

Meeting Date: 7/19/11

Santa Clara



AGENDA REPORT

City of Santa Clara, California

Agenda Item # SA-3



Date: June 28, 2011

To: Executive Director for Stadium Authority Action

From: Administrative Analyst to the City Manager

Subject: Adoption of a Resolution Approving a Stadium Marketing and Loan Agreement between the Santa Clara Stadium Authority and Forty Niners Stadium, LLC

EXECUTIVE SUMMARY:

The Santa Clara Stadium Authority is proposing to enter into a Stadium Marketing and Loan Agreement (Agreement) with Forty Niners Stadium, LLC (Stadco), for the coordination of marketing efforts associated with the sale of Stadium Builders Licenses (SBLs).

Legends Premium Sales, LLC (Legends) has been identified by Stadco, working on behalf of the Stadium Authority, as the best qualified firm to sell SBLs on behalf of the Stadium Authority, and as a separate action staff is proposing that the Stadium Authority enter into an agreement with Legends for SBL sales. Stadco has entered into a separate contract with Legends for the marketing of Stadium suites. The Stadium Authority and Stadco recognize that the coordination of marketing efforts for suites, the revenue from which goes to Stadco, and SBLs, the revenue from which goes to the Stadium Authority, is essential to the success of the Stadium Project. Through the proposed Agreement between the Stadium Authority and Stadco, Stadco will supervise Legends in its performance under the Legends SBL Agreement, coordinate the SBL marketing program with Stadco's marketing of Suites, and loan the Stadium Authority amounts due to Legends under the Legends SBL Agreement.

Details regarding the Stadium Marketing and Loan Agreement are contained in the Discussion section. A copy of the Agreement has been placed in Council offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The proceeds from the sale of SBLs will be an important source of financing for the development of the Stadium. Stadco has the resources and the expertise to work with Legends to develop a marketing and sales plan to maximize SBL proceeds. In addition, Stadco has the ability to access the 49ers' season ticketholder base to enable Legends to market to the existing 49ers fan base.

ECONOMIC/FISCAL IMPACT:

In order to pay Legends' costs during the SBL sale period, Stadco will advance funds to the Stadium Authority as a short-term predevelopment loan. Stadco will directly pay Legends' authorized costs, as established in the marketing budget approved by Stadco and the Stadium Authority, until the close of escrow (Closing) under the Disposition and Development Agreement (DDA). After the Closing, the Stadium

Executive Director for Stadium Authority Action

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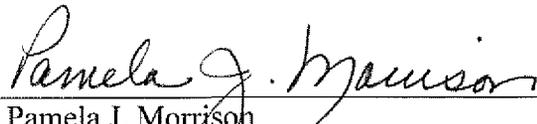
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Authority will repay the predevelopment loan and pay Legends' cost directly from Stadium construction sources. If the SBL agreement with Legends terminates prior to the Closing under the DDA, the Stadium Authority will repay the predevelopment loan only to the extent that it has available unencumbered funds, as further spelled out in the Discussion section.

RECOMMENDATION:

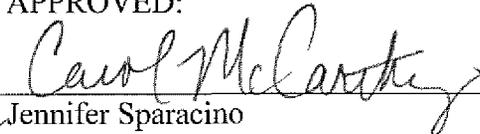
That the Authority adopt the Resolution approving a Stadium Marketing and Loan Agreement between the Santa Clara Stadium Authority and Forty Niners Stadium, LLC, for the coordination of marketing efforts associated with the sale of Stadium Builders Licenses (SBLs).



Pamela J. Morrison

Administrative Analyst to the City Manager

APPROVED:



Jennifer Sparacino

Executive Director for Stadium Authority

Documents Related to this Report:

1) ***Stadium Marketing and Loan Agreement between the Santa Clara Stadium Authority and Forty Niners Stadium, LLC***

Executive Director for Stadium Authority Action

Subject: Adoption of a Resolution Approving a Stadium Marketing and Loan Agreement between the Santa Clara Stadium Authority and Forty Niners Stadium, LLC

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DISCUSSION:

- The Stadium Marketing and Loan Agreement (Agreement) is between the Stadium Authority and the Forty Niners Stadium, LLC (Stadco)
- Under the Agreement, Stadco will coordinate with and supervise Legends in its performance under the Agreement for Stadium Builders License Sales (SBL Sales Agreement). Stadco will also advance funds to the Stadium Authority to pay Legends' costs under the SBL Sales Agreement (Predevelopment Loan)
- The term of the Agreement will run concurrently with the SBL Sales Agreement (commencing on July 15, 2011 and expiring on February 1st in the calendar year following the opening of the Stadium).
- Stadco will work with the Stadium Authority Executive Director and Legends to develop a pricing structure for the SBLs, a marketing plan for the sale of the SBLs and an SBL form contract.
- Stadco will advance funds to the Stadium Authority as needed to pay the costs incurred by the Stadium Authority under the SBL Sales Agreement. The outstanding advances will bear an interest rate of 3¼%, compounded annually.
- The outstanding principal and interest on the Predevelopment Loan will be due upon termination of the Agreement. If the Agreement terminates after the Closing (i.e. the execution of the Stadium Lease), the Stadium Authority shall only be liable for repayment of the Predevelopment Loan from available construction funds.
- If the Agreement terminates prior to the Closing then the Stadium Authority will be liable for repayment of the Predevelopment Loan only from any unencumbered funds on hand that do not constitute Non-Recourse Funds.
- Non-Recourse Funds means any funds of the Stadium Authority that meet any of the following: (i) funds received by the Stadium Authority, directly or indirectly, from the Redevelopment Agency, (ii) funds that are required to pay other costs incurred by the Stadium Authority that are included in the budget approved by the Board, or (iii) funds that are restricted and cannot be used by the Stadium Authority to pay Legends' costs or to repay the Predevelopment Loan.
- Legends will submit all invoices for payment under the SBL Sales Agreement to Stadco. Stadco will review the invoices for compliance with the terms of the Legends SBL Agreement and will submit to the Stadium Authority a statement with the amount due to Legends, along with Stadco's certification that costs to be reimbursed to Legends were incurred consistent with the SBL Budget.

RESOLUTION NO. ____ (STADIUM AUTHORITY)

**A RESOLUTION OF THE SANTA CLARA STADIUM
AUTHORITY APPROVING A STADIUM MARKETING AND
LOAN AGREEMENT RELATED TO THE CONSTRUCTION
OF THE STADIUM PROJECT**

BE IT RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

WHEREAS, on February 22, 2011, by City of Santa Clara Resolution No. 11-7825, the City of Santa Clara authorized the execution of a Joint Powers Agreement (“Agreement”) with the City of Santa Clara Redevelopment Agency to form the Santa Clara Stadium Authority (“Stadium Authority”);

WHEREAS, the Stadium Authority was formed to facilitate the development and operating of a stadium in the City suitable for NFL games ("Stadium Project") and to fulfill the mandates of Measure J, “The Santa Clara Stadium Taxpayer Protection and Economic Progress Act”;

WHEREAS, the Stadium Authority intends to sell, license or otherwise transfer personal seat licenses, also referred to as stadium builders licenses ("SBLs") for seats at the Stadium and to use the proceeds from the sale of SBLs for the construction of the Stadium;

WHEREAS, the Stadium Authority, pursuant to that certain Agreement for Stadium Builders Licenses Sales and Related Services, has or intends to engage Legends Premium Sales, LLC, a Delaware limited liability company ("Legends") to market and sell the SBLs;

WHEREAS, the Forty Niners Stadium, LLC has entered into an agreement with Legends regarding the sales of suites at the Stadium;

WHEREAS, the Stadium Authority and the Forty Niners Stadium, LLC have determined that coordination of the marketing of the suites and the SBLs is essential to the success of the Stadium Project;

WHEREAS, the Stadium Authority desires to enter into a Stadium Marketing and Loan Agreement with the Forty Niners Stadium, LLC which provides for the Forty Niners Stadium, LLC to supervise Legends in the marketing of the SBLs and to provide a loan to the Stadium Authority for amounts due to Legends under the Agreement for Stadium Builders License Sales and Related Services; and

WHEREAS, the Staff Report provides additional information upon which the findings and actions set forth in this Resolution are based.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

1. That the Board of the Stadium Authority hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. The Stadium Authority hereby approves the Stadium Marketing and Loan Agreement and authorizes the Executive Director to enter into and execute the Stadium Marketing and Loan Agreement on behalf of the Authority, substantially in the form on file with the Authority Secretary, with such revisions as are reasonably determined necessary by the Executive Director, such determination to be conclusively deemed to have been made by the execution of the Agreement by the Executive Director. The Executive Director is authorized to implement the Stadium Marketing and Loan Agreement and take all further actions and execute all other documents which are necessary or appropriate to carry out the Stadium Marketing and Loan Agreement.

3. The Executive Director is hereby authorized to take such further actions as may be necessary or appropriate to carry out the Authority's obligations pursuant to this Resolution and the Stadium Marketing and Loan Agreement.

4. The Authority Secretary shall certify to the adoption of this Resolution,

5. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of

this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

6. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE SANTA CLARA STADIUM AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2011, BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAINED: BOARD MEMBERS:

ATTEST:

ROD DIRIDON, JR.
SECRETARY OF THE STADIUM AUTHORITY
SANTA CLARA STADIUM AUTHORITY

Attachments incorporated by reference:

1. Staff Report date June 28, 2011: Adoption of a Resolution Approving a Stadium Marketing and Loan Agreement between the Santa Clara Stadium Authority and Forty Niners Stadium, LLC

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

PREAMBLE

THIS STADIUM MARKETING AND LOAN AGREEMENT (this "Agreement") is made as of July 15, 2011, by and between the Santa Clara Stadium Authority, a California joint powers authority (the "Stadium Authority") and Forty Niners Stadium, LLC, a Delaware limited liability company ("Stadco"), with reference to the following facts, purposes, and understandings.

RECITALS

- A. On June 8, 2010, the voters of the City of Santa Clara approved Measure J, which endorses the construction, operation and maintenance of a stadium in the City suitable for NFL games (the "Stadium").
- B. The Stadium Authority is a joint powers authority formed by and comprised of the City, its Redevelopment Agency (the "Agency") and the Bayshore North Project Enhancement Authority for the purpose of acquiring, financing, constructing, owning, managing, operating and maintaining the Stadium and related facilities.
- C. The construction of the Stadium will further the goal of both the City and Agency of creating an entertainment destination in the Bayshore North Redevelopment Project and will provide significant economic benefits to the City and its residents and businesses.
- D. The Stadium Authority intends to lease from the City certain real property located in the City within the Bayshore North Redevelopment Project Area (the "Stadium Site") for development of the Stadium.
- E. Stadco is an affiliate of the San Francisco Forty Niners, Limited, an NFL team that would play home games at the Stadium (the "Team"). Through the Team, Stadco has substantial expertise in the marketing of events and venues.
- F. The Stadium Authority and Stadco intend to negotiate a Disposition and Development Agreement ("DDA") pursuant to which, subject to various conditions precedent, the Stadium Authority would develop and own the Stadium and Stadco would enter into an agreement with the Stadium Authority providing for Stadco's lease of the Stadium (the "Stadium Lease") for the six months of the year from August 1 to January 31, which includes all Team home games.
- G. As the Stadium Authority will develop and own the Stadium, the Stadium Authority possesses and will possess the sole and exclusive right to sell, license, or otherwise transfer certain significant property, entitlement and advertising rights in the Stadium, including, without limitation, Stadium Builders Licenses or SBLs (as defined below). Stadco acknowledges that it has no right to sell Stadium Builder's Licenses for the Stadium.

- H. Concurrently with its entry into this Agreement, the Stadium Authority is entering into an Agreement for Stadium Builders License Sales and Related Services dated as of July 15, 2011 (the "Legends SBL Agreement") by and between the Stadium Authority and Legends Premium Sales, LLC ("Legends") pursuant to which the Stadium Authority is retaining Legends as the exclusive contractor for the marketing, solicitation of orders for and sales of SBLs.
- I. Suites in the Stadium will not be subject to SBLs and Stadco will be entitled to receive license revenue from Stadium suites. Stadco has entered into a separate contract with Legends (the "Legends Suites Agreement") pursuant to which Legends will provide Stadco with general marketing services regarding suites at the Stadium (collectively "Suites") being marketed by Stadco. Stadco has leased and improved space in the Techmart for use as a center for the marketing of suites (the "Sales Center"), and has also authorized Legends to use the Sales Center in connection with the marketing of SBLs, provided that Legends reimburses Stadco for a fair share of the rent and other costs of operating the Sales Center.
- J. The Stadium Authority and Stadco have each determined that coordination of their simultaneous marketing of Suites and SBLs is essential to the success of the Stadium Project. Through this Agreement, Stadco will supervise Legends' performance under the Legends SBL Agreement, coordinate the SBL marketing program with Stadco's marketing of Suites, and loan the Stadium Authority amounts due to Legends under the Legends SBL Agreement.
- K. Pursuant to CEQA, the Stadium Authority has reviewed, and certified that certain Final Environmental Impact Report, 49ers Santa Clara Stadium Project for the transactions contemplated by this Agreement, following conduct of a duly noticed public hearing (the "Final Environmental Impact Report"). The Final Environmental Impact Report has served as the environmental documentation for the Stadium Authority's consideration and approval of this Agreement and the transactions contemplated by this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Stadium Authority and Stadco agree as follows:

ARTICLE 1.
DEFINITIONS

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

- (a) "Agency" is defined in Recital B.
- (b) "Agreement" means this Stadium Marketing and Loan Agreement.
- (c) "Authorized Costs" means costs incurred by the Stadium Authority under the Legends SBL Agreement.
- (d) "Board" means the governing body of the Stadium Authority.

(e) "Closing" means the later of close of escrow under the DDA, through which the Stadium Authority would ground lease the Stadium site from the City and enter into the Stadium Lease with Stadco, or the date that the Development Fund is established.

(f) "DDA" is defined in Recital F.

(g) "Development Fund" means an account or accounts to be established pursuant to the DDA at or prior to the commencement of construction of the Stadium into which all funds available for payment of development costs of the Stadium will be deposited and from which such costs will be paid.

(h) "Executive Director" means the Executive Director of the Stadium Authority or his/her designee.

(i) "Legends" is defined in Recital H.

(j) "Legends SBL Agreement" is defined in Recital H.

(k) "Legends Suites Agreement" is defined in Recital I.

(l) "Marketing Plan" is defined in the Legends SBL Agreement.

(m) "Non-Recourse Funds" means any funds of the Stadium Authority that meet any of the following: (i) were received by the Stadium Authority, directly or indirectly, from the Agency, (ii) are required to pay other costs incurred by the Stadium Authority in furtherance of the Stadium Project that are included in the budget approved by the Board, or (iii) cannot, consistent with applicable law and its other contractual covenants, be used by the Stadium Authority to pay Authorized Costs.

(n) "Party" means the Stadium Authority or Stadco, as applicable.

(o) "Parties" collectively means the Stadium Authority and Stadco.

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

(q) "SBL Budget" is defined in the Legends SBL Agreement.

(r) "Stadium Builders Licenses" or "SBLs" means licenses issued by the Stadium Authority providing the license holder with rights to purchase tickets for events in the Stadium, including the Team's home games.

(s) "Stadium Project" means the development of the Stadium and other related improvements on and off the Stadium Site.

(t) "Suites" is defined in Recital I.

(u) "Team" is defined in Recital E.

(v) "Term" means the term of this Agreement as defined in Section 2.1.

ARTICLE 2.
TERM

Section 2.1 Term. This Agreement shall commence concurrently with the Legends SBL Agreement, and, except for the provisions which survive the expiration or earlier termination hereof, shall continue thereafter for a term coincident with that of the Legends SBL Agreement.

ARTICLE 3.
MANAGEMENT OF SBL SALES

Section 3.1 Management of SBL Sales. Stadco, on behalf of the Stadium Authority, shall coordinate and supervise Legends in the performance of Legends' services under the Legends SBL Agreement. Without limitation on the foregoing, Stadco shall work cooperatively with Legends and the Stadium Authority and shall, within the times required under the Legends SBL Agreement, make recommendations to the Executive Director (which may be made jointly with Legends), with respect to the following, all of which are subject to the approval of the Stadium Authority under the Legends SBL Agreement:

- (a) a pricing structure for the SBLs that will be based on, among other things, the location of the SBL and associated amenities;
- (b) the Marketing Plan;
- (c) standardized forms of contracts for the sale of SBLs;
- (d) the SBL Budget identifying projected costs associated with Legends' performance of services under the Legends SBL Agreement; and
- (e) marketing materials proposed by Legends to be distributed to potential purchasers of SBLs and the public at large.

Section 3.2 Stadco Acknowledgements. Stadco acknowledges that the proceeds from the sale of SBLs, once the SBL contracts are accepted by the Stadium Authority, shall be collected solely for the account and benefit of the Stadium Authority and shall be used to defray the Stadium Authority's costs with respect to the development of the Stadium. Such proceeds shall not be collected for the benefit of Stadco or the Team, nor shall they be treated for any purpose as such, nor shall they be used to defray or otherwise satisfy any obligation of Stadco with respect to the development of the Stadium. Stadco also acknowledges that the Stadium Lease will require that Stadco honor the rights of the holders of SBLs validly issued by the Stadium Authority during the term of such SBLs, including a requirement that Stadco cause the Team to offer season tickets to the holders of valid SBLs as will be more particularly provided in the SBLs and in the Stadium Lease.

Section 3.3 Team License. Stadco shall cause the Team to enter into a license agreement with Legends, pursuant to which the Team will authorize Legends, at no cost to Legends and on such other terms and conditions as determined by the Team (including provisions regarding confidentiality and protection of trade secrets), to utilize in connection with the marketing and sales of SBLs (i) a list of the Team's current season ticket holders and the wait list of potential season ticket holders to allow Legends to promote the sale of SBLs to those

individuals consistent with the Marketing Plan adopted pursuant to the Legends SBL Agreement, and (ii) certain of the team's logos, designs, trademarks, trade names, and service marks.

Section 3.4 Relationship to Suite Sales. All costs in connection with the Legends Suites Agreement shall be borne by Stadco. In accordance with the terms of the Legends SBL Agreement, Legends is responsible to account separately for costs incurred in performing its obligations under the Legends SBL Agreement with the Stadium Authority and those incurred in performing its obligations under Legends Suites Agreement with Stadco, and for fairly allocating any shared costs in accordance with the SBL Sales Budget approved by the Executive Director. In no event shall the Stadium Authority have any liability or responsibility for the obligations of either Legends or Stadco under the Legends Suites Agreement, or for costs incurred by Legends in marketing the Suites on behalf of Stadco. Without limitation on its obligations under this Agreement, in no event shall Stadco have any liability or responsibility for the obligations of either Legends or the Stadium Authority under the Legends SBL Agreement.

ARTICLE 4. **PREDEVELOPMENT LOAN**

Section 4.1 Stadco Predevelopment Loan. In order to further the Parties' shared goal of developing the Stadium Project, and in anticipation of reimbursement from the Development Fund as described below, Stadco agrees to make a loan to the Stadium Authority (the "Predevelopment Loan") to pay Authorized Costs as provided herein. The terms set forth below reflect the short-term nature of the Predevelopment Loan given the expectation that such loan will be repaid from the Development Fund

Section 4.2 Terms of the Predevelopment Loan.

(a) The Predevelopment Loan shall be advanced to the Stadium Authority in disbursements (the "Disbursements"). Stadco agrees to make Disbursements as required to pay Authorized Costs consistent with the SBL Budget and as otherwise approved in writing by the Stadium Authority. No Disbursement may be applied to any item or expense other than the Authorized Costs.

(b) The Predevelopment Loan shall bear interest at a fixed annual rate of three and one-quarter percent (3¼%) calculated on the balance of the Predevelopment Loan outstanding from time to time, commencing with Stadco's initial Disbursement. Interest shall be compounded annually.

(c) The Stadium Authority hereby assigns to Stadco, as security for the Predevelopment Loan, all its right, title and interest in any licenses, permits, and non-privileged work product prepared by Legends or any other consultants or contractors to the Stadium Authority relating to the the Stadium Project.

(d) All principal and interest under the Predevelopment Loan shall be due and payable in full upon the earlier of (i) at the Closing, subject to extension as required to comply with any restrictions on disbursements from the Development Fund approved by Stadco pursuant to the DDA, or (ii) the termination of this Agreement as provided in Section 2.1. From and after the Closing, the Stadium Authority shall be liable for repayment of the Predevelopment Loan only from the Development Fund in accordance with any restrictions on disbursements from the

Development Fund approved by Stadco pursuant to the DDA. If this Agreement terminates prior to the Closing, then the Stadium Authority shall be liable for repayment of the Predevelopment Loan only from and to the extent of (a) any unencumbered cash or cash equivalents on hand other than Non-Recourse Funds, and (b) those assets of the Stadium Authority assigned to Stadco as security for the Predevelopment Loan under Section 4.2(b). Stadco is making the Predevelopment Loan in anticipation of repayment from the Development Fund, and acknowledges that in the unlikely event this Agreement terminates prior to the Closing, that the Stadium Authority may not have unencumbered cash or cash equivalents on hand available for and sufficient to pay the Predevelopment Loan.

Section 4.3 Direct Payment. Invoices submitted by Legends pursuant to the Legends SBL Agreement shall be reviewed by Stadco for compliance with the terms of the Legends SBL Agreement. Stadco shall submit to the Stadium Authority a statement setting forth the amount Stadco determines to be due to Legends, including Stadco's certification that costs to be reimbursed to Legends were incurred consistent with the SBL Budget. Upon approval by the Authority, for the administrative convenience of the parties, Stadco may make payments to Legends on account of invoices that Stadco determines to be properly payable under the terms of the Legends SBL Agreement, and each such payment shall be treated as a Disbursement under the Predevelopment Loan, as and when made.

Section 4.4 Modification of Legends SBL Agreement. Given Stadco's agreement to provide funding for amounts due under the Legends SBL Agreement, as set forth above, the Stadium Authority agrees not to terminate or modify the Legends SBL Agreement in such a way as to increase payments to Legends, whether by commission, incentives or base payments, reduce or materially modify Legends' obligations thereunder or performance timelines, or otherwise materially modify the Legends SBL Agreement without the prior written consent of Stadco. Performance benchmarks to be established under the Legends SBL Agreement shall be subject to Stadco's approval, which shall not be unreasonably withheld. Whenever the Legends SBL Agreement calls for or permits the Stadium Authority's approval, consent or waiver, the Stadium Authority shall consult with Stadco prior to taking any action with respect thereto.

Section 4.5 Predevelopment Loan Documentation. The Predevelopment Loan shall be evidenced by a promissory note consistent with the terms of this Agreement. The promissory note shall be in form acceptable to the Executive Director and shall be executed promptly following the Initial Disbursement and shall be updated as necessary from time to time thereafter. From time to time, upon the request of the Executive Director, Stadco shall provide the Stadium Authority with a written statement specifying the outstanding amount of the Predevelopment Loan, each Disbursement made, the interest accrued thereon, the date, and amounts of prior payments made thereunder.

ARTICLE 5. **GENERAL PROVISIONS**

Section 5.1 Non-Liability of Officials. No member, official, employee, manager or agent of any Party shall be personally liable to any other Party, or any successor in interest, in the event of any default or breach by such Party for any amount which may become due to any other Party or successor or on any obligation under the terms of this Agreement.

Section 5.2 Actions of the Parties. Except as otherwise provided in this Agreement, whenever this Agreement calls for or permits the Stadium Authority's approval, consent, or waiver, the written approval, consent, or waiver of the Executive Director (or his/her respective designee) shall constitute the approval, consent, or waiver of the Stadium Authority, respectively, without further authorization required from the governing board of such Party; provided, however, that the person vested with such authority may seek such further advice or authorization from the applicable governing board as she/he deems it appropriate.

Section 5.3 Third Party Beneficiaries. The Stadium Authority and Stadco do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third party, and no third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement.

Section 5.4 State Law. This Agreement, and the rights and obligations of the Parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

Section 5.5 Additional Acts. The Parties each agree to take such other and additional actions and execute and deliver such other and additional documents as may be reasonably requested by the other Parties for purposes of consummating the transactions contemplated in this Agreement.

Section 5.6 Validity of Agreement. If any provisions of this Agreement, or the application thereof to any person, Party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions, or circumstances, shall not be affected thereby.

Section 5.7 Modification and Amendment. This Agreement cannot be amended or modified except by written agreement of the Parties.

Section 5.8 Defaults and Remedies. If either Party breaches any material provision of this Agreement, the other Party shall first notify the breaching Party in writing of the purported breach or failure, giving the breaching Party thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event the breaching Party does not then so cure within such thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, the breaching Party fails to commence to cure within such thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the non-breaching Party shall be entitled to elect either to terminate this Agreement or to seek specific performance, as its sole and exclusive remedy. Notwithstanding the foregoing, the limitation on remedies contained in this Section 5.8 shall not apply to a breach of any indemnity obligations set forth in Section 5.9 below.

Section 5.9 Indemnity. To the extent permitted by law, Stadco undertakes and agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to the Stadium Authority) the Stadium Authority, the City, the Agency, their respective commissioners, directors, council members, officers, employees, agents, and successors (the "Indemnified Parties"), from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation and litigation-related matters, damage or liability of any nature whatsoever, arising out of Stadco's acts or

omissions in its performance under this Agreement, except to the extent caused by the negligence or willful misconduct of the Indemnified Parties. The provisions of this Section 5.9 shall survive the termination of this Agreement.

Section 5.10 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties to this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Section 5.11 Time of the Essence. Time is of the essence in the performance of all duties and obligations under this Agreement.

[Section 5.12 and signatures follow on next page.]

Section 5.12 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth in the opening paragraph of this Agreement.

SANTA CLARA STADIUM AUTHORITY
a California joint powers authority

APPROVED AS TO FORM:

ELIZABETH H. SILVER
Interim Stadium Authority General Counsel

JENNIFER SPARACINO
Executive Director

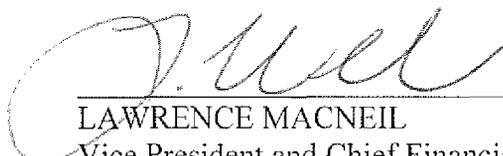
ATTEST:

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

ROD DIRIDON, JR.
Stadium Authority Secretary

“Stadium Authority”

FORTY NINERS STADIUM, LLC
a Delaware limited liability company



LAWRENCE MACNEIL
Vice President and Chief Financial Officer

4949 Centennial Blvd.
Santa Clara, CA 95054
Telephone: (408) 562-4949

“Stadco”

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