agreement. In addition, to be efficient of all of our time and resources regarding this very important issue and potential violations, provide all information that will resolve these issues, at least seven business days in advance of the scheduled meeting. If you fail to comply with this Notice and your obligations under Section 3.3.2, or continue to fail to meet your obligations as stated here, Stadium Authority will consider all actions to enforce its rights and remedies under the Stadium Management Agreement, including but not limited to formal default notices, or legal actions in Superior Court.

Sincerely,



Deanna J. Santana
Executive Director

Attachments (3):

- A. Stadium Manager Non-Compliance with Section 3.3 of the First Amendment to the Stadium Management Agreement (Quarterly Status Meetings) – Advance Communication of Non-NFL Events
- B. Stadium Manager Non-Compliance with Section 3.3 of the First Amendment to the Stadium Management Agreement (Quarterly Status Meetings) – Written Non-NFL Event Reports
- C. Stadium Manager Non-Compliance with Section 2.1 of the First Amendment to the Stadium Management Agreement (Stadium Procurement Contracts) and Section 17.30.120 of the Santa Clara City Code)

Previous communications referenced in letter and attachments provided upon request.

CC: Santa Clara Stadium Authority Board
Patricia Inglis, Executive Vice President
Hannah Gordon, Chief Administrative Officer and General Counsel
Brian Doyle, Stadium Authority Counsel
Mohammad Walizadeh, Hanson Bridgett

Attachment A: Stadium Manager Non-Compliance with Section 3.3 of the First Amendment to the Management Agreement (Quarterly Status Meetings) – Advance Communication of Non-NFL Events

Stadium Authority and Stadium Manager have discussed numerous times, dating back to December 21, 2017 with San Francisco 49ers President Al Guido (SF 49ers President), Stadium Manager's obligation to share marketing efforts to obtain Non-NFL events. Additionally, Stadium Authority has also discussed numerous times the manner required to disclose communications about Stadium Manager's activity to obtain Non-NFL Events at Levi's Stadium, and how to reflect this information in the Marketing Plan for the Stadium Authority Board (Board). Stadium Manager has not taken reasonable action to meet the requirements under the Management Agreement and Stadium Authority continues to receive insufficient information that is also not timely or complete.

Following are specific examples that demonstrate Stadium Manager's non-compliance with Section 3.3 of the First Amendment to the Management Agreement due to Stadium Manager's scheduling of Non-NFL Events without prior coordination with Stadium Authority Executive Director (Executive Director).

- **2018 Non-NFL Events Marketing & Business Plan (Marketing Plan)** – On March 13, 2018 the Board held a Study Session to discuss and provide input on the Marketing Plan. Executive Director and Stadium Manager stated they would work collaboratively to develop key performance indicators (KPIs) that will be used to both evaluate the effectiveness of the Marketing Plan, as well as inform the decision making process for the next annual Marketing Plan, for review by the Board in the second quarter of Stadium Authority Fiscal Year 2018/2019 (July – September 2018).

Executive Director stated via October 4, 2018 letter that despite numerous discussions, efforts to develop KPIs had not significantly advanced, and outlined those efforts:

- April 26 Monthly Meeting: Stadium Manager establish by May 11 draft KPIs to Stadium Authority; Stadium Authority/Stadium Manager set May/June review dates.
- June 20 Email: Stadium Manager transmits draft KPIs for Concessionaire.
- June 21 Monthly Meeting: Discussed KPIs scope; Stadium Manager to establish draft KPIs to Stadium Authority by July 1.
- June 26 and 27 Emails: Stadium Authority requested meeting to review in July draft KPIs; reminder to provide additional KPIs (not related to Concessionaire).
- July 17 Email: Stadium Manager transmitted draft KPIs to Stadium Authority.
- July 19 Meeting: Stadium Authority/Stadium Manager review draft KPIs. Stadium Authority provided feedback, agreed to provide template for displaying KPIs. Stadium Manager to provide revised KPIs by August 16, with plans to review at August 23 monthly meeting.
- July 29 Email: Stadium Authority provided draft template for recording KPIs with potential performance categories based on the Marketing Plan.
- August 17 Email: Stadium Manager transmitted draft KPIs to Stadium Authority.

- **August 31, 2018 Executive Director Letter to Stadium Manager** – Executive Director memorialized the many discussions where Stadium Authority and Stadium Manager specifically reviewed this agreement provision at monthly meetings and in other venues regarding Stadium Manager’s requirement to provide full and advanced information of any potential Non-NFL Events. Executive Director listed specific examples of several Non-NFL events that Stadium Manager scheduled without prior coordination or disclosure to Executive Director as required:
 - Heart & Soles Run (Silicon Valley Leadership Group); March 23, 2019
 - College football: SJSU vs. Army West Point; October 13, 2018
 - College football: Cal vs UNC; September 1, 2018
 - High School Football Series; September 21, 2018

- **May 19, 2019 Rolling Stones Concert** – This is another specific example of the extremely limited nature of keeping the Executive Director apprised of Non-NFL Events. This began in August 2018 when SF 49ers President spoke with Chief Operating Officer Walter C. Rossman regarding a potential Rolling Stones weeknight concert in May 2019, specifically referencing concerns with the requirement to end weeknight concerts no later than 10:00 p.m. SF 49ers President then called the Executive Director regarding the possibility of booking this potential concert. Since that time there was no further definitive communications regarding this Non-NFL Event until November 6, 2018, when Stadium Manager advised Executive Director via email of plans to do a pre-announcement promotion for the Rolling Stones concert. The Executive Director inquired in writing regarding the date(s) of the concert, she received a reply five days later stating “No set date yet...we will know next week and relay to the group when it has been determined.” In fact, the Executive Director learned about the date, despite her written inquiry, through a press release issued by the Stadium Manager. The Stadium Manager made no effort to respond to the written inquiry, despite the fact that it is reasonable to believe that the Stadium Manager had access to the date well in advance, as demonstrated through the robust public release of these concert dates. No pre-contractual information has been provided for the Stadium Authority to understand the financials surrounding this event, despite the provision requirement to disclose.

- **March 26, 2019 United States Men’s National Team Soccer Match** – Stadium Manager notified Executive Director December 9, 2018 via email of an upcoming formal announcement of this Non-NFL Event. Stadium Manager refers to efforts characterized as “previously advised” the Executive Director about this particular event. The agreement provision requires that no less often than quarterly Stadium Manager report on the status of any ongoing negotiations with respect to Non-NFL Events. The Stadium Manager has inappropriately set limitations on the information afforded to the Executive Director by placing “Hold” or “Pending” in a report that attempts to respond under this provision to the Executive Director. Listing a potential event on a spreadsheet with “Hold” or “Pending” does not satisfy this agreement provision and provides no

advanced notification to the Executive Director for which the threshold is “without limitation.” Further, on December 11, 2018, Executive Director sent via email a written request to understand this Non-NFL Event in greater detail and specifically requested information regarding this event’s financials. As of December 13, 2018 Stadium Manager has made no effort, once again, to provide information in accordance with the Management Agreement provision.

- **October 18 and November 26, 2018 Levi’s Stadium Event Notification Spreadsheets –** These notifications do not comply with this section of the Management Agreement. Providing a spreadsheet that (1) includes only upcoming scheduled events that have reached the status of “Hold”, “Pending” or “Booked” and (2) provides no detail beyond “Private Event” for the majority of events listed is insufficient. Per the Stadium Management Agreement, Stadium Manager is required to report the status of Stadium Manager’s marketing and promotional efforts, and any ongoing negotiations with respect to Non-NFL Events “without limitation.” This insufficient response provides (1) no opportunity for the Executive Director to make any an informed decisions or analyses relative to the activity’s compliance within the Marketing Plan, (2) to understand the activities undertaken to book the Levi’s Stadium, or (3) to fulfill her obligations on this matter to the Stadium Authority Board.

For example, with respect to the Rolling Stones concert, the Levi’s Stadium Event Notification Spreadsheets reference two concert “holds” in May 2019, but provide no other detail. As the Stadium Manager is well aware, there are substantial community concerns with weekday concerts that violate the 10:00 p.m. curfew. It is imperative that the Stadium Manager provide information under the thresholds established in the Management Agreement.

It is the Stadium Manager’s obligation to coordinate and disclose any and all potential events at Levi’s Stadium in advance and “without limitation” of information. The Stadium Manager’s inadequate performance impairs the Executive Director in her duty to adequately provide public services throughout the City, each and every day of the year. At a meeting on October 4, 2018, with Patty Ingles and Hannah Gordon, the Executive Director advised in great detail how the Stadium Manager’s inadequate performance sets inappropriate limitations on the Executive Director’s ability to fulfill obligations to the Board.

Attachment B: Stadium Manager Non-Compliance with Section 3.3 of the First Amendment to the Management Agreement (Quarterly Status Meetings) – Written Non-NFL Event Reports

Executive Director notified Stadium Manager via letter dated October 1, 2018 of its failure, per the Management Agreement, to submit within 45 days of each Non-NFL Event with attendance projected to exceed 25,000 and on a quarterly basis for all other events, such written revenue or other reports relating to Non-NFL Events as the Parties may agree from time to time. In this letter, the Executive Director requested:

- Within 30 calendar days all past due required quarterly written reports;
- Within one week the written report for the August 4, 2018 Non-NFL Event (2018 International Champions Cup); and
- The written report for the September 29, 2018 Non-NFL Event (OTR II Concert) within the time frame established by the Management Agreement.

The Executive Director further requested that the written reports include the following Non-NFL Events information:

- Brief Event Narrative (overview report on event highlights)
- Event Contract
- Event Pro-Forma
- Profit and Loss Statement detailing all revenue and expense items, including all Non-NFL Event Revenue as defined in the Amended and Restated Stadium Lease (Section 12.8 Non-NFL Revenue)
- Statistical Event Data such as number of tickets sold, number of tickets scanned, total number of cars parked (main lot and offsite lots), etc.

The November 21, 2018 response from StadCo Chief Financial Officer Scott Sabatino states that Stadium Manager is not aware of delinquent reports for earlier periods. To date, the Executive Director has not been provided with any written Non-NFL Event reports and, as Stadium Manager is well aware, the Stadium Authority has had to take extraordinary action to obtain possession of documents and information in order to conduct its due diligence on Stadium Authority financial matters.

Stadium Manager is delinquent for all Non-NFL Events with attendance projected to exceed 25,000 that have taken place on or before October 29, 2018, and for all quarterly reports for the quarter ended September 30, 2018 and prior. In his November 21, 2018 letter, Mr. Sabatino states "the document production that we worked on earlier this year provides far more information than you requested for these quarterly reports". As stated in the Executive Director's October 1, 2018 letter, these required written Non-NFL Event reports do not replace existing staff-level administrative processes of Stadium Manager providing data for each Non-NFL Event to Stadium Authority as it becomes available. In turn, the staff-level administrative work also does not suffice as meeting the requirement for a written Non-NFL Event report and it is not for CFO Sabatino to make such determination on the part of the Executive Director.

The information provided in the sample quarterly report attached to StadCo's letter is incomplete and saving it on the shared laptop in the Stadium Authority Stadium Office does not meet this provision of the Management Agreement. Since issuing the October 1, 2018 letter, several other Non-NFL events have taken place and the Stadium Manager has made no effort to issue timely reports, as required by this Management Agreement provision.

To be clear, Stadium Manager should continue providing ticket and parking data by email to Stadium Authority Treasurer or her delegate, and loading data on the shared laptop in the Stadium Authority Stadium office. In addition, per the terms of the Management Agreement, the Stadium Manager should also furnish to the Executive Director, written reports that include the information requested in her October 1, 2018 letter, and referenced above.

Attachment C. Stadium Manager Non-Compliance with Section 2.1 of the First Amendment to the Stadium Management Agreement (Stadium Procurement Contracts) and Section 17.30.120 of the Santa Clara City Code (Service contracts – Signature authority)

Section 2.1 of the First Amendment to the Management Agreement and Section 17.30.120 of the City Code both delegate the Executive Director's procurement authority to the Stadium Manager and contain reporting requirements, or Board action, for the purpose of transparency and disclosure. The Stadium Manager has not reasonably taken good faith actions in the best interest of management of the Stadium to comply with the Management Agreement or City Code, as well as to be responsive to the Executive Director's requests.

In response to Harvey M. Rose Audit Recommendation 1.O, Stadium Authority reported to the Stadium Authority Ad-Hoc Audit Committee on October 29, 2018 that Section 2.1 of the First Amendment to the Management Agreement states that the Stadium Manager shall provide the Stadium Authority with information, including the contracting party and the contract amount, regarding all Stadium Procurement Contracts entered into with contract amounts greater than \$100,000 within thirty (30) days of entering into any such contract. The forgoing constitutes the Executive Director's delegation to the Stadium Manager. The Executive Director reported her intent to send a letter to the Stadium Manager ensuring compliance with this provision for the past year and going forward.

On October 30, 2018, Stadium Manager sent two letters requesting Executive Director's approval of procurements within \$100,000 - \$250,000 and over \$250,000. Upon review, it became clear that Stadium Manager sought Executive Director's approval inappropriately and not per the required Management Agreement terms. The following reflects activities taken by the Executive Director and Stadium Manager to cure the violations, which have not been properly addressed on the part of the Stadium Manager:

- **November 9, 2018 Executive Director Letter to Stadium Manager** – Executive Director expressed concern regarding Stadium Manager's non-compliance with the Management Agreement and City Code, including Stadium Manager's apparent failure to properly obtain Board approval for contracts over \$250,000. The Executive Director requested that Stadium Manager work with Stadium Authority staff to seek approval from the Board on an upcoming agenda, and to plan for any corrective action as soon as possible. Stadium Manager was also asked to self-report in writing any other procurement activity that violated the Stadium Management Agreement and/or City Code by December 1, 2018. Despite setting a deadline of December 1, 2018 for the Stadium Manager to provide a complete report in writing confirming the violations, and any additional violations, the Stadium Manager has not confirmed in writing the extent of violations.
- **November 29, 2018 Stadium Authority/Stadium Manager Quarterly Status Meeting** – Executive Director and Stadium Manager discussed one instance of Stadium Manager's failure to properly obtain Board approval, and Executive Director's direction to Stadium

Manager to submit required disclosure per November 9, 2018 letter. Executive Director and Stadium Manager also discussed Brown Act requirements for public meetings, and the multi-departmental review process and resulting lead time necessary to prepare reports to the Board. Stadium Authority staff explained that even if Stadium Manager provided the contract that week, and complete and accurate information for the report by December 3, 2018, there may not be sufficient time to add the contract approval to the December 11, 2018 meeting agenda.

During this meeting, Stadium Authority also requested Stadium Manager provide all Stadium Procurement Contracts so that Stadium Authority can ensure Stadium Authority payments are in compliance with contract terms, as well as the Management Agreement and/or City Code. As of December 13, 2018, Stadium Manager has only provided the contract for the one instance of Stadium Manager's failure to properly obtain Board approval.

- **November 30, 2018 Stadium Authority emails to Stadium Manager** – Stadium Authority followed up on the November 29, 2018 discussion regarding the required written disclosure of any procurement activity that violated the Stadium Management Agreement and/or City Code. Stadium Authority also requested the above referenced procurement contract requiring Board approval and relevant information so that staff could plan for a future Board meeting agenda date.
- **December 3, 2018 Stadium Manager email to Stadium Authority** – Stadium Manager provided the contract requiring Board approval and requested that Stadium Authority staff place the item on the December 11, 2018 Board meeting agenda. The material provided with the request was incomplete and did not substantiate that the procurement for over \$250,000 was properly insured or bonded, or any other contract requirements demonstrating that the Stadium Manager took good faith actions in the best interest in the Stadium. Executive Director has already requested this information and the Stadium Manager has not provided this required information to fully disclose the extent of the violation to the Board.
- **December 4 and 5, 2018 Stadium Authority email to Stadium Manager** – Stadium Authority confirmed the contract would not be prepared for consideration by the Board on December 11, 2018 to allow for due diligence staff review. Staff again requested a written response to the Executive Director regarding procurement compliance with Stadium Management Agreement and City Code.

As stated during the November 29, 2018 Stadium Authority/Stadium Manager meeting, documents for the December 11, 2018 City Council/Board meeting were past due, and documents for the January 15, 2019 meeting were due the week of December 10, 2018. As of December 13, 2018, Stadium Authority has not received additional material or communication

from Stadium Manager that demonstrates reasonable efforts to timely seek the Board's consideration of approval. As Stadium Authority stated at the monthly meeting, failure to meet these deadlines, would require that this action be delayed to January 29 or February 2019. This demonstrates poor management practices of efforts to cure a City Code violation in a timely and complete manner, even though the Executive Director noticed the Stadium Manager in early November. Additionally, as of this date, Stadium Authority has not received all procurement contracts as requested, and as Stadium Manager agreed to provide, on November 29, 2018.

EXHIBIT D

EXHIBIT D

Sent via Certified Mail, Return Receipt Requested
and Email al.guido@49ers.com



March 21, 2019

Al Guido, President
San Francisco Forty Niners
4949 Marie P. DeBartolo Way
Santa Clara, CA 95054

NOTICE OF BREACH
(MANAGEMENT AGREEMENT)
March 21, 2019

Dear Mr. Guido:

PLEASE TAKE NOTICE that Forty Niners Stadium Management Company LLC (Stadium Manager) is in breach of its obligations under Stadium Management Agreement, by and among Santa Clara Stadium Authority (Stadium Authority), Stadium Manager, and Forty Niners SC Stadium Company LLC, dated March 28, 2012 and subsequently amended (Management Agreement). This letter and notice serves as Stadium Authority's Notice of Breach under Section 11.3 of the Management Agreement.

Under the Section 2.1 of the First Amendment of the Management Agreement, dated November 13, 2012 (First Amendment), Stadium Manager is obligated to comply with contract procurement terms and related laws, as follows:

Stadium Procurement Contracts. In addition to contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Stadium Authority hereby agrees that the Stadium Manager shall have full authority and discretion to select the providers, and to negotiate, approve, enter into and administer contracts with such providers on behalf of the Stadium Authority, for the purchase of supplies, materials and equipment, and for services, relating to the Stadium and its operations ("Stadium Procurement Contracts"), as and to the extent the Executive Director has authority to enter into such Stadium Procurement Contracts pursuant to Sections 17.30.010 through 17.30.180 of the Santa Clara City Code ("SCCC"), as approved on first reading by the Santa Clara City Council on November 13, 2012. Manager shall provide the Stadium Authority with information, including the contracting party and the contract amount, regarding all Stadium Procurement Contracts entered into with contract amounts greater than \$100,000 within thirty (30) days of entering into any such contract. The foregoing constitutes the Executive Director's delegation to the Stadium Manager, pursuant to Section 17.30.010(c) of the SCCC, of the authority

granted to the Executive Director to enter into such Stadium Procurement Contracts. If the ordinance adopting Sections 17.30.010 through 17.30.180 of the SCCC approved on November 13, 2012 does not become effective by January 31, 2013, this Section 2 shall be of no further force or effect.

Accordingly, Stadium Manager is obligated to comply with Section 17.30.120 of the Santa Clara City Code (City Code), Service contracts – Signature authority:

The Executive Director shall have the authority to execute contracts with third parties for services provided to the Stadium Authority, which shall be exempt from the competitive process, as follows:

(a) The Executive Director, or designee, is authorized to purchase professional, nonprofessional and personal services required by the Stadium Authority and to execute contracts for such services on behalf of the Stadium Authority in contract amounts up to and including two hundred fifty thousand dollars (\$250,000.00) per contract, subject to approved budgetary amount, so long as such persons are specially trained and experienced and competent to perform the special services required. Contracts with a contract amount above this dollar limit shall be referred to the Stadium Authority Board for approval;

(b) The Executive Director is authorized to delegate all or a portion of the authority to execute such service contracts to specified Stadium Authority employees at her/his discretion. Such delegation of authority shall be made in writing;

(c) Such service contracts shall be generally consistent with forms of contracts approved by the Stadium Authority Counsel's office or shall be subject to the final review and approval of the Stadium Authority Counsel's office for form and content;

(d) The maximum amount of the value of the service contracts which the Executive Director or designee is authorized to execute shall be adjusted as needed by resolution of the Stadium Authority Board, with amounts rounded to the nearest five thousand dollar (\$5,000.00) increment;

(e) Notwithstanding anything to the contrary, solicitations for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

Al Guido, President, San Francisco Forty Niners
RE: Notice of Breach (Management Agreement)
March 21, 2019
Page 3 of 4

In exercising its authority under Section 2.1, Stadium Manager is required to comply with all applicable legal requirements, including but not limited to California Prevailing Wage statutes (See California Labor Code Sections 1720 and 1771) and regulations of the California Department of Industrial Relations.

Stadium Authority has previously raised questions and concerns regarding Stadium Manager's compliance with the contract procurement obligations. These concerns have included, but are not limited to, the December 13, 2018 Notice to Provide Management Correction Action that Stadium Authority served on Stadium Manager. Despite these contractual obligations and Stadium Authority's efforts to confirm Stadium Manager's compliance, it appears that Stadium Manager is in breach of its obligations.

Just today, on March 21, 2019, Jim Mercurio of Stadium Manager and Deanna Santana of Stadium Authority, in addition to other Stadium Manager and Stadium Authority staff, participated in a telephone conference regarding the Agreement for the Performance of Services by and between Stadium Manager and Designer Surfaces, LLC dba NEX Systems Surfaces, dated August 1, 2018, (NEX Agreement), that Stadium Manager procured on behalf of the Stadium Authority. It became very apparent on that call that Stadium Manager has substantially failed to comply with the California Prevailing Wage Law with respect to its issuance of the NEX Agreement, and that such contract is subject to being declared void under the provisions of 17.30.150 of the City Code. Specifically, Stadium Manager could not confirm that it complied with the California Prevailing Wage Law, let alone attempted to do so. In addition, Stadium Manager failed to present this NEX Agreement to Stadium Authority for Board approval prior to issuance, as required by City of Santa Clara Code.

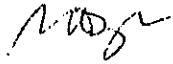
Therefore, the Stadium Authority hereby notifies Stadium Manager of Breach of the Management Agreement.

Stadium Manager must cure the foregoing breach, at Stadium Manager's own costs and expense, by providing documentation to Stadium Authority that the NEX Agreement is in compliance with all applicable legal requirements, specifically including but not limited to California Prevailing Wage Law. If Stadium Manager fails to cure this breach within Thirty (30) Days of the date of this Notice, then such breach will be an Event of Default under Article 11 of the Management Agreement. This matter will be before the Stadium Authority Board on April 30, 2019, as stated by the Executive Director.

Al Guido, President, San Francisco Forty Niners
RE: Notice of Breach (Management Agreement)
March 21, 2019
Page 4 of 4

Stadium Authority reserves all rights, including but not limited to actions to enforce the Management Agreement.

Sincerely,



Brian Doyle
Stadium Authority Counsel

cc: Hannah Gordon, Director of Legal Affairs, San Francisco Forty Niners
Stadium Authority Executive Director
Santa Clara Stadium Authority Board
I:\STADIUM AUTHORITY\19.0440 Notice of Breach - ManCo 03-21-19.docx



EXHIBIT E

EXHIBIT E



*Sent Via Certified Mail, Return Receipt Requested
and Email al.guido@49ers.com*

April 26, 2019

Al Guido, President
San Francisco Forty Niners Management Company
4900 Marie P. De Bartolo Way
Santa Clara, CA 95054

**SUBJECT: Notice of Default of Management Agreement
Failure to Cure Breach – NEX Systems Surfaces Contract**

Dear Mr. Guido:

On March 21, 2019, the Stadium Authority issued a Notice of Breach of the Stadium Management Agreement due to the Stadium Manager's failure to comply with the California Labor Code and Department of Industrial Relations regulations for prevailing wage requirements for contracts paid for in whole or in part by public funds. The Notice also identified Stadium Manager's failure to comply with the Stadium Authority Procurement Policy set forth in Santa Clara City Code Chapter 17.30.

Although the March 21 Notice triggered discussions regarding the Stadium Manager's intention to attempt to cure the breaches, the Stadium Manager has failed to cure within the 30 days provided for in Section 11.1 of the Management Agreement. This failure to cure is evidenced by your counsel's April 24, 2019 letter. Accordingly, the Stadium Authority must declare a Default pursuant to Section 11.1.2 of the Management Agreement.

With regard to the prevailing wage requirements, the April 24 Letter concedes that Stadium Manager did not meet "strict and total compliance" with the prevailing wage laws. Indeed, Stadium Manager has failed to provide any evidence that the NEX Systems contract met state prevailing wage requirements at all. Stadium Manager also concedes that compliance going forward remains uncertain. Accordingly, Stadium Manager has failed to cure its breach, and is now in default.

As for the proposed cures, Stadium Manager's plan to have their new counsel work with the DIR is not a cure at all. Stadium Manager should have obtained adequate legal advice regarding the exercise of public agency contracting authority from the first day that it took on the role of procuring Stadium Authority contracts five years ago. Second, as explained below, we question the legal and contractual right to reclassify the prior work provided under NEX contract to StadCo. This proposed approach is also contradictory, given that the DIR would not approve a contract that is not subject to prevailing wage laws. In sum, Stadium Authority can discuss

AL GUIDO, PRESIDENT
SAN FRANCISCO FORTY NINERS MANAGEMENT COMPANY
Re: Notice of Default of Management Agreement
Failure to Cure Breach – NEX Systems Surfaces Contract

April 26, 2019

Page 2 of 3

whether Stadium Manager provided adequate cure only after we are provided an official response from the DIR that the work is in compliance.

With regard to the procurement policies and requirements, Stadium Manager's April 24 letter takes the untenable position that the procurement of the NEX Systems contract is not at issue because no written contract was never executed. Stadium Manager own actions pertaining to this contract and the services provided prove a contract existed, and Stadium Manager's current attempt to hide or re-write those facts demonstrates Stadium Manager's apparent disregard for the seriousness of contract procurement requirements. Mr. Mercurio represented to the Stadium Authority that the NEX systems contract was a contract in excess of \$250,000 that needed to be ratified by the Stadium Authority Board. In addition, Stadium Manager submitted to the Stadium Authority four invoices from NEX Systems, dated July through August 2018, which were paid by the Stadium Authority. Clearly, public services were provided here under this contract.

Moreover, even assuming that no contract had been entered into (despite Stadium Manager's statements, comments and submission of paid invoices), then what was the Stadium Manager doing here? Mr. Mercurio has no authority to dangle public contract work in front of potential contractors, only to tell them later that he was acting outside of his authority and would have another party pay them directly in order to avoid application of public contracting laws. This shows that Stadium Manager does not understand and cannot meet its management obligations.

This failure is further demonstrated by the legal argument made in the April 24 letter. Stadium Manager's attorney cites to a case claiming that a contract (such as the NEX Systems contract) is void if it was created in excess of the agency's power. This argument, however, does not explain or excuse Mr. Mercurio's prior statements regarding the NEX Systems contract or the fact the NEX Systems provided services that were paid for by the Stadium Authority. Instead, this argument only proves the point that the Stadium Manager was improperly acting outside of its delegated authority and in breach of the Management Agreement.

Finally, Stadium Manager's April 24 letter provided no legal or contractual authority to support a cure of the breach by having Stadium Manager sign the NEX System contract on behalf of StadCo, and not the Stadium Authority. The fact remains that Stadium Manager engaged a contractor in a work of public improvement in violation of the law. Although we remain highly skeptical that legal authority exists for your proffered solution of unilaterally shifting the funding for capital expenditure for Stadium work, you are free to submit such authority.

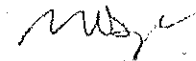


AL GUIDO, PRESIDENT
SAN FRANCISCO FORTY NINERS MANAGEMENT COMPANY
Re: Notice of Default of Management Agreement
Failure to Cure Breach – NEX Systems Surfaces Contract
April 26, 2019
Page 3 of 3

For all these reasons, the Stadium Authority hereby declares a Default pursuant to Section 11.1.2 of the Management Agreement.

As you are aware, failure to comply with state prevailing wage law is a serious matter, which must be cured without further delay. Accordingly, the Stadium Authority intends to undertake any and all of the remedies provided for in Section 11.4 of the Management Agreement, including but not limited to termination of the delegated procurement authority granted to Stadium Manager in Section 2.1 of the First Amendment to the Management Agreement. All damages and costs, including attorneys' fees, shall be borne by Stadium Manager.

Sincerely,



Brian Doyle
Stadium Authority Counsel

cc: Deanna Santana, Stadium Authority Executive Director
Jihad Beauchman, Stadium Manager Counsel
Jonathan Bass, Esq.
Hannah Gordon, Esq.
Mohammad Walizadeh, Esq.

EXHIBIT F

EXHIBIT F



*Sent Via Certified Mail, Return Receipt Requested
and Email al.guido@49ers.com*

June 14, 2019

Al Guido, President
San Francisco Forty Niners Management Company
4900 Marie P. De Bartolo Way
Santa Clara, California 95054

SUBJECT: Notice of Breach of Management Agreement

Dear Mr. Guido:

PLEASE TAKE NOTICE that Forty Niners Stadium Management Company LLC (Stadium Manager) is in breach of its obligations under Stadium Management Agreement, by and among Santa Clara Stadium Authority (Stadium Authority), Stadium Manager, and Forty Niners SC Stadium Company LLC, dated March 28, 2012 and subsequently amended (Management Agreement). This letter and notice serves as Stadium Authority's Notice of Breach under Section 11.3 of the Management Agreement.

Under the Section 2.1 of the First Amendment of the Management Agreement, dated November 13, 2012 (First Amendment), Stadium Manager is obligated to comply with contract procurement terms and related laws, as follows:

Stadium Procurement Contracts. In addition to contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Stadium Authority hereby agrees that the Stadium Manager shall have full authority and discretion to select the providers, and to negotiate, approve, enter into and administer contracts with such providers on behalf of the Stadium Authority, for the purchase of supplies, materials and equipment, and for services, relating to the Stadium and its operations ("**Stadium Procurement Contracts**"), as and to the extent the Executive Director has authority to enter into such Stadium Procurement Contracts pursuant to Sections 17.30.010 through 17.30.180 of the Santa Clara City Code ("**SCCC**"), as approved on first reading by the Santa Clara City Council on November 13, 2012. Manager shall provide the Stadium Authority with information, including the contracting party and the contract amount, regarding all Stadium Procurement Contracts entered into with contract amounts greater than \$100,000 within thirty (30) days of entering into any such contract. The foregoing constitutes the Executive Director's delegation to the Stadium Manager, pursuant to Section 17.30.010(c) of the SCCC, of the authority granted to the Executive Director to enter into such Stadium Procurement Contracts. If the ordinance adopting Sections 17.30.010

through 17.30.180 of the SCCC approved on November 13, 2012 does not become effective by January 31, 2013, this Section 2 shall be of no further force or effect.

Accordingly, Stadium Manager is obligated to comply with Section 17.30.120 of the Santa Clara City Code (City Code), Service contracts – Signature authority:

The Executive Director shall have the authority to execute contracts with third parties for services provided to the Stadium Authority, which shall be exempt from the competitive process, as follows:

(a) The Executive Director, or designee, is authorized to purchase professional, nonprofessional and personal services required by the Stadium Authority and to execute contracts for such services on behalf of the Stadium Authority in contract amounts up to and including two hundred fifty thousand dollars (\$250,000.00) per contract, subject to approved budgetary amount, so long as such persons are specially trained and experienced and competent to perform the special services required. Contracts with a contract amount above this dollar limit shall be referred to the Stadium Authority Board for approval;

(b) The Executive Director is authorized to delegate all or a portion of the authority to execute such service contracts to specified Stadium Authority employees at her/his discretion. Such delegation of authority shall be made in writing;

(c) Such service contracts shall be generally consistent with forms of contracts approved by the Stadium Authority Counsel's office or shall be subject to the final review and approval of the Stadium Authority Counsel's office for form and content;

(d) The maximum amount of the value of the service contracts which the Executive Director or designee is authorized to execute shall be adjusted as needed by resolution of the Stadium Authority Board, with amounts rounded to the nearest five thousand dollar (\$5,000.00) increment;

(e) Notwithstanding anything to the contrary, solicitations for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

In exercising its authority under Section 2.1, Stadium Manager is required to comply with all applicable legal requirements, including but not limited to California Prevailing Wage statutes (see California Labor Code Sections 1720 and 1771) and regulations of the California Department of Industrial Relations.

In addition, Stadium Manager is required to comply with the Political Reform Act (See attached FPPC Advice Letter, dated April 18, 2018) and Government Code Section 1090.

In addition, Stadium Manager is required under the Management Agreement to exercise prudent, commercially reasonable good faith efforts in managing and operating the Stadium, and to conduct the management and operation of the Stadium at all times with integrity and good faith and in a manner which in the good faith judgment of Stadium Manager is in the best interests of the Stadium, StadCo and the Stadium Authority. (Management Agreement, Sections 2.9 and 2.10.)

Stadium Manager has failed to meet these legal and contractual obligations as follows:

1. Stadium Manager has admitted its failure to comply with its contract procurement obligations by failing to comply with applicable prevailing wage regulations; and
2. Stadium Manager has failed to comply with applicable conflict of interest requirements.

Stadium Manager's noncompliance constitutes a breach of Stadium Manager's contractual and legal obligations, and has placed the Stadium Authority in several potential violations of California State Law.

Accordingly, Stadium Authority and Stadium Manager met on May 22, 2019 to discuss the revocation of the procurement authority that had been delegated to the Stadium Manager and further issues that may result from such a revocation. On May 28, 2019, Stadium Authority notified Stadium Manager in writing that:

1. Stadium Authority will partially suspend its monthly Shared Stadium Expenses payments to the extent that such payments include requests for contractual services that are not demonstrated to be in compliance with local and/or State law, until such time that these matters are resolved, and State law compliance is achieved.
2. Stadium Authority will not release payment of any shared expenses that are not demonstrated to be in compliance with local and/or State law.

The suspension of payments is only partial. Stadium Authority has no intent to stop payments for debt repayment, insurance, utilities and on-going expenses.

To date Stadium Manager has failed to cure its breach by refusing to provide documentation sufficient to demonstrate compliance with local and/or State law in response to Stadium



Authority's numerous requests. Similarly, Stadium Manager has recently requested that Stadium Authority pay its share of certain Shared Stadium Expenses, yet Stadium Manager did not provide any supporting documentation to demonstrate that these contracts, services or costs are in compliance. Stadium Authority will not and cannot make any such payments that could continue violations of law, unless and until full compliance is confirmed.

For all these reasons, Stadium Authority hereby notifies Stadium Manager of Stadium Manager's Breach of the Management Agreement.

Stadium Manager must cure the foregoing breaches, at Stadium Manager's own cost and expense, as follows:

1. Stadium Manager must provide records that demonstrate to Stadium Authority that Stadium Manager's procurement of any prior contract or payment for services as the Stadium Authority's delegated agent was and is in compliance with all applicable legal requirements, including but not limited to California Prevailing Wage Law, Conflict of Interests Law and proper procurement of a public works or contract. This written proof must include all documentation related to:
 - a. the procurement of any goods or services provided to Stadium Authority, whether or not payment was requested or made for such goods or services; and
 - b. payments made from Stadium Authority sources, whether or not goods or services were provided.

To the extent not included in the above, Stadium Manager shall provide all records demanded in Stadium Authority Counsel's letter to Ruthann Ziegler dated June 10, 2019 (attached hereto).

2. For any recent, upcoming or further requests to Stadium Authority for payment of Shared Stadium Expenses, Stadium Manager must provide records and all related documentation to show compliance with all applicable legal requirements, including but not limited to California Prevailing Wage Law, Conflict of Interests Law and proper procurement of a public works or contract.

If Stadium Manager fails to cure this breach within Thirty (30) Days of the date of this Notice, then such breach will be an Event of Default under Article 11 of the Management Agreement

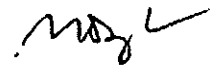
This Notice does not replace the prior March 21, 2019 Notice of Breach and the April 26, 2019 Notice of Default regarding the NEX Agreement. Similarly, this Notice does not replace any of Stadium Authority's current demands and requests for documentation to Stadium Manager. Stadium Manager should respond to those requests without any further delay. In fact, Stadium

Re: Notice of Breach of Management Agreement
June 14, 2019
Page 5 of 5

Manager's delay and noncompliance with those requests for documentation has required this formal Notice of Breach.

Stadium Authority reserves all rights, including but not limited to actions to enforce the Management Agreement.

Sincerely,



Brian Doyle
Stadium Authority Counsel

Attachments:

April 18, 2018 Letter from FPPC
June 10, 2019 letter to Ruthann Ziegler, Esq.

cc: Deanna Santana, Stadium Authority Executive Director
Jihad Beauchman, Stadium Manager Counsel
Jonathan Bass, Esq.
Mohammad Walizadeh, Esq.
Hannah Gordon, Esq.

I:\STADIUM AUTHORITY\19.0943 Notice of Breach - ManCo 06-14-19.DOCX



June 10, 2019

Via Email and U.S. Mail: rziegler@rzieglerlaw.com

Ruthann Ziegler, Esq.
Law Office of Ruthann G. Ziegler
3308 El Camino Avenue
Suite 300, #427
Sacramento, CA 95821

Re: Stadium Procurement Contracts

Dear Ms. Ziegler,

I am writing in response to your May 31, 2019 letter to Stadium Authority Executive Director Deanna Santana which we discussed by telephone last Friday June 7, 2019. I call your attention to Section 2.1 of the First Amendment to the Stadium Management Agreement which provides as follows:

Stadium Procurement Contracts. In addition to contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Stadium Authority hereby agrees that the Stadium Manager shall have *full* authority and discretion to select the providers, and to negotiate, approve, enter into and administer contracts with such providers on behalf of the Stadium Authority, for the purchase of supplies, materials and equipment, and for services, relating to the Stadium and its operations ("Stadium Procurement Contracts"), as and *to the extent the Executive Director has authority to enter into such Stadium Procurement Contracts* pursuant to Sections 17.30.010 through 17.30.180 of the Santa Clara City Code ("SCCC"), as approved on first reading by the Santa Clara City Council on November 13, 2012. Manager shall provide the Stadium Authority with information, including the contracting party and the contract amount, regarding all Stadium Procurement Contracts entered into with contract amounts greater than \$100,000 within thirty (30) days of entering into any such contract. The foregoing constitutes the Executive Director's delegation to the Stadium Manager, pursuant to Section 17.30.010(c) of the SCCC, of the authority granted to the Executive Director to enter into such Stadium Procurement Contracts. If the ordinance adopting Sections 17.30.010 through 17.30.180 of the SCCC approved on November 13, 2012 does not become effective by January 31, 2013, this Section 2 shall be of no further force or effect.

The delegation of the Executive Director's full authority to enter into contracts on behalf of the Stadium Authority to ManCo resulted in a finding by the FPPC that ManCo's executive

RUTHANN ZIEGLER, ESQ.
RE: Stadium Procurement Contracts
June 10, 2019
Page 2 of 3

James Mercurio was subject to state conflict of interest laws and regulations in the exercise of that authority.

In *City of San Jose v Superior Court*, 2 Cal.5th 608, 622 (2017) the California Supreme Court found:

CPRA encompasses writings prepared by an agency but also writings it owns, uses, or retains, regardless of authorship. Obviously, an agency engaged in the conduct of public business will use and retain a variety of writings related to that business, including those prepared by people outside the agency.

The delegated purchasing authority necessarily requires the Stadium Authority to use the records created by ManCo in exercising the authority and specifically requires the Executive Director to make an annual report to the Board on all contracts created as a result of the use of the authority. Santa Clara City Code Section 17.30.160.

We have specifically requested records relating to the VenueNext agreement which ManCo has refused to produce on the ground that Mr. Mercurio did not sign a piece of paper in the name of the Stadium Authority. It is clear that there was a contractual relationship between the Stadium Authority and VenueNext because publicly available information indicated that VenueNext was used to market and sell non-NFL events at Levi's Stadium. In addition, Mr. Mercurio took great pains to sell his interest in VenueNext in an attempt to "avoid the appearance of a conflict." If Mr. Mercurio did not use the VenueNext relationship for Stadium Authority business, why would there have been any appearance of a conflict? The VenueNext contract is clearly a record of Stadium Authority business whether it contains a signature on behalf of the Stadium Authority or not.

You have requested that the Stadium Authority revise its requests for records from ManCo as contained in Dominique Davls' requests. We hereby revise our previous request as follows:

All records prepared, owned, used, or retained by ManCo related to the exercise of the procurement authority delegated to it in Section 2.1 of the First Amendment to the Management Agreement.

As these records were required to have been provided to the Stadium Authority on an annual basis, there is no good reason that ManCo has to assert that they should not be immediately transferred to the Stadium Authority. Therefore, we demand that all of the records be provided to the Stadium Authority without further delay. The records should contain no redactions. If ManCo believes that portions of the records are exempt from disclosure, please mark those portions and provide a legally recognized basis for the request for exemption.



RUTHANN ZIEGLER, ESQ.
RE: Stadium Procurement Contracts
June 10, 2019
Page 3 of 3

Our demand includes a demand specifically for the VenueNext agreement as well as any other agreements that were used to conduct Stadium Authority business whether the Stadium Authority signed the contract or not.

Sincerely,



Brian Doyle
Stadium Authority Counsel

cc: Deanna Santana, Executive Director
Hannah Gordon, 49ers Director of Legal Affairs
Jihad Beauchman, 49ers Deputy General Counsel
Mohammad Walizadeh, Esq.

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STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

April 18, 2018

Brian Doyle
City Attorney Stadium Authority Counsel
Santa Clara City Attorney's Office
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Your Request for Advice
Our File No. A-18-039

Dear Mr. Doyle:

This letter responds to your request for advice on behalf of the Santa Clara Stadium Authority ("Authority") regarding the conflict of interest code provisions of the Political Reform Act (the "Act").¹ This advice solely pertains to the conflict of interest code provisions of the Act, and does not address other conflict of interest prohibitions such as common law conflict of interest or Section 1090. Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. Please also note that we do not provide advice regarding past conduct. (Regulation 18329(b)(8)(A).)

QUESTION

Does the Act require the Authority to include as a "consultant" in its Conflict of Interest Code an individual who works for the Forty Niners Stadium Management Company LLC ("Stadium Manager" or "ManCo") and makes procurement decisions on behalf of the Authority pursuant to the amended Stadium Management Agreement?

CONCLUSION

Yes. The Act requires the Authority to include that individual as a "consultant" in its Conflict of Interest Code.²

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Section 87302(b) requires a "designated employee," as defined in Section 82019, to file Statements of Economic Interests ("Form 700") as required by the Act.

FACTS AS PROVIDED BY REQUESTOR

You are the City Attorney for the City of Santa Clara and the Stadium Authority Counsel for the Authority, a joint powers agency established pursuant Section 6500 et seq. On March 28, 2012, the Authority, ManCo, and the Forty Niners SC Stadium Company, LLC ("StadCo") entered into the Stadium Management Agreement. The purpose of the Stadium Management Agreement was to secure management services for the then-under-construction Levi's Stadium. Completed in 2014, Levi's Stadium is located in the City of Santa Clara, owned by the Authority, managed by ManCo, and leased to StadCo.

On November 13, 2012, the Authority approved the First Amendment to the Stadium Management Agreement, authorizing ManCo to enter into contracts on behalf of the Authority for the purchase of supplies, materials and equipment, and services relating to the Levi's Stadium and its operations. You note that it appears that the Authority did not examine the issue of whether the Act's conflict of interest provisions applied to any individuals that work for ManCo at that time. The Authority's initial Conflict of Interest Code did not include a consultant designation, and no individual who worked for ManCo was designated in that Code.

The Authority recently amended its Code to include a consultant designation. You have requested formal written advice confirming the accuracy of your analysis that an individual who works for ManCo and makes procurement decisions on behalf of the Authority pursuant to the amended Stadium Management Agreement is a "consultant" under the Act, required to be included in the Authority's Code and to file Form 700.

ANALYSIS

Section 87100 of the Act prohibits a public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. Section 82048 defines "public official" as "every member, officer, employee or consultant of a state or local government agency." Regulation 18700.3 defines "consultant" for purposes of Section 82048 and provides in pertinent part as follows:

- (a) For purposes of Sections 82019 and 82048, "consultant" means an individual who, pursuant to a contract with a state or local government agency:
 - (1) Makes a governmental decision whether to:
 - (A) Approve a rate, rule, or regulation;
 - (B) Adopt or enforce a law;
 - (C) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 - (D) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
 - (E) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
 - (F) Grant agency approval to a plan, design, report, study, or similar item;
 - (G) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(2) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18704(a) and (b) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Section 87302.

Thus, there are two ways that an individual may become a "consultant" under the Act. First, an individual is a "consultant" if he or she, pursuant to a contract with a state or local government agency, makes a governmental decision described in Regulation 18700.3(a)(1). Alternatively, an individual is a "consultant" if he or she, pursuant to a contract with a state or local government agency, (1) serves in a staff capacity and (2) either participates in governmental decisions, as defined,³ or performs the same or substantially all the same duties that would otherwise be performed by an individual in a position listed in the agency's code.

Section 2.1 of the of the amended Stadium Management Agreement delegates substantial procurement authority to ManCo and provides as follows:

2.1 Stadium Procurement Contracts. In addition to contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Stadium Authority hereby agrees that the Stadium Manager shall have full authority and discretion to select the providers, and to negotiate, approve, enter into and administer contracts on behalf of the Stadium Authority, for the purchase of supplies, materials and equipment, and for services, relating to the Stadium and its operations ("Stadium Procurement Contracts"), as and to the extent the Executive Director has authority to enter in such Stadium Procurement Contracts pursuant to Sections 17.30.180 of the Santa Clara City Code ("SCCC"), as approved on first reading by the Santa Clara City Council on November 13, 2012.

Thus, the amended Stadium Management Agreement delegates to ManCo the full authority of the Authority's Executive Director under the Santa Clara City Code to approve and enter into "Stadium Procurement Contracts" for the purchase of supplies, materials and equipment, and services relating to Levi's Stadium and its operations.

ManCo is not a "consultant" for purposes of the Act because only an individual may be a "consultant" under Regulation 18700.3(a). An individual who works for ManCo is a "consultant" if that individual meets that regulation's definition of the term.

As noted above, Regulation 18700.3(a)(1) provides that an individual is a "consultant" if he or she makes a governmental decision pursuant to a contract with a local government agency to,

³ Regulation 18704(a) provides that an official "makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency," and Regulation 18704(b) states that an "official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review."

among other things, enter into a contract of the type requiring agency approval (subparagraph (D)), or grant agency approval to a contract—or the specifications for a contract—which requires agency approval and to which the agency is a party (subparagraph (E)).

An individual who works for ManCo and exercises the authority granted to ManCo pursuant to Section 2.1 of the amended Stadium Management Agreement makes governmental decisions pursuant to a contract with the Authority, including decisions to approve and enter into contracts of the types described in Regulation 18700.3(a)(1)(D) and (E). Therefore, that individual is a "consultant" under the Act, the Authority must include that individual as a "consultant" in its Conflict of Interest Code, and that individual must file Form 700 as required by the Act.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Brian G. Lau
Assistant General Counsel



By: Matthew F. Christy
Counsel, Legal Division

MFC:jgl

EXHIBIT G

EXHIBIT G



*Sent Via Certified Mail, Return Receipt Requested
and Email al.guido@49ers.com*

August 16, 2019

Al Guido, President
San Francisco Forty Niners Management Company
4900 Marie P. De Bartolo Way
Santa Clara, California 95054

**SUBJECT: Notice of Default of Management Agreement
 Failure to Cure June 14, 2019 Notice of Breach**

Dear Mr. Guido:

On June 14, 2019, the Stadium Authority issued a Notice of Breach of the Stadium Management Agreement due to the Stadium Manager's failure to comply with its contract procurement requirements, failure to comply with applicable prevailing wage requirements, and failure to comply with applicable conflict of interest requirements.

The Notice of Breach stated how Stadium Manager's breaches placed the Stadium Authority in several potential violations of California State Law. Accordingly, Stadium Authority confirmed its partial suspension of payments, as Stadium Authority had previously informed and notified Stadium Manager prior to serving the June 14 Notice of Breach. The Notice of Breach also provided clear steps and documentation required from the Stadium Manager in order to cure the breaches.

The Stadium Manager failed to cure the Notice of Breach within the 30 days provided for in Section 11.1 of the Management Agreement. Accordingly, the Stadium Authority hereby declares a Default pursuant to Section 11.1.2 of the Management Agreement.

With regard to the contract procurement and prevailing wage breach, the Notice included as the cure Stadium Manager's production of records regarding Stadium Manager's services as the delegated agent of the Stadium Authority, and a full, compliant production and response to Public Records Act Requests. The costs for both cures are the Stadium Manager's responsibilities, based on the serious legal issues created by Stadium Manager's acts and omissions, and Stadium Manager's contractual and legal obligations as the agent of the Stadium Authority and its delegated manager.

AL GUIDO, PRESIDENT

Re: Notice to Vendors to Potentially Void Contracts due to Improper Procurement

August 16, 2019

Page 2 of 3

In response to the June 14, 2019 Notice of Breach, the Stadium Manager did not produce the records regarding Stadium Manager's services as the delegated agent of the Stadium Authority. Instead, the Stadium Manager's outside counsel served a July 12, 2019 letter which, as explained in Stadium Authority's July 18, 2019 response letter, was completely detached from undisputable legal violations caused by the Stadium Manager, the parties' communications and the record. The fact that Stadium Manager's outside counsel ignored (or was unaware) of the actual status of Department of Industrial Relation's involvement in the prevailing wage issue, and the FPPC's open investigations of the conflict of interest law violations, demonstrates Stadium Manager's on-going dismissiveness of these serious violations. Ultimately, Stadium Manager's July 12 letter ends by claiming it would take at least six months for Stadium Manager to produce requested documents, and only at Stadium Authority's cost. This position further demonstrates Stadium Manager's failure to maintain the Stadium's records separately as required under Section 7 of the First Amendment to the Management Agreement. Given Stadium Manager's refusal to even attempt to show legal compliance and cure the breach, Stadium Manager's default is now confirmed.

In addition, Stadium Manager did not provide a full and compliant production and response to the pending Public Records Act Requests. Instead, on July 22, the Stadium Manager's other outside counsel sent a short letter that completely miss-cites and misunderstands the express terms of the parties' agreement, and baselessly claims that a public agency's records in the possession of a public agency's manager and agent are not subject to the Public Records Act Requests. This response confirmed that Stadium Manager has no intention of fully complying with its legal obligations, nor has any ability to do so.

Finally, the Notice of Breach included clear cure steps and documentation required for the Stadium Manager to demonstrate that recent, upcoming or further Shared Stadium Expenses comply with all legal requirements. Given the amount of time and effort Stadium Manager has spent over the past year on revisions to the Stadium Authority budget, Stadium Manager should easily be able to produce back up records for its expenditures in the Shared Stadium Expenses. Yet, Stadium Manager did not produce any documentation. Instead, ignoring the Notice of Breach, Stadium Manager used the Revolving Credit Agreement to pay these costs, thus incurring additional and unnecessary costs and fees to the Stadium Authority.

AL GUIDO, PRESIDENT

Re: Notice to Vendors to Potentially Void Contracts due to Improper Procurement

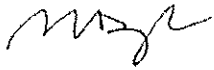
August 16, 2019

Page 3 of 3

For all these reasons, the Stadium Authority hereby declares a Default pursuant to Section 11.1.2 of the Management Agreement.

As you are aware, failure to comply with state prevailing wage and conflict of interest laws is a serious matter, which must be cured without further delay. Accordingly, the Stadium Authority intends to undertake any and all of the remedies provided for in Section 11.4 of the Management Agreement. All damages and costs, including attorneys' fees, shall be borne by Stadium Manager.

Sincerely,



Brian Doyle

Stadium Authority Counsel

cc: Deanna Santana, Stadium Authority Executive Director
Mohammad Wallzadeh, Esq.
Jihad Beauchman, Stadium Manager Counsel
Hannah Gordon, Esq.
Jonathan Bass, Esq.

I:\STADIUM AUTHORITY\Letter from Stadium Authority Counsel to Al Guido re Notice of Default 08-16-19.DOCX

EXHIBIT H

EXHIBIT H



*Sent Via Certified Mail, Return Receipt Requested
and Email al.guido@49ers.com*

September 17, 2019

Al Guido, President
San Francisco Forty Niners Management Company
4900 Marie P. De Bartolo Way
Santa Clara, California 95054

**SUBJECT: Notice of Termination of Management Agreement in regards to
the Stadium Authority, Non-NFL Operations and Non-NFL Events**

Dear Mr. Guido:

PLEASE TAKE NOTICE that Santa Clara Stadium Authority (Stadium Authority) is hereby terminating the Management Agreement with Forty Niners Stadium Management Company LLC (Stadium Manager) for the management of Non-NFL Operations and Non-NFL Events. This Notice is not to terminate Stadium Manager's management and operation of NFL games at Levi's Stadium.

This termination is pursuant to Section 8.1.1 of the March 28, 2018 Stadium Management Agreement, as amended (collectively, Management Agreement), and based on (1) Stadium Manager's fraud, intentional misrepresentation, and material omissions of facts in connection with the Management Agreement; (2) Stadium Manager's misappropriation and self-dealing; and (3) Stadium Manager's willful misconduct that resulted in two Events of Defaults, which Stadium Manager failed to cure.

First, Stadium Manager committed fraud and intentionally misrepresented facts in connection with its performance under the Management Agreement. Stadium Manager represented that it has "substantial experience and expertise in the management and operation of public assembly facilities" (Management Agreement, Recital E). This representation was false, as demonstrated by Stadium Manager's failure to comply with legal requirements and obligations, including but not limited to prevailing wage laws, conflict of interest laws, and the Public Records Request Act. The representation was also false, as demonstrated by the continued and substantial decline of Stadium Authority Operating and Net Revenues based on Stadium Manager's performance and omissions. Stadium Authority's net revenue for the recent 2018-2019 fiscal year is only estimated at \$18,591, and Stadium Manager projects the net revenue for the current 2019-2020 fiscal year to be \$0.00. Performance Rent payments to the City of Santa Clara is significantly reduced by these minimal to non-existent Non-NFL Net Revenue earnings, which results in the City of Santa Clara no longer receiving fair market value for the land as required by Measure J.

MR. AL GUIDO, PRESIDENT
Re: NOTICE OF TERMINATION
September 17, 2019
Page 2 of 3

Stadium Manager also committed fraud, intentionally misrepresented facts, and omitted material facts in connection with its presentation of claims for payment of the NEx Agreement and for services for the Stadium. Stadium Authority paid for approximately \$308,568 of NEx services based on Stadium Manager's representations. Stadium Manager affirmatively represented in writing that the services complied with prevailing wage laws, which was a false statement. In addition, Stadium Manager requested and submitted for Stadium Authority's retroactive approval a NEx contract that included a total of \$643,567 for costs and services, a total that the Stadium Manager also represented in writing. When the prevailing wage law violations became known and undisputed, Stadium Manager refunded to Stadium Authority the previously paid amounts of only \$308,568, without any reconciliation or explanation of why Stadium Manager had presented a claim to the Stadium Authority for the higher contract amount of \$643,567.

Second, Stadium Authority also terminates the Management Agreement based on Stadium Manager's misappropriation and self-dealing under the Management Agreement, and violation of its fiduciary duties to Stadium Authority. Stadium Manager booked Non-NFL Events for the Stadium Authority that lose money for the Stadium Authority. Stadium Authority is informed and believes that a 49ers entity is a part owner of some of these events, and that Stadium Manager and StadCo receive additional Suite revenues by reason of the booking of these events. Thus, Stadium Manager, StadCo or its affiliates, receive a financial benefit from these actions at the expense of the Stadium Authority. Accordingly, Stadium Manager's actions constitute breaches of its fiduciary duties as agent of Stadium Authority to conduct the management and operation of the Stadium at all times with integrity and good faith, as well as control Manager Operating Expenses, StadCo Operating Expenses and Stadium Authority Operating Expenses, and maximize Operating Revenues. Stadium Manager's actions are self-dealing and have resulted in misappropriation based upon Stadium Manager charging Stadium Authority the costs and expenses for the money losing events even when other 49ers entities receive the financial benefit of those events.

Finally, Stadium Authority's termination of the Management Agreement is also based on Stadium Manager's willful misconduct that resulted in two Events of Defaults, which have not been cured. On March 21, 2019, Stadium Authority served a Notice of Breach pertaining to the NEx Agreement and services, which demanded a cure that Stadium Manager provide the documentation showing that the agreement, services and work is in compliance with prevailing wage laws. Stadium Manager did not cure this breach. Thus, on April 26, 2019, Stadium Authority served a Notice of Default. On June 14, 2019, Stadium Authority served a second Notice of Breach pertaining Stadium Manager's failure to comply with prevailing wage laws, conflict of interest laws, and procurement obligations. Stadium Authority had partially suspended payment of Shared Stadium Expenses based on these violations, with the stated position that payments would be made upon Stadium Manager's production of records supporting each invoice or expense. This Notice of Breach demanded a cure that Stadium Manager produce its records of procurement activity on behalf of Stadium Authority, as well as

MR. AL GUIDO, PRESIDENT
Re: NOTICE OF TERMINATION
September 17, 2019
Page 3 of 3

the supporting records for the recent or any upcoming Shared Stadium Expenses. Stadium Manager did not cure this breach either. Thus, on August 16, 2019, Stadium Authority served a second Notice of Default. Each of these defaults resulted from Stadium Manager's willful misconduct, including Stadium Manager's substantial disregard and gross negligence for Stadium Authority's interests, the legal requirements for a public facility and public works, and Stadium Manager's legal obligations and contractual duties.

For all these reasons, the Stadium Authority hereby terminates the Management Agreement as to Non-NFL Operations pursuant to Section 8.1.1 of the Management Agreement.

This Notice of Termination pertains the Stadium Manager's duties, rights and obligations pertaining to the Stadium Authority, including but not limited to the Stadium Authority Season and the Non-NFL Season or events. Stadium Authority is terminating the Management Agreement without Forty Niners SC Stadium Company LLC (StadCo)'s written consent, as expressly provided and allowed under Section 8.1.1 of the Management Agreement. Accordingly, this Notice of Termination does not pertain to Stadium Manager's duties, rights and obligations pertaining to StadCo, or the NFL Season and NFL events.

This Termination will become effective on November 15, 2019, due to the practical needs for a transition to a new manager, including coordination with StadCo and Stadium Manager. Until that termination date, Stadium Manager's obligation to comply with its legal and contractual obligations continues. Stadium Authority reserves all rights.

Sincerely,



Brian Doyle
Stadium Authority Counsel

cc: Deanna Santana, Stadium Authority Executive Director
Jihad Beauchman, Stadium Manager Counsel
Jeffrey Knowles, Esq.
Hannah Gordon, Esq.
Mohammad Walizadeh, Esq.

I:\49ers\Stadium Management Agreement\Termination Notice 9-17-19.docx

1 **PROOF OF SERVICE**

2 ***Forty Niners Stadium Management Company LLC, et al. v. City of Santa Clara, et al.;***
3 ***and Related Cross-Action***

4 **Santa Clara Superior Court Action No. 19CV355432**

5 **STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA**

6 At the time of service, I was over 18 years of age and not a party to this action. I am
7 employed in the County of Contra Costa, State of California. My business address is 1676 N.
8 California Blvd., Suite 620, Walnut Creek, CA 94596.

9 On October 29, 2019, I served true copies of the following document(s) described as:

10 **SANTA CLARA STADIUM AUTHORITY'S CROSS-COMPLAINT FOR**
11 **DECLARATORY RELIEF, ACCOUNTING, BREACH OF MANAGEMENT**
12 **AGREEMENT, BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR**
13 **DEALING, AND BREACH OF FIDUCIARY DUTIES**

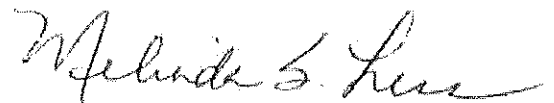
14 on the interested parties in this action as follows:

15 Jonathan R. Bass, Esq. Attorneys for Plaintiffs and Cross-Defendants
16 Jeffrey G. Knowles, Esq. Forty Niners Stadium Management Company
17 Charmaine G. Yu, Esq. LLC and Forty Niners SC Stadium Company
18 James F. McKee, Esq. LLC
19 Rosan Agbajoh, Esq.
20 Coblenz Patch Duffy & Bass LLP
21 One Montgomery Street, Suite 3000
22 San Francisco, CA 94104-5500
23 Tel: (415) 391-5800
24 Fax: (415) 989-1663
25 Email: ef-jrb@cpdb.com
26 ef-jgk@cpdb.com
27 ef-cgy@cpdb.com
28 ef-jfm@cpdb.com
ef-ola@cpdb.com

29 **BY ELECTRONIC SERVICE:** I served the document(s) on the person listed in the
30 Service List by submitting an electronic version of the document(s) to One Legal, LLC, through
31 the user interface at www.onelegal.com.

32 I declare under penalty of perjury under the laws of the State of California that the
33 foregoing is true and correct.

34 Executed on October 29, 2019, at Walnut Creek, California.

35 

36 Melinda S. Less