



Date: March 12, 2012

To: City Manager/Executive Director for Council/Stadium Authority Action

From: Assistant City Manager/Assistant Executive Director

Subject: Adoption of Resolutions to Approve Parking Rights Agreements with City, Stadium Authority, and Forty Niners SC Stadium Company LLC

EXECUTIVE SUMMARY:

The City, the Stadium Authority and the Forty Niners SC Stadium Company LLC ("StadCo") have been working cooperatively to develop a stadium on the south side of Tasman Drive at Centennial Boulevard. Parking for events at the Stadium will be provided by a combination of privately owned and public parking lots, including parking lots and garages owned by the City in the vicinity of the Stadium. The City has previously granted to the Stadium Authority and the Forty Niners an easement to use the City owned parking lot adjacent to the Great America Theme Park subject to the terms of a Parking Agreement approved by the City, the Stadium Authority and StadCo. The City now desires to enter into Parking Rights Agreements with both the Stadium Authority and StadCo. The agreements give the Stadium Authority and StadCo rights to use the Tasman Drive Parking Garage, currently under construction; spaces in the Convention Center garage that are not subject to the prior rights of the Techmart office building and the Hyatt Regency hotel; the Stars and Stripes Drive parking lot adjacent to the Valley Transportation Agency ("VTA") rail station; and the surface parking lots on Tasman Drive directly across from the Stadium Site. The rights granted are subject to the prior rights of other users such as the rights of the VTA under the agreement between the VTA and the City related to the Stars and Stripes Lot.

Under the terms of the Parking Rights Agreements, both the Stadium Authority and StadCo are able to use the Tasman Drive surface lots until such time as the City leases or sells the lots for development. If the City leases or sells the Tasman Drive surface lots, the terms of any such sale or lease are to require that the Stadium Authority and StadCo have rights to use any parking spaces developed on the property for Stadium events in excess of those needed for the development. Additionally, the terms of any such sale or lease related to use of the properties for Stadium event parking are subject to the approval of the Stadium Authority and StadCo. If the Tasman Drive surface lots are developed, the City will cooperate with the Stadium Authority and StadCo to identify other City property to provide parking for Stadium events. Other than use of the Hotel Community Facilities District (CFD) funds to put such property in a condition to be used for parking, the City is not responsible for any other costs necessary to put such property in a condition to be used for parking.

Under the terms of the Parking Rights Agreement with StadCo, StadCo will pay to the City \$5 for each parking space in the Tasman Drive surface lots used in connection with each NFL event. Other than this fee, StadCo is not obligated to make any payments to the City for the use of the parking facilities, but

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StadCo will be responsible for paying all operating costs associated with its use of the parking facilities for NFL events and repair of any damage caused by its use of the parking facilities.

Under the terms of the Parking Rights Agreement with the Stadium Authority, the Stadium Authority will pay to the City 50% of the net revenues received from the Tasman Drive garage related to use of the garage for Non-NFL Events. In addition, parking revenues received by the Stadium Authority from the other City owned parking facilities will be part of the Net Non-NFL Event Revenues, 50% of which is paid to the City as Ground Rent under the Ground Lease.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

NFL games at the Stadium are estimated to require approximately 21,000 parking spaces. The Stadium EIR determined that in the area surrounding the Stadium there were approximately 40,000 parking spaces available including the parking spaces on the City owned lots subject to the Parking Agreements. The approval of the Parking Agreements will ensure the availability of these 10,000 spaces for both NFL events and Non-NFL Events and will provide the most convenient parking spaces for the Stadium.

Use of some of the parking spaces, including those in the Convention Center garage and the VTA lot will require coordination with other users to ensure that spaces are available. With respect to the Convention Center garage, use of the parking spaces may preclude the Convention Center from scheduling certain events that conflict with Stadium Events.

ECONOMIC/FISCAL IMPACT:

The Authority Parking Rights Agreement provides for the City to receive payment for the use of the Tasman Drive Parking Garage from the Authority in the amount of 50% of the net revenues received by the Stadium Authority. At the City's discretion, these revenues can be used by the City to offset costs associated with the operation of the Garage. The net revenues received by the Stadium Authority from the other parking facilities will be part of the Net Non-NFL Event Revenues received by the Stadium Authority, 50% of which is paid to the City as part of its Ground Rent under the Ground Lease between the City and the Stadium Authority for the Stadium Site.

The City will also receive \$5 per parking space used in the Tasman Drive surface lots for Non-NFL Events. These payments will only be received for so long as these lots are available for parking. The City will not receive any additional revenue from StadCo for the use of the other parking facilities for NFL Events.

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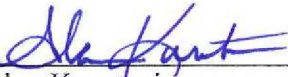
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RECOMMENDATION:

- 1) That the City Council adopt the Resolution approving the Parking Rights Agreements with Forty Niners SC Stadium Company, LLC and the Stadium Authority, authorizing the City Manager to execute the Parking Rights Agreements, and making certain findings related thereto.
- 2) That the Stadium Authority adopt the Resolution approving the Parking Rights Agreement with the City, authorizing the Executive Director to execute the Parking Rights Agreement and making certain findings related thereto.



Alan Kurotori

Assistant City Manager/Assistant Executive Director

APPROVED:



Jennifer Sparacino

City Manager/Executive Director

Documents Related to this Report:

- 1) *Resolutions*
- 2) *Parking Rights Agreements*

RESOLUTION NO. ____

A RESOLUTION OF THE CITY OF SANTA CLARA APPROVING THE CERTAIN PARKING RIGHTS AGREEMENTS, AUTHORIZING THE EXECUTION OF THE PARKING RIGHTS AGREEMENTS BY THE CITY MANAGER, AND MAKING CERTAIN FINDINGS RELATED THERETO

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the Santa Clara Stadium Authority ("Authority"), a joint exercise of powers entity, created through Government Code Section 6500 *et seq.*, is engaged in various activities designed to lead to the development of a 68,500 seat stadium suitable for professional football ("Stadium Project") on a property located at Tasman and Centennial Drive ("Stadium Site");

WHEREAS, the City of Santa Clara (the "City") owns the Stadium Site and intends to lease the Stadium Site to the Authority pursuant to the terms of a Ground Lease to be entered into between the City and the Authority;

WHEREAS, the Authority intends to lease the Stadium Site to Forty Niners SC Stadium Company, LLC, a Delaware limited liability company ("StadCo"), pursuant to a sublease (the "Stadium Lease") provided that StadCo satisfies certain conditions precedent;

WHEREAS, the City owns or is constructing certain parking structures in the area near the Stadium Site which the City desires to make available to the Authority and StadCo for use during Stadium events to provide parking in accordance with terms of certain parking rights agreements between the City and StadCo and the Authority, respectively ("Parking Rights Agreements"),

WHEREAS, the Authority desires to approve the Parking Rights Agreements, and authorize the execution of the Parking Rights Agreements;

WHEREAS, as further described in the Staff Report, the Stadium Project has previously undergone environmental review pursuant to the California Environmental Quality Act ("CEQA") and was considered as part of the project Environmental Impact Report certified for the proposed 49ers Santa Clara Stadium Project at 4900 Centennial Boulevard (the "Stadium EIR"); 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 CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council of the City of Santa Clara hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. The City Council hereby finds, for the following reasons, and based on the provision of CEQA (with particular reference to 14 California Code of Regulations, Section 15162), that the Stadium EIR has served as the environmental documentation pursuant to CEQA for approval of this Resolution and the Parking Rights Agreements. The City Council further specifically finds that there have not been any of the following occurrences since the approval of the Stadium EIR that would require a subsequent or supplemental environmental documents in connection with approval of this Resolution and the Parking Rights Agreements:

A.. There have not been substantial changes in the project analyzed in the Stadium EIR which would require major revisions in the Stadium EIR and the Mitigation Monitoring Program;

B. There have not been substantial changes with respect to the circumstances under which the project analyzed in the Stadium EIR will be undertaken which would require major revisions in the Stadium EIR and the Mitigation Monitoring Program; and

C. There has not been the appearance of new information which was not known and could not have been known as of the date of approval of the Stadium EIR and the Mitigation Monitoring Program which is relevant to the approval of the Stadium EIR and the Mitigation Monitoring Program as it relates to Amendment No. 3 and the Reservation Amendment.

3. The City Council hereby approves the Parking Rights Agreements with the Authority and StadCo, and authorizes the City Manager to enter into and execute the Parking Rights Agreement on behalf of the City, substantially in the form on file with the City Clerk, with such revisions as are reasonably determined necessary by the City signatory, such determination to be conclusively deemed to have been made by the execution of such agreement by the City signatory. The City Manager is authorized to implement the Parking Rights Agreements and take all further actions and execute all other documents which are necessary or appropriate to carry out the Parking Rights Agreements.

4. The City Manager is hereby authorized and directed to file a Notice of Determination with respect to the approvals set forth in this Resolution in accordance with the applicable provisions of CEQA.

5. The City Manager is hereby authorized to take such further actions as may be necessary or appropriate to carry out the City's obligations pursuant to this Resolution, and the Parking Rights Agreements.

6. The City Clerk shall certify to the adoption of this Resolution.

7. 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.

8. 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 CITY OF SANTA CLARA, CALIFORNIA, AT A SPECIAL MEETING THEREOF HELD ON THE ___ DAY OF _____, 2012, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

ATTEST:

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference: None

RESOLUTION NO. ____ (STADIUM AUTHORITY)

A RESOLUTION OF THE SANTA CLARA STADIUM AUTHORITY APPROVING THE PARKING RIGHTS AGREEMENT, AUTHORIZING THE EXECUTION OF THE PARKING RIGHTS AGREEMENT BY THE SANTA CLARA STADIUM AUTHORITY, AND MAKING CERTAIN FINDINGS RELATED THERETO

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

WHEREAS, the Santa Clara Stadium Authority ("Authority"), a joint exercise of powers entity, created through Government Code Section 6500 *et seq.*, is engaged in various activities designed to lead to the development of a 68,500 seat stadium suitable for professional football ("Stadium Project") on a property located at Tasman and Centennial Drive ("Stadium Site");

WHEREAS, the City of Santa Clara (the "City") owns the Stadium Site and intends to lease the Stadium Site to the Authority pursuant to the terms of a Ground Lease to be entered into between the City and the Authority;

WHEREAS, the Authority intends to lease the Stadium Site to Forty Niners SC Stadium Company, LLC, a Delaware limited liability company ("StadCo"), pursuant to a sublease (the "Stadium Lease") provided that StadCo satisfies certain conditions precedent;

WHEREAS, to assist in the operation of the Stadium Project, the Authority desires to utilize certain parking lots owned by the City, and the City desires to grant such use to the Authority pursuant to a parking rights agreement (the "Parking Rights Agreement");

WHEREAS, the Authority desires to approve the Parking Rights Agreement, and authorize the execution of the Parking Rights Agreement;

WHEREAS, as further described in the Staff Report, the Stadium Project has previously undergone environmental review pursuant to the California Environmental Quality Act

("CEQA") and was considered as part of the project Environmental Impact Report certified for the proposed 49ers Santa Clara Stadium Project at 4900 Centennial Boulevard (the "Stadium EIR"); 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 Authority hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. The Authority hereby finds, for the following reasons, and based on the provision of CEQA (with particular reference to 14 California Code of Regulations, Section 15162), that the Stadium EIR has served as the environmental documentation pursuant to CEQA for approval of this Resolution and the Parking Rights Agreement. The Authority further specifically finds that there have not been any of the following occurrences since the approval of the Stadium EIR that would require a subsequent or supplemental environmental documents in connection with approval of this Resolution and the Parking Rights Agreement:

A. There have not been substantial changes in the project analyzed in the Stadium EIR which would require major revisions in the Stadium EIR and the Mitigation Monitoring Program;

B. There have not been substantial changes with respect to the circumstances under which the project analyzed in the Stadium EIR will be undertaken which would require major revisions in the Stadium EIR and the Mitigation Monitoring Program; and

C. There has not been the appearance of new information which was not known and could not have been known as of the date of approval of the Stadium EIR and the Mitigation Monitoring Program which is relevant to the approval of the Stadium EIR and the Mitigation Monitoring Program as it relates to the approval of the documents and agreements set forth in this Resolution and the Parking Rights Agreement.

3. The Authority hereby approves the Parking Rights Agreement, and authorizes the Executive Director to enter into and execute the Parking Rights 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 Authority signatory, such determination to be conclusively deemed to have been made by the execution of such agreement by the Authority signatory. The Executive Director is authorized to implement the Parking Rights Agreement and take all further actions and execute all other documents which are necessary or appropriate to carry out the Parking Rights Agreement.

4. The Executive Director is hereby authorized and directed to file a Notice of Determination with respect to the approvals set forth in this Resolution in accordance with the applicable provisions of CEQA.

5. 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 Parking Rights Agreement.

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

7. 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.

8. 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 BOARD OF THE SANTA CLARA STADIUM AUTHORITY, AT A SPECIAL MEETING THEREOF HELD ON THE ___ DAY OF _____, 2012, BY THE FOLLOWING VOTE:

AYES:	BOARD MEMBER:
NOES:	BOARD MEMBER:
ABSENT:	BOARD MEMBER:
ABSTAINED:	BOARD MEMBER:

ATTEST: _____
ROD DIRIDON, JR.
AUTHORITY SECRETARY

Attachments Incorporated by Reference: None

DRAFT

**RECORD WITHOUT FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103**

RECORDING REQUESTED BY:

Office of the City Attorney
City Of Santa Clara, California

AND WHEN RECORDED MAIL TO:

Richard E. Nosky, City Attorney
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA

SPACE ABOVE FOR RECORDER'S USE

**CITY OF SANTA CLARA
PARKING RIGHTS AGREEMENT
(StadCo)**

THIS CITY OF SANTA CLARA PARKING RIGHTS AGREEMENT (the "**Agreement**") is made and entered into as of _____, 2012 (the "**Effective Date**"), by and among The City of Santa Clara, a chartered California municipal corporation ("**City**") and Forty Niners SC Stadium Company LLC, a Delaware limited liability company ("**StadCo**").

RECITALS

A. City, the Santa Clara Stadium Authority, a California joint powers authority ("**Authority**"), StadCo and Forty Niners Football Company LLC ("**Team**") are working cooperatively to develop a stadium (the "**Stadium**") on the south side of Tasman Drive at Centennial Boulevard, as more particularly described in Exhibit A attached hereto and incorporated herein (the "**Stadium Site**"). The Stadium Site is owned by City and will be leased to Authority pursuant to that certain Ground Lease (Stadium Site) dated as of _____, 2012 (the "**Ground Lease**"). The Stadium will be developed and owned by Authority during the term of the Ground Lease. For a portion of each year, Authority will lease the Stadium to StadCo, who will sublease the Stadium to Team for use as its home stadium for NFL games. In addition, StadCo and Team will use the Stadium for certain other uses related to NFL games, including promotional events and advertising, all pursuant to the terms of such lease from Authority to StadCo (the "**Stadium Lease**"). During the remainder of the year, Authority will operate the Stadium for its own account as a venue for events other than NFL games, including civic events, concerts and other athletic events (collectively, including NFL games and other NFL events, "**Stadium Events**").

B. Parking for Stadium Events will be provided by a combination of privately provided and public parking, including parking on certain parking lots, parking garages and other parking facilities located on land owned by City. City has previously granted an easement to Authority and StadCo for parking and related uses at one such City-owned parking lot (the

"Main Lot"), which also serves as a parking lot for the Great America Theme Park and is the subject of a separate agreement (the "**GA Parking Agreement**") among City, Authority, StadCo and Cedar Fair Southwest, Inc. (the "**GA Tenant**"), which agreement provides, among other things, for shared use of the Main Lot in a cooperative manner by GA Tenant, Authority and StadCo. In addition, City, in the Ground Lease, has granted an easement to Authority (which easement is appurtenant to Authority's leasehold interest in the Ground Lease), and Authority, in the Stadium Lease, has granted an easement to StadCo (which easement is appurtenant to StadCo's leasehold interest in the Stadium Lease), authorizing StadCo's use of the Main Lot for parking and related uses pursuant to the terms of the GA Parking Agreement.

C. The parties to this Agreement have agreed to enter into this Agreement to document the grant to StadCo of parking and related rights in and with respect to certain other City-owned parking facilities, as more particularly described herein, and to set forth the rights and obligations of the parties with respect thereto.

D. Assurance of adequate parking for NFL Events in the Stadium is of critical importance in furthering City's goals of creating an entertainment destination in the vicinity of the Stadium, and will provide significant economic benefits to the City and its residents and businesses.

NOW, THEREFORE, in consideration for the mutual covenants and promises of the parties contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. General Provisions.

1.1 Parking Rights Defined. For purposes of this Agreement, the term "**Parking Rights**" means, with respect to a specified Parking Parcel (as hereinafter defined): (a) the right to park motor vehicles (of any size, including buses and trucks) and non-motorized vehicles (including bicycles) on or in such Parking Parcel for a reasonable time before and after NFL Events, together with (b) rights of access to such Parking Parcel, and between such Parking Parcel and the Stadium Site, including the right to install and maintain identifying and wayfinding signage (which may, if permitted under City regulations, include sponsorship attributes) and the right to install security stations, gates, fences or similar barriers in appropriate locations to limit and control public access to the Stadium, (c) the right to operate such Parking Parcel for a reasonable time before and after NFL Events, including, but not limited to, the right to establish parking rates and collect revenues, (d) the right to promulgate rules and regulations regarding the use of parking, including, but not limited to, rules and regulations controlling the flow of traffic to and from various parking areas, the angle and direction of parking, the right to designate certain portions of a Parking Parcel as reserved for particular users or groups of users (including the right to establish different parking rates for unreserved and reserved parking), or to forbid parking by particular users or groups of users in specified locations, including the right to designate specific parking spaces for use by vehicles exhibiting handicap parking placards, and including the right (but not an obligation) to tow vehicles (subject to compliance with applicable laws) parked without permission in reserved parking areas or otherwise in violation of such rules and regulations, and (e) the right to make ancillary use of such Parking Parcel, including the right to sell advertising and use space within such Parking Parcel for promotional

displays, and the right to conduct promotional activities and/or marketing events within such Parking Parcel, and including, without limitation, the right to install temporary improvements, concession stands, kiosks, signage, advertising and other promotional uses; provided, however, that notwithstanding the foregoing, City agrees that StadCo shall have the exclusive right to sell naming rights and sponsorship rights within the Parking Parcels in conjunction with all Stadium Events.

1.2 Stadium Events Defined. For purposes of this Agreement, the term "**Stadium Events**" means events sponsored or licensed by Authority or StadCo to occur within the Stadium, on the Stadium Site, or in the parking areas (including the Parking Parcels) in the vicinity of the Stadium Site, and includes NFL or other professional football games ("**NFL Games**"), other events or meetings relating to the promotion or operation of the NFL and of the Team (and if applicable, a second NFL franchise), including community relations, promotional and corporate partner private events such as open houses, fan appreciation events, fantasy camps, and other marketing events (collectively, including NFL Games, "**NFL Events**"), concerts and sporting events other than NFL Games ("**Non-NFL Events**"), and other events that are either conducted by City, or that are conducted by Authority at the request (or with the approval) of City that are neither NFL Events nor Non-NFL Events ("**Civic Events**").

2. Grant. City hereby grants to StadCo a license for Parking Rights for NFL Events (and other related rights as more particularly set forth below) during the Term hereof, at the times and with respect to the properties hereinafter specified (each, a "**Parking Parcel**," and collectively, "**Parking Parcels**"):

2.1 Tasman Drive Surface Lots.

(a) Particular Licenses Granted. With respect to the property commonly known as Assessor's Parcel Numbers 104-3-38 and 104-3-39, as more particularly described in Exhibit B (the "**Surface Lots**"), City hereby grants to StadCo the following rights and licenses, subject to the provisions of subsection (c) below:

(1) A license for Parking Rights in connection with NFL Events, including, but not limited to, a right to improve, maintain, repair, and operate the Surface Lots;

(2) A license consisting of the right to construct, install, repair, replace, reconstruct, reconfigure, maintain and use roads, driveways, sidewalks and pedestrian areas for vehicular (including truck) and pedestrian ingress and egress to and from the public streets;

(3) A license for the placement of light fixtures, landscaping, entry and exit gates, trash receptacles, bicycle storage facilities, temporary rest rooms and other improvements ancillary to the operation of the Surface Lots, together with a right of pedestrian and vehicular ingress, egress and access for inspection, maintenance, repair, alteration, reconstruction, replacement and use of such improvements.

(b) Capacity. City and StadCo acknowledge that the estimated parking capacity of the Surface Lots is approximately 789 vehicles.

(c) Future Development. City reserves the right to offer the Surface Lots, or either of them, for sale or lease for development on the following conditions, and in connection therewith, City reserves the right, effective at the closing of such sale or lease transaction, to terminate or modify the licenses herein granted with respect to the Surface Lots, to the extent necessary to reflect the terms of the agreements described below:

(1) Any RFP or other document offering the Surface Lots, or either of them, for sale or lease shall indicate City's intent to require that to the extent any such development includes parking in excess of that reasonably required for the use of such development on Stadium event days, such parking shall be made available to Authority and/or StadCo for parking for Stadium Events at no charge.

(2) In the course of negotiating any binding agreements for the sale or lease of either or both of the Surface Lots, the proposed terms of such agreements related to Stadium event parking shall be submitted to, and shall be subject to the approval of, Authority and StadCo.

(3) City shall cooperate with Authority and StadCo to identify other City property in the area that could be used for Stadium Event parking. To the extent available, City agrees to provide CFD funds to cause such property to be put into condition to be used for parking. The City shall have no responsibility for any such costs, but shall make such property available to Authority and StadCo at no cost.

2.2 Stars and Stripes Lot.

(a) Particular Licenses Granted. With respect to the real property shown as Parcel 4 on that certain Map (the "**Stadium Tract Map**") entitled "Tract 10118 Being a Subdivision of that land south of Tasman Drive, west of the Southern Pacific Railroad Right of Way, and east of San Tomas Aquino Creek as shown on that certain Record of Survey filed for record on August 22, 1974 in Book 345 of Maps at Pages 1-8, a portion of that land as shown on that certain Map filed for record on October 22, 1888 in Book 'D' of Maps at Page 41, and a portion of that land described in that certain Grant Deed recorded August 6, 1971 at Book 9479, Page 108, Official Records, Santa Clara County Records, and lying within the City of Santa Clara, County of Santa Clara, State of California", which Map was recorded in the Official Records of Santa Clara County on _____, 2012, as Instrument __, at Book __, Page __ of Maps (the "**Stars and Stripes Lot**"), City hereby grants to StadCo a license for Parking Rights in connection with NFL Events, including, but not limited to, the right to improve, maintain, repair, and operate the Stars and Stripes Lot, subject to the limitations described in subsection (b) below.

(b) Capacity. City and StadCo acknowledge that the estimated parking capacity of the Stars and Stripes Lot is approximately 189 spaces.

(c) Limitations. The rights granted in subsection (a) above are subject and subordinate to the terms and provisions of that certain "Cooperative Agreement for Construction and Maintenance of the Great Rail Station Improvements - Stars and Stripes Drive Extension and Parking Lot" dated July 24, 2001 between City and the SCVTA, as the same may

be amended from time to time with consent of StadCo. The rights granted in subsection (a) above are also subject and subordinate to licenses for ingress and egress over and across the Stars and Stripes Lot to, from and between Stars and Stripes Drive and various other properties.

2.3 Tasman Drive Parking Garage.

(a) Particular Licenses Granted. With respect to the parking structure being constructed by City (City Project No. CE 10-11-11) (the "**Tasman Drive Garage**") on the real property commonly known as Assessor's Parcel _____ (as more particularly described in Exhibit C), City hereby grants to StadCo a license for Parking Rights in connection with NFL Events (including the right to exclusive use of the Tasman Drive Garage on days when NFL Events are scheduled, subject to the limitations described in subsection (c) below):

(b) Capacity. City and StadCo acknowledge that the estimated parking capacity of the Tasman Drive Garage is approximately 1,812 spaces.

(c) Limitations. The rights granted in subsection (a) above are subject and subordinate to the licenses and rights previously granted under the Hotel Ground Lease. City agrees not to amend the Hotel Ground Lease in any way that would affect the rights granted to StadCo hereunder without StadCo's written consent. StadCo agrees that it may not make permanent alterations to the Tasman Drive Garage in connection with its use.

2.4 Convention Center/TechMart.

(a) Particular Licenses Granted. With respect to those certain properties commonly known as the Convention Center Garage and the TechMart, as more particularly described in Exhibit D, City hereby grants to StadCo a non-exclusive license for Parking Rights in connection with NFL Events, subject to the limitations described in subsection (c) below.

(b) Capacity. City and StadCo acknowledge that the estimated parking capacity of the Convention Center garage, together with surface spaces at the Convention Center and at the TechMart is approximately 2,000 spaces.

(c) Limitations. The rights granted in subsection (a) above are subject and subordinate to the licenses and rights previously granted to the tenants of the Hyatt (approximately 500 spaces) and TechMart (approximately 1,081 spaces) ground leases. Specific location of the spaces is to be determined in consultation with the tenants under the Hyatt and TechMart Ground Leases. City agrees not to amend or expand any of such licenses or rights in any way that would affect the rights granted to StadCo hereunder without StadCo's written consent. StadCo agrees that it may not make permanent alterations to the Convention Center Garage or the surface spaces at the Convention Center or the TechMart in connection with its use.

(d) Cooperation. Authority and StadCo will cooperate with the Convention Center to develop a mutually agreeable plan to encourage events at the Convention Center to be held in conjunction with NFL and Non-NFL Events and to identify sponsorship and advertising opportunities for the Convention Center that do not conflict with that conflict with

the rights, or the terms of contracts, that StadCo, the Team or any Second Team negotiates with its advertisers or sponsors.

2.5 Other Parking Facilities. From time to time, City and StadCo may agree to designate additional property for parking for NFL Events hereunder, and as to any such property may, by recording a notice or memorandum of such designation, cause such property to be subject to the terms and provisions of this agreement, together with such other or additional provisions as the parties may specify. Any such designation shall automatically constitute a grant of a license for Parking Rights to StadCo with respect to the property so designated, subject to matters of record, the provisions hereof, and such additional limitations or provisions as may be specified in such notice or memorandum.

3. General. The licenses and rights granted to StadCo hereunder are intended to be non-exclusive (except as may otherwise be specified herein), appurtenant to the Stadium Site and StadCo's leasehold interest therein under the Stadium Lease, and irrevocable during the Term hereof. This license, and the rights granted hereby, are intended to be binding on, and to benefit and burden City and StadCo and their respective successors and assigns.

4. Responsibility for Operating Expenses. With respect to each Parking Parcel, incremental costs of operation (i.e., the amount by which operating costs, with respect to each Parking Parcel used by StadCo for any NFL Event, exceed amounts customarily incurred for operation of such Parking Parcel for public parking ("**Baseline Operating Costs**"), plus all costs of installing and removing temporary improvements, signage, advertising media, and the like in or on such Parking Parcel for such NFL Event), including costs of cleanup of litter and graffiti following each such event, shall be borne by StadCo on each occasion that StadCo exercises the right to control parking at such Parking Parcel for any NFL Event,. In addition, StadCo shall be responsible for repairing any damage to the Parking Parcels and any improvements thereon, resulting from or reasonably attributable to use by StadCo and its invitees. For purposes of the foregoing, Baseline Operating Costs includes amounts attributable to the amortization, depreciation or accumulation of reasonable reserves for the replacement of capital assets.

5. Term. This Agreement and the rights and license granted hereby shall be in effect for a term commencing on the Effective Date and continuing until the date sixty-five (65) years following the Effective Date. Notwithstanding the foregoing, however, this Agreement and the rights and license granted hereby shall be appurtenant to the leasehold interest of StadCo in the Stadium Lease, and shall expire concurrently therewith; provided, however, that if the Stadium Lease terminates and thereafter a New Lease (as defined in the Stadium Lease) is entered into with a Tenant Mortgagee (as defined in the Stadium Lease) or its designee, then this Agreement shall not terminate, but StadCo's interest herein shall be deemed automatically assigned to the tenant under said New Lease (and if such tenant requests, City agrees to execute a new Agreement with such tenant on all of the terms of this Agreement for a period equal to the remaining term of such New Lease or the balance of the original term of this Agreement, whichever is shorter.

6. Consideration. StadCo agrees to pay to City, within thirty (30) days following each NFL Game or other NFL Event for which the Surface Lots are used for parking, the sum of \$5 for each parking space in the Surface Lots used for parking in connection with such NFL

Game or NFL Event. City and StadCo agree that except for the forgoing, City will not be entitled to any direct or indirect compensation relating to the sale of parking by StadCo for NFL Games or other NFL Events. Except as provided in the previous sentence with respect to the Surface Lots, Stadco shall not be required to pay compensation to City pursuant to this Agreement or otherwise for its use of the Parking Parcels.

7. Scheduling of Events, Priority. Beginning concurrently with the initial preparation by Authority and StadCo (or by the Stadium Manager on behalf of Authority and StadCo) of a schedule of Stadium Events, StadCo shall deliver (or cause the Stadium Manager to deliver) a tentative schedule of the dates and times of NFL Games and other NFL Events for which StadCo wishes to exercise the Parking Rights granted herein. StadCo will also be responsible for negotiating the terms of any agreements it deems necessary or appropriate with those Persons specified in Sections 2.2(c), 2.3(c) and 2.4(c) above as having prior rights to make use of portions of one or another of the Parking Parcels, and for assuring that StadCo's exercise of its rights to use the Parking Parcels hereunder will not unreasonably interfere with the rights of such Persons. StadCo agrees that City will have no responsibility for conflicts in scheduling priority as between StadCo and Authority, and that any scheduling conflict as between StadCo and Authority will be resolved as between them as provided in the Stadium Lease or other agreements between Authority and StadCo. City acknowledges that on occasion Stadium Events may need to be rescheduled on short notice, e.g., to accommodate NFL "flexible schedule" requirements, and that both NFL Events and Non-NFL Events may need to be rescheduled as a consequence. City agrees that that Stadium Events for which Authority, StadCo or their respective agents have given notice hereunder will have priority over other uses of the Parking Parcels, including general public parking.

8. Permitted Encumbrances. The licenses and rights granted to StadCo under this Agreement shall be subordinate only to those matters listed in Exhibit E (herein the "**Permitted Encumbrances**").

9. Assignments and Sublicenses. StadCo may assign its rights hereunder to others, and may authorize others to exercise some or all of the rights granted StadCo hereunder, including but not limited to contractors, subcontractors and agents, any of StadCo's tenants or subtenants and their invitees. City agrees that if this Agreement is terminated, such termination will not affect rights conveyed by StadCo to third parties under this Section prior to such termination, and City will not terminate or otherwise disturb such rights, so long as one or more of such third parties assumes the obligations of StadCo under this Agreement.

10. Security Interests. Nothing in this Agreement shall be interpreted to prevent StadCo, its tenants or subtenants from granting liens or security interests in their rights hereunder.

11. Indemnification. StadCo agrees to indemnify, defend, and hold harmless City and Authority, and their respective officers, employees, contractors, agents, affiliates and mortgagees, from and against all claims and demands for loss or damage, including property damage, personal injury and wrongful death (collectively, "**Claims**") arising out of or in connection with StadCo's use or occupancy of the Parking Parcels (including any Claims by persons having prior rights to use the Parking Parcels, as specified above, alleging interference

by StadCo with such prior rights), except in any instance to the extent such Claims arise out of the negligence or the willful act or omission of the indemnified party.

12. Insurance. StadCo shall obtain and maintain, at all times following the Effective Date, commercial general liability insurance covering its use of the Parking Parcels and the licenses and other rights (including, but not limited to, parking rights) granted herein, and naming City and Authority, to the extent of their respective interests, as additional insureds thereunder. Any such commercial general liability insurance policy shall have a combined single limit of coverage of not less than \$2,000,000 for any one accident or occurrence. All such policies shall be issued by insurance companies licensed to do business in California, and certificates or other evidence of the existence of the insurance required hereby shall be given by StadCo to City and Authority upon request. The insurance to be maintained hereunder may be provided by a separate policy, or as part of a single policy also providing coverage required to be provided by StadCo under the Stadium Lease.

13. No Dedication. Nothing contained in this Agreement, and no use of the licenses or rights granted herein shall be deemed to be, or to result in, any gift or dedication of any portion of the Parking Parcels to the general public or for any public purpose.

14. Default. In the event of a breach or threatened breach of any restriction or other provision of this Agreement, any party may prosecute any proceedings at law or in equity to enjoin such breach or threatened breach and, as the exclusive remedies for such breach or threatened breach, obtain an injunction or recover damages for any such breach; *provided* that no party shall be deemed to be in default under this Agreement until it has received written notice of such default and has failed to cure the same within thirty (30) days after receipt of such notice, or such longer period of time as may be reasonably necessary in order to cure the particular default, so long as such party commences the cure of such default within such thirty (30) day period and thereafter diligently prosecutes it to completion. Under no circumstances shall the default by any party with respect to the performance of any obligation hereunder result in the termination of this easement or the rights of any party hereunder, and the sole remedies of a party alleging a breach or default by another party shall be an action to recover damages or for an injunction or other equitable relief.

15. Mortgagee Protection. The breach of any restriction or other provision of this Agreement shall not defeat or render invalid or unenforceable the lien of any bona fide mortgage or deed of trust or other security instrument that secures a loan made by a bona fide lender (each, a "**Mortgagee**"), in good faith and for value, to any party to this Agreement. City agrees that each Mortgagee of the interest of StadCo shall be entitled to the protections set out in Exhibit F attached hereto.

16. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing and shall be personally delivered, sent by Federal Express or other reputable overnight courier service, with charges prepaid for next business day delivery, or mailed by first class, certified United States mail, postage prepaid, addressed to the parties hereto at their respective addresses listed in this Section, or such subsequent addresses as a party may have specified hereunder. Notices, demands or requests given in accordance with this Section 16 shall be deemed to have been properly given upon personal delivery, or on the

third business day following deposit with the U.S. Postal Service, or on the next business day following deposit with such courier service. Any party shall have the right from time to time to change its address for notices, demands and requests, provided such new address shall be within the United States of America. As of the date hereof, the notice addresses of the parties are as follows:

If to City: City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Jennifer Sparacino, City Manager

with a copy to: City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Richard E. Nosky, Jr., City Attorney

If to StadCo: Forty Niners SC Stadium Company, LLC
4949 Centennial Boulevard
Santa Clara, CA 95054
Attn: John Edward York, President

with copies to: Forty Niners SC Stadium Company, LLC
4949 Centennial Boulevard
Santa Clara, CA 95054
Attn: Larry MacNeil, CFO

and

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

17. Miscellaneous.

17.1 Modification. This Agreement shall not be amended, modified or terminated without the written agreement of City, StadCo and all of StadCo's Mortgagees.

17.2 No Merger. The licenses and other rights created herein shall not be extinguished by merger should any one person or entity now or hereafter own more than one of the Parcels. City hereby declares that the reference to and description of licenses herein shall not be affected by a merger of estates, but shall constitute a special restriction as to the affected Property that runs with the land. If City transfers title to any Parcel to a third party such that all of the Parcels are no longer under common ownership, the rights specified in this Agreement shall be deemed to constitute valid and binding easements wherein the Stadium Site is the dominant tenement and the Parking Parcels are the servient tenements.

17.3 Attorneys' Fees. If any party brings an action or proceeding for damages for an alleged breach of any provision of this Agreement, or to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs.

17.4 Relationship of Parties. Nothing in this Agreement shall be deemed or construed to create or establish any relationship of partnership, joint venture, agency, or any similar relationship between the parties.

17.5 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

17.6 Entire Agreement. The terms of this Agreement are intended by the parties as the final expression of their agreement with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement.

17.7 Interpretation. The headings of the sections and subsections of this Agreement are for convenience of reference only and shall not be used to interpret any term or provision hereof.

17.8 Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent allowed by law.

17.9 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

17.10 Exhibits. Exhibits A through F attached to this Agreement are hereby incorporated in this Agreement by this reference.

[Signatures on Following Page]

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below, effective as of the day and year first above written.

APPROVED AS TO FORM:

CITY:

THE CITY OF SANTA CLARA, CALIFORNIA,
a California municipal corporation

RICHARD E. NOSKY
City Attorney

By: _____
Name: JENNIFER SPARACINO
Its: City Manager

Attest:

RON DIRIDON, JR.
City Clerk

STADCO:

FORTY NINERS SC STADIUM COMPANY,
a Delaware limited liability company

By: _____
Name: JOHN EDWARD YORK
Its: President Director

List of Exhibits:

- Exhibit A: Legal Description of Stadium Site
- Exhibit B: Legal Description of Surface Lots
- Exhibit C: Legal Description of Tasman Drive Garage
- Exhibit D: Legal Description of Convention Center / Techmart
- Exhibit E: Permitted Encumbrances
- Exhibit F: Mortgagee Protection Provisions

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EXHIBIT A
LEGAL DESCRIPTION OF STADIUM SITE

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EXHIBIT B
LEGAL DESCRIPTION OF SURFACE LOTS

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EXHIBIT C
LEGAL DESCRIPTION OF TASMAN DRIVE GARAGE

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EXHIBIT D
LEGAL DESCRIPTION OF CONVENTION CENTER/TECHMART

DRAFT

EXHIBIT E
PERMITTED ENCUMBRANCES

EXHIBIT F
MORTGAGEE PROTECTION PROVISIONS

Notwithstanding anything contained in this Agreement to the contrary, StadCo may grant any pledge, collateral assignment or other security interest or agreement to any person pursuant to which all or any portion of the rights created by this Agreement are encumbered, collaterally assigned or transferred as security for any bonds, notes, other evidences of indebtedness, credit facility or other financial obligation or guarantee of StadCo (each such pledge, collateral assignment or other security interest or agreement, a "Security Interest"). With respect to each Security Interest of which City receives written notice including the name and address of the holder of such Security Interest (a "Recognized Secured Party"), City agrees that following receipt of such notice by City, and as long as such Security Interest remains unsatisfied of record or until written notice of satisfaction is given by the Recognized Secured Party thereunder to City, the following provisions shall apply:

(a) No termination, cancellation, surrender or modification of this Agreement by StadCo, or waiver by StadCo of any of the provisions of this Agreement or giving by StadCo of any consent shall be effective as to the Recognized Secured Party unless consented to in writing by the Recognized Secured Party;

(b) The Recognized Secured Party shall have the right, but not the obligation, to perform any covenant or agreement under this Agreement to be performed by StadCo (and City and StadCo each agree the Recognized Secured Party may enter onto the Parking Parcels (or any part thereof) for purposes of effecting such performance), and City shall accept such performance by any Recognized Secured Party or at its direction as if such performance was made by StadCo, including performance of covenants relating to payments of money.

(c) City shall, upon providing StadCo with any notice of (i) default under this Agreement, (ii) a termination of this Agreement, or (iii) a matter on which City may predicate or claim a default, at the same time provide a copy of such notice to the Recognized Secured Party. City shall have no liability for the failure to give any such notice, except that no such notice by City to StadCo shall be deemed to have been duly given to the Recognized Secured Party, or to be effective, unless and until a copy thereof has been so provided to the Recognized Secured Party. From and after the date such notice has been given to the Recognized Secured Party, the Recognized Secured Party shall have the right (but not the obligation) to cure StadCo's defaults within thirty (30) days (the "Secured Party's Grace Period") following the later of (x) its receipt of City's notice with respect to such default and (y) the expiration of the grace period, if any, provided to StadCo to cure such default, subject to extension of such Secured Party's Grace Period for the additional periods of time specified in subsections (d) and (e) of this Exhibit F. The effectiveness of any default by StadCo shall be suspended for all purposes under this Agreement during the Secured Party's Grace Period.

(d) Notwithstanding anything contained in this Agreement to the contrary, City shall have no right to terminate this Agreement in any circumstance where termination would otherwise be allowed under this Agreement unless, following the expiration of the period of time given StadCo to cure such default or the act or omission that gave rise to such default, City shall notify the Recognized Secured Party of City's intent to so terminate at least thirty (30) days in advance of

the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least ninety (90) days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money. The provisions of paragraph (e) below shall apply only if during such 30 or 90-day termination notice period, the Recognized Secured Party shall: (i) notify City of Recognized Secured Party's desire to nullify such notice; and (ii) pay or cause to be paid all amounts (A) then due hereunder and in arrears as specified in the termination notice to Recognized Secured Party and (B) any of the same that become due during such 30 or 90-day period as and when they become due; and (iii) comply, or with reasonable diligence commence in good faith to comply, with all non-monetary requirements of this Agreement then in default and reasonably susceptible of being complied with by the Recognized Secured Party.

(e) (i) If City shall elect to terminate this Agreement in any circumstance where termination otherwise would be allowed under this Agreement, and the Recognized Secured Party shall have proceeded in the manner provided for by paragraph (d) above, this Agreement shall not be terminated as long as the Recognized Secured Party shall: (A) pay or cause to be paid any monetary obligations of StadCo under this Agreement as the same become due, and continue its good faith efforts to perform all of StadCo's other obligations under this Agreement excepting (x) past non-monetary obligations then in default and not reasonably susceptible of being cured by Recognized Secured Party; and (B) if not enjoined or stayed, take reasonable steps to acquire or sell the interest of StadCo subject to the Security Interest by foreclosure or any other appropriate and lawful means. Nothing contained in this clause (e)(i) shall be construed to extend this Agreement beyond the original term hereof, nor to require the Recognized Secured Party to continue such foreclosure or other appropriate proceedings after all defaults have been cured. If all defaults are cured and the Recognized Secured Party discontinues such foreclosure or other appropriate proceedings, this Agreement shall continue in full force and effect as if StadCo had not defaulted under this Agreement. If a Recognized Secured Party shall obtain possession of all or a portion of StadCo's interest in or rights under this Agreement by the initiation of foreclosure, power of sale or other enforcement proceeding under any Security Interest, or by obtaining an assignment thereof in lieu of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding (any of the foregoing being referred to as a "Security Interest Enforcement Proceeding"), and shall have assumed StadCo's obligations under this Agreement pursuant to an instrument reasonably satisfactory to City, then any termination notice will be deemed to have been withdrawn and all alleged defaults described therein waived or satisfied, and all rights of StadCo under this Agreement which may have been terminated or suspended by virtue of such notice or alleged defaults shall be reinstated in favor of such Recognized Secured Party;

(ii) The making or granting of a Security Interest shall not be deemed to constitute an assignment or transfer of this Agreement or the interest or rights hereby created, nor shall the Recognized Secured Party, as such, be deemed to be an assignee or transferee of this Agreement or of the rights hereby created (other than as collateral assignee), so as to require the Recognized Secured Party, as such, to assume the performance of any of the terms, covenants or conditions on the part of StadCo to be performed hereunder, unless the Recognized Secured Party shall acquire the interest or rights hereby created in any proceedings for the foreclosure of the Security Interest, by deed in lieu of foreclosure or any other lawful means;

(iii) Any Default Successor of the Security Interest pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings, any immediate or remote assignee of such Default Successor (which immediate or remote assignee shall for all purposes hereof be deemed to be a Default Successor), and any party to a New Agreement as described in paragraph (f) below, may, upon acquiring the rights under this Agreement, without the consent of City, sell and assign this Agreement and/or any or all rights hereunder to a further Default Successor and thereafter be relieved of all obligations under this Agreement, provided that such further Default Successor has delivered to City its written agreement to be bound by the terms and provisions of this Agreement. As used herein, "Default Successor" means a Recognized Secured Party or any other person or entity succeeding to the interest of StadCo at a foreclosure sale, an assignment or transfer in-lieu thereof or other proceedings.

(f) If this Agreement is terminated in whole or in part for any reason, including the rejection or disaffirmance of this Agreement in connection with a bankruptcy, insolvency or similar proceeding by or against StadCo, City shall promptly provide the Recognized Secured Party with written notice that this Agreement has been terminated (the "New Agreement Notice"), together with a statement of all sums that would at that time be due under this Agreement but for such termination, and of all other defaults, if any, then known to City. City agrees to enter into a new real property license agreement ("New Agreement") with respect to the Parking Parcel(s) with the Recognized Secured Party or its designee (which for all purposes hereof shall be deemed to be a Default Successor) for the remainder of the term of this Agreement, effective as of the date of termination, upon the same terms, covenants and conditions of this Agreement provided that:

(i) the Recognized Secured Party shall make a written request upon City for such New Agreement within thirty (30) days after the date that the Recognized Secured Party receives City's New Agreement Notice given pursuant to this paragraph (f);

(ii) the Recognized Secured Party or a Default Successor shall pay or cause to be paid to City, at the time of the execution and delivery of such New Agreement, any and all sums that would at the time of execution and delivery thereof be due pursuant to this Agreement but for such termination and, in addition thereto, all reasonable out-of-pocket expenses, including reasonable attorneys' fees, which City shall have incurred by reason of such termination and the execution and delivery of the New Agreement and that have not otherwise been received by City from StadCo or any other party in interest under StadCo. In the event of a controversy as to the amount to be paid to City pursuant to this clause (f)(ii), the payment obligation shall be satisfied if City is paid the amount not in controversy, and the Recognized Secured Party or such Default Successor agrees to pay any additional sum ultimately determined to be due. The parties shall cooperate to determine any disputed amount promptly in accordance with the terms of this Agreement;

(iii) concurrently with the execution and delivery of the New Agreement, the Recognized Secured Party or such Default Successor shall agree to remedy any of StadCo's defaults of which the Recognized Secured Party was notified by City's New Agreement Notice and that are reasonably capable of being so cured by the Recognized Secured Party or such Default Successor. If, commencing on the effective date of the New Agreement, the Recognized Secured Party or such Default Successor fails to cure all such defaults within the time periods required,

such failure shall constitute an event of default under the New Agreement and City shall have all rights and remedies with respect thereto provided in the New Agreement;

(iv) any New Agreement made pursuant to this paragraph (f) shall have the same priority with respect to any security interest or other liens or encumbrances on the Parking Parcel(s), or any part thereof, as this Agreement, and the Recognized Secured Party or such Default Successor shall have the same right, title and interest in and to the Parking Parcel(s) under such New Agreement as StadCo has under this Agreement as of the date of the New Agreement, provided the requirements of clauses (ii) and (iii) above with respect to defaults by StadCo and unpaid sums have been satisfied.

(g) Nothing herein contained shall require the Recognized Secured Party or a Default Successor as a condition to its exercise of rights hereunder to cure any default of StadCo which by its terms is not reasonably susceptible of being cured by the Recognized Secured Party or such Default Successor in order to comply with the provisions of paragraph (d) or (e) above, or as a condition of entering into the New Agreement provided for by paragraph (f). No default, the cure of which, and no obligation of StadCo, the performance of which, requires access to the Parking Parcel(s) shall be deemed reasonably susceptible of cure or performance by the Recognized Secured Party or a successor to StadCo's interest under this Agreement or a New Agreement without access to the Parking Parcel(s), provided that such holder is complying with the requirements described in clause (e)(i)(B) above or to otherwise legally and peaceably obtain access to the Parking Parcel(s) and upon obtaining access promptly proceeds to cure any such default then reasonably susceptible of cure by the Recognized Secured Party or such successor.

(h) Notices from City to the Recognized Secured Party shall be mailed to the address or addresses furnished to City pursuant to the first paragraph of this Exhibit, and notices from the Recognized Secured Party to City shall be mailed to the address or addresses designated pursuant to the provisions of Section 12 of the Agreement. Such notices, demands and requests shall be given in the manner described in Section 12 of the Agreement and shall in all respects be covered by the provisions of that Section.

(i) If this Agreement is rejected in connection with a bankruptcy proceeding by StadCo or a trustee in bankruptcy for StadCo, such rejection shall be deemed an assignment by StadCo to the Recognized Secured Party of all rights of StadCo under this Agreement and all of StadCo's interest under this Agreement, and this Agreement shall not terminate and the Recognized Secured Party shall have all rights and obligations of the Recognized Secured Party under this Exhibit as if such bankruptcy proceeding had not occurred, unless the Recognized Secured Party shall reject such deemed assignment by notice in writing to City within thirty (30) days following rejection of this Agreement by StadCo or StadCo's trustee in bankruptcy, unless the foregoing is prohibited by any applicable laws; the Recognized Secured Party shall reimburse City for all reasonable costs and expenses incurred by City directly in connection with such assignment. If any court of competent jurisdiction shall determine that this Agreement shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by StadCo or StadCo's trustee in bankruptcy in connection with any such proceeding, the rights of the Recognized Secured Party to a New Agreement from City pursuant to paragraph (f) above shall not be affected thereby, subject to any contrary determination by the bankruptcy court.

(j) Notwithstanding anything to the contrary set forth in this Exhibit, no Recognized Secured Party shall be liable under this Agreement unless and until such time as it becomes the owner of the applicable portion of StadCo's rights hereunder or StadCo's interests under this Agreement, and then only for such obligations of StadCo which accrue during the period while it remains the owner of such rights or interests; if a New Agreement in favor of the Recognized Secured Party is in place, the terms thereof shall prevail.

(k) City agrees to enter into such additional and further agreements as any Recognized Secured Party reasonably shall request to confirm and give effect to the rights of such Recognized Secured Party as provided in this Exhibit as long as such agreements do not increase the obligations of City or reduce the obligations of StadCo under this Agreement in any material respect.

(l) In the event that StadCo shall grant Security Interests to more than one Recognized Secured Party, then at the request of City, StadCo shall appoint one such Recognized Secured Party (selected by StadCo in its sole discretion) as agent for all of the Recognized Secured Parties and City shall satisfy its notice obligations under this Exhibit by providing notice to such agent. If more than one Recognized Secured Party shall seek to exercise the rights provided for in this Exhibit, the Recognized Secured Party with the most senior lien priority (or with the senior priority right established under an intercreditor agreement) shall be entitled, as against the others, to priority in the exercise of such rights.

**RECORD WITHOUT FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103**

RECORDING REQUESTED BY:

Office of the City Attorney
City Of Santa Clara, California

AND WHEN RECORDED MAIL TO:

Richard E. Nosky, City Attorney
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA

SPACE ABOVE FOR RECORDER'S USE

**CITY OF SANTA CLARA
PARKING RIGHTS AGREEMENT
(Stadium Authority)**

THIS CITY OF SANTA CLARA PARKING RIGHTS AGREEMENT (the "**Agreement**") is made and entered into as of _____, 2012 (the "**Effective Date**"), by and among The City of Santa Clara, a chartered California municipal corporation ("**City**") and Santa Clara Stadium Authority, a California joint powers authority ("**Authority**").

RECITALS

A. City, Authority, Forty Niners SC Stadium Company LLC ("**StadCo**") and Forty Niners Football Company LLC ("**Team**") are working cooperatively to develop a stadium (the "**Stadium**") on the south side of Tasman Drive at Centennial Boulevard, as more particularly described in Exhibit A attached hereto and incorporated herein (the "**Stadium Site**"). The Stadium Site is owned by City and will be leased to Authority pursuant to that certain Ground Lease (Stadium Site) dated as of _____, 2012 (the "**Ground Lease**"). The Stadium will be developed and owned by Authority during the term of the Ground Lease. For a portion of each year, Authority will lease the Stadium to StadCo, who will sublease the Stadium to Team for use as its home stadium for NFL games. In addition, StadCo and Team will use the Stadium for certain other uses related to NFL games, including promotional events and advertising, all pursuant to the terms of such lease from Authority to StadCo (the "**Stadium Lease**"). During the remainder of the year, Authority will operate the Stadium for its own account as a venue for events other than NFL games, including civic events, concerts and other athletic events (collectively, including NFL games and other NFL events, "**Stadium Events**").

B. Parking for Stadium Events will be provided by a combination of privately provided and public parking, including parking on certain parking lots, parking garages and other parking facilities located on land owned by City. City has previously granted an easement to Authority and StadCo for parking and related uses at one such City-owned parking lot (the "**Main Lot**"), which also serves as a parking lot for the Great America Theme Park and is the

subject of a separate agreement (the "**GA Parking Agreement**") among City, Authority, StadCo and Cedar Fair Southwest, Inc. (the "**GA Tenant**"), which agreement provides, among other things, for shared use of the Main Lot in a cooperative manner by GA Tenant, Authority and StadCo. In addition, in the Ground Lease, City has granted an easement to Authority, which easement is appurtenant to the leasehold interest conveyed by the Ground Lease, authorizing Authority's use of the Main Lot for parking and related uses pursuant to the terms of the GA Parking Agreement.

C. The parties to this Agreement have agreed to enter into this Agreement to document the grant to Authority of parking and related rights in and with respect to certain other City-owned parking facilities, as more particularly described herein, and to set forth the rights and obligations of the parties with respect thereto.

D. Assurance of adequate parking for NFL Events in the Stadium is of critical importance in furthering City's goals of creating an entertainment destination in the vicinity of the Stadium, and will provide significant economic benefits to the City and its residents and businesses.

NOW, THEREFORE, in consideration for the mutual covenants and promises of the parties contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. General Provisions.

1.1 Parking Rights Defined. For purposes of this Agreement, the term "**Parking Rights**" means, with respect to a specified Parking Parcel (as hereinafter defined): (a) the right to park motor vehicles (of any size, including buses and trucks) and non-motorized vehicles (including bicycles) on or in such Parking Parcel for a reasonable time before and after Non-NFL Events and Civic Events, together with (b) rights of access to such Parking Parcel, and between such Parking Parcel and the Stadium Site, including the right to install and maintain identifying and wayfinding signage (which may, if permitted under City regulations, include sponsorship attributes) and the right to install security stations, gates, fences or similar barriers in appropriate locations to limit and control public access to the Stadium, (c) the right to operate such Parking Parcel for a reasonable time before and after Non-NFL Events and Civic Events, including, but not limited to, the right to establish parking rates and collect revenues, (d) the right to promulgate rules and regulations regarding the use of parking, including, but not limited to, rules and regulations controlling the flow of traffic to and from various parking areas, the angle and direction of parking, the right to designate certain portions of a Parking Parcel as reserved for particular users or groups of users (including the right to establish different parking rates for unreserved and reserved parking), or to forbid parking by particular users or groups of users in specified locations, including the right to designate specific parking spaces for use by vehicles exhibiting handicap parking placards, and including the right (but not an obligation) to tow vehicles (subject to compliance with applicable laws) parked without permission in reserved parking areas or otherwise in violation of such rules and regulations, and (e) the right to make ancillary use of such Parking Parcel, including the right to sell advertising and use space within such Parking Parcel for promotional displays, and the right to conduct promotional activities and/or marketing events within such Parking Parcel, and including, without limitation, the right

to install temporary improvements, concession stands, kiosks, signage, advertising and other promotional uses; provided, however, that notwithstanding the foregoing, City and Authority agree that StadCo shall have the exclusive right to sell naming rights and sponsorship rights within the Parking Parcels in conjunction with all Stadium Events.

1.2 Stadium Events Defined. For purposes of this Agreement, the term "Stadium Events" means events sponsored or licensed by Authority or StadCo to occur within the Stadium, on the Stadium Site, or in the parking areas (including the Parking Parcels) in the vicinity of the Stadium Site, and includes NFL or other professional football games ("NFL Games"), other events or meetings relating to the promotion or operation of the NFL and of the Team (and if applicable, a second NFL franchise), including community relations, promotional and corporate partner private events such as open houses, fan appreciation events, fantasy camps, and other marketing events (collectively, including NFL Games, "NFL Events"), concerts and sporting events other than NFL Games ("Non-NFL Events"), and other events that are either conducted by City, or that are conducted by Authority at the request (or with the approval) of City that are neither NFL Events nor Non-NFL Events ("Civic Events").

2. Grant. City hereby grants to Authority a license for Parking Rights for Non-NFL Events and Civic Events (and other related rights as more particularly set forth below) during the Term hereof, at the times and with respect to the properties hereinafter specified (each, a "Parking Parcel," and collectively, "Parking Parcels"):

2.1 Tasman Drive Surface Lots.

(a) Particular Licenses Granted. With respect to the property commonly known as Assessor's Parcel Numbers 104-3-38 and 104-3-39, as more particularly described in Exhibit B (the "Surface Lots"), City hereby grants to Authority the following rights and licenses, subject to the provisions of subsection (c) below:

(1) A license for Parking Rights in connection with Non-NFL Events and Civic Events, including, but not limited to, a right to improve, maintain, repair, and operate the Surface Lots;

(2) A license consisting of the right to construct, install, repair, replace, reconstruct, reconfigure, maintain and use roads, driveways, sidewalks and pedestrian areas for vehicular (including truck) and pedestrian ingress and egress to and from the public streets;

(3) A license for the placement of light fixtures, landscaping, entry and exit gates, trash receptacles, bicycle storage facilities, temporary rest rooms and other improvements ancillary to the operation of the Surface Lots, together with a right of pedestrian and vehicular ingress, egress and access for inspection, maintenance, repair, alteration, reconstruction, replacement and use of such improvements.

(b) Capacity. City and Authority acknowledge that the estimated parking capacity of the Surface Lots is approximately 789 vehicles.

(c) Future Development. City reserves the right to offer the Surface Lots, or either of them, for sale or lease for development on the following conditions, and in connection therewith, City reserves the right, effective at the closing of such sale or lease transaction, to terminate or modify the licenses herein granted with respect to the Surface Lots, to the extent necessary to reflect the terms of the agreements described below:

(1) Any RFP or other document offering the Surface Lots, or either of them, for sale or lease shall indicate City's intent to require that to the extent any such development includes parking in excess of that reasonably required for the use of such development on Stadium event days, such parking shall be made available to Authority and/or StadCo for parking for Stadium Events at no charge.

(2) In the course of negotiating any binding agreements for the sale or lease of either or both of the Surface Lots, the proposed terms of such agreements related to Stadium event parking shall be submitted to, and shall be subject to the approval of, Authority and StadCo.

(3) City shall cooperate with Authority and StadCo to identify other City property in the area that could be used for Stadium Event parking. To the extent available, City agrees to provide CFD funds to cause such property to be put into condition to be used for parking. The City shall have no responsibility for any such costs, but shall make such property available to Authority and StadCo at no cost.

2.2 Stars and Stripes Lot.

(a) Particular Licenses Granted. With respect to the real property shown as Parcel 4 on that certain Map (the "**Stadium Tract Map**") entitled "Tract 10118 Being a Subdivision of that land south of Tasman Drive, west of the Southern Pacific Railroad Right of Way, and east of San Tomas Aquino Creek as shown on that certain Record of Survey filed for record on August 22, 1974 in Book 345 of Maps at Pages 1-8, a portion of that land as shown on that certain Map filed for record on October 22, 1888 in Book 'D' of Maps at Page 41, and a portion of that land described in that certain Grant Deed recorded August 6, 1971 at Book 9479, Page 108, Official Records, Santa Clara County Records, and lying within the City of Santa Clara, County of Santa Clara, State of California", which Map was recorded in the Official Records of Santa Clara County on _____, 2012, as Instrument __, at Book __, Page __ of Maps (the "**Stars and Stripes Lot**"), City hereby grants to Authority a license for Parking Rights in connection with Non-NFL Events and Civic Events, including, but not limited to, the right to improve, maintain, repair, and operate the Stars and Stripes Lot, subject to the limitations described in subsection (b) below.

(b) Capacity. City and Authority acknowledge that the estimated parking capacity of the Stars and Stripes Lot is approximately 189 spaces.

(c) Limitations. The rights granted in subsection (a) above are subject and subordinate to the terms and provisions of that certain "Cooperative Agreement for Construction and Maintenance of the Great Rail Station Improvements - Stars and Stripes Drive Extension and Parking Lot" dated July 24, 2001 between City and the SCVTA, as the same may

be amended from time to time with consent of Authority. The rights granted in subsection (a) above are also subject and subordinate to licenses for ingress and egress over and across the Stars and Stripes Lot to, from and between Stars and Stripes Drive and various other properties.

2.3 Tasman Drive Parking Garage.

(a) Particular Licenses Granted. With respect to the parking structure being constructed by City (City Project No. CE 10-11-11) (the "**Tasman Drive Garage**") on the real property commonly known as Assessor's Parcel _____ (as more particularly described in Exhibit C), City hereby grants to Authority a license for Parking Rights in connection with Non-NFL Events and Civic Events (including the right to exclusive use of the Tasman Drive Garage on days when Non-NFL Events and Civic Events are scheduled, subject to the limitations described in subsection (c) below):

(b) Capacity. City and Authority acknowledge that the estimated parking capacity of the Tasman Drive Garage is approximately 1,812 spaces.

(c) Limitations. The rights granted in subsection (a) above are subject and subordinate to the licenses and rights previously granted under the Hotel Ground Lease. City agrees not to amend the Hotel Ground Lease in any way that would affect the rights granted to Authority hereunder without Authority's written consent. Authority agrees that it may not make permanent alterations to the Tasman Drive Garage in connection with its use.

2.4 Convention Center/TechMart.

(a) Particular Licenses Granted. With respect to those certain properties commonly known as the Convention Center Garage and the TechMart, as more particularly described in Exhibit D, City hereby grants to Authority a non-exclusive license for Parking Rights in connection with Non-NFL Events and Civic Events, subject to the limitations described in subsection (c) below.

(b) Capacity. City and Authority acknowledge that the estimated parking capacity of the Convention Center garage, together with surface spaces at the Convention Center and at the TechMart is approximately 2,000 spaces.

(c) Limitations. The rights granted in subsection (a) above are subject and subordinate to the licenses and rights previously granted to the tenants of the Hyatt (approximately 500 spaces) and TechMart (approximately 1,081 spaces) ground leases. Specific location of the spaces is to be determined in consultation with the tenants under the Hyatt and TechMart Ground Leases. City agrees not to amend or expand any of such licenses or rights in any way that would affect the rights granted to Authority hereunder without Authority's written consent. Authority agrees that it may not make permanent alterations to the Convention Center Garage or the surface spaces at the Convention Center or the TechMart in connection with its use.

(d) Cooperation. Authority and StadCo will cooperate with the Convention Center to develop a mutually agreeable plan to encourage events at the Convention Center to be held in conjunction with NFL and Non-NFL Events and to identify sponsorship and

advertising opportunities for the Convention Center that do not conflict with that conflict with the rights, or the terms of contracts, that StadCo, the Team or any Second Team negotiates with its advertisers or sponsors.

2.5 Other Parking Facilities. From time to time, City and Authority may agree to designate additional property for parking for Non-NFL Events and Civic Events hereunder, and as to any such property may, by recording a notice or memorandum of such designation, cause such property to be subject to the terms and provisions of this agreement, together with such other or additional provisions as the parties may specify. Any such designation shall automatically constitute a grant of a license for Parking Rights to Authority with respect to the property so designated, subject to matters of record, the provisions hereof, and such additional limitations or provisions as may be specified in such notice or memorandum.

3. General. The licenses and rights granted to Authority hereunder are intended to be non-exclusive (except as may otherwise be specified herein), appurtenant to the Stadium Site and Authority's leasehold interest therein under the Ground Lease, and irrevocable during the Term hereof. This license, and the rights granted hereby, are intended to be binding on, and to benefit and burden City and Authority and their respective successors and assigns.

4. Responsibility for Operating Expenses. With respect to each Parking Parcel, incremental costs of operation (i.e., the amount by which operating costs, with respect to each Parking Parcel used by Authority for any Non-NFL Event or Civic Event, exceed amounts customarily incurred for operation of such Parking Parcel for public parking ("**Baseline Operating Costs**"), plus all costs of installing and removing temporary improvements, signage, advertising media, and the like in or on such Parking Parcel for such Non-NFL Event or Civic Event), including costs of cleanup of litter and graffiti following each such event, shall be borne by Authority on each occasion that Authority exercises the right to control parking at such Parking Parcel for a Non-NFL Event or Civic Event,. In addition, Authority shall be responsible for repairing any damage to the Parking Parcels and any improvements thereon, resulting from or reasonably attributable to use by Authority and its invitees. For purposes of the foregoing, Baseline Operating Costs includes amounts attributable to the amortization, depreciation or accumulation of reasonable reserves for the replacement of capital assets.

5. Term. This Agreement and the rights and license granted hereby shall be in effect for a term commencing on the Effective Date and continuing until the date sixty-five (65) years following the Effective Date. Notwithstanding the foregoing, however, this Agreement and the rights and license granted hereby shall be appurtenant to the leasehold interest of Authority in the Ground Lease, and shall expire concurrently therewith; *provided, however*, that (except as otherwise provided herein with respect to events occurring following exercise of the Stadium Authority Put Right, as defined in the Stadium Lease) if the Ground Lease terminates and thereafter a New Lease (as defined in the Ground Lease) is entered into with a Recognized Mortgagee (as defined in the Ground Lease) or its designee, then this Agreement shall not terminate, but Authority's interest herein shall be deemed automatically assigned to the tenant under said New Lease (and if such tenant requests, City agrees to execute a new Agreement with such tenant on all of the terms of this Agreement for a period equal to the remaining term of such New Lease or the balance of the original term of this Agreement, whichever is shorter. If, however, Authority exercises the Stadium Authority Put Right (as defined in the Stadium Lease),

and this Agreement is thereby deemed assigned to StadCo, then (a) the subsequent termination of the Ground Lease shall have no effect hereunder so long as the Stadium Lease remains in effect as between City and StadCo, and following exercise of the Stadium Authority Put Right, the provisions of Section 15 and Exhibit F hereto shall be deemed to benefit Mortgagees of StadCo (and the provisions of Exhibit F shall be interpreted as if each reference therein to Authority in fact applied to StadCo); and (b) if the Stadium Lease thereafter terminates and a New Lease (as defined in the Stadium Lease) is entered into, then the New Tenant (as defined in the Stadium Lease) shall be entitled to a new agreement on all of the terms hereof for the remainder of the Term hereof.

6. Consideration. Authority and City acknowledge that the Rent paid by Authority to City under the Ground Lease includes Performance Based Rent (as that term is defined in the Ground Lease), and that parking revenues collected by Authority from its operation of the Parking Parcels (excluding the Tasman Drive Garage) for Non-NFL and Civic Events are included in the calculation of Performance Based Rent. Except with respect to the Tasman Drive Garage, Authority shall not be required to pay additional compensation to City pursuant to this Agreement for its use of the Parking Parcels. In consideration of the rights and licenses hereby granted with respect to the Tasman Drive Garage, Authority agrees to pay to City with respect to each Lease Year (as defined in the Ground Lease), at the same time when Performance Base Rent, if any, for such Lease Year, would be due and payable under the Ground Lease, an amount equal to one-half of the Net Revenues (as hereinafter defined) generated with respect to its use and operation of the Tasman Drive Garage. For purposes of the foregoing:

6.1 **"Net Revenues"** attributable to Authority's use of the Tasman Drive Garage for any relevant period of time means Gross Receipts for such period, less Operations and Maintenance Expense for such period.

6.2 **"Gross Receipts"** attributable to Authority's use of the Tasman Drive Garage for any period means the total all revenues received by Authority during such period from the sale or licensing of rights to park motor vehicles in the Tasman Drive Garage in connection with Non-NFL Events or Civic Events. City acknowledges that pursuant to the Stadium Lease, StadCo has the right to issue complimentary parking passes to Owners' Club Licensees (as defined in the Stadium Lease) that will allow the holders thereof to park without additional charge during all Stadium Events, including Non-NFL Events and Civic Events, and that Authority will not receive any Gross Receipts if the holder of any such parking pass uses it to park in the Tasman Drive Garage.

6.3 **"Operations and Maintenance Expense"** attributable to Authority's use of the Tasman Drive Garage for any period means all expenses described in Section 4 above to the extent incurred in connection with Authority's use of the Tasman Garage for any Non-NFL Event or Civic Event.

7. Scheduling of Events, Priority. Beginning concurrently with the initial preparation by Authority and StadCo (or by the Stadium Manager on behalf of Authority and StadCo) of a schedule of Stadium Events, Authority shall deliver (or cause the Stadium Manager to deliver) a tentative schedule of the dates and times of those Non-NFL Events and Civic Events for which Authority wishes to exercise the Parking Rights granted herein. Authority will also be

responsible for negotiating the terms of any agreements it deems necessary or appropriate with those Persons specified in Sections 2.2(c), 2.3(c) and 2.4(c) above as having prior rights to make use of portions of one or another of the Parking Parcels, and for assuring that Authority's exercise of its rights to use the Parking Parcels hereunder will not unreasonably interfere with the rights of such Persons. Authority agrees that City will have no responsibility for conflicts in scheduling priority as between StadCo and Authority, and that any scheduling conflict as between StadCo and Authority will be resolved as between them as provided in the Stadium Lease or other agreements between Authority and StadCo. City acknowledges that on occasion Stadium Events may need to be rescheduled on short notice, e.g., to accommodate NFL "flexible schedule" requirements, and that both NFL Events and Non-NFL Events may need to be rescheduled as a consequence. City agrees that that Stadium Events for which Authority, StadCo or their respective agents have given notice hereunder will have priority over other uses of the Parking Parcels, including general public parking.

8. Permitted Encumbrances. The licenses and rights granted to Authority under this Agreement shall be subordinate only to those matters listed in Exhibit E (herein the "**Permitted Encumbrances**").

9. Assignments and Sublicenses. City and Authority agree that if Authority exercises the Stadium Authority Put Right (as defined in the Stadium Lease), pursuant to which StadCo will thereafter be responsible for conducting Non-NFL and Civic Events (as well as NFL Events) in the Stadium, then Authority's entire right, title and interest in this Agreement shall be deemed automatically assigned to StadCo. Subject to the foregoing, Authority may assign its rights hereunder to others, and may authorize others to exercise some or all of the Authority's rights granted hereunder, including but not limited to contractors, subcontractors and agents, any of Authority's tenants or subtenants and their invitees, provided that any such assignment or authorization shall, at StadCo's option, terminate upon transfer of this Agreement to StadCo pursuant to the first sentence of this Section. City agrees that if this Agreement is terminated, such termination will not affect rights conveyed by the Authority to third parties under this Section, and City will not terminate or otherwise disturb such rights, so long as one or more of such third parties assumes the obligations of the Authority under this Agreement.

10. Security Interests. Nothing in this Agreement shall be interpreted to prevent the Authority, its tenants or subtenants from granting liens or security interests in their rights hereunder.

11. Indemnification. Authority agrees to indemnify, defend, and hold harmless City and StadCo, and their respective officers, employees, contractors, agents, affiliates and mortgagees, from and against all claims and demands for loss or damage, including property damage, personal injury and wrongful death (collectively, "**Claims**") arising out of or in connection with Authority's use or occupancy of the Parking Parcels (including any Claims by persons having prior rights to use the Parking Parcels, as specified above, alleging interference by Authority with such prior rights), except in any instance to the extent such Claims arise out of the negligence or the willful act or omission of the indemnified party.

12. Insurance. Authority shall obtain and maintain, at all times following the Effective Date, commercial general liability insurance covering the use of the Parking Parcels

and the licenses and other rights (including, but not limited to, parking rights) granted herein, and naming City and StadCo, to the extent of their respective interests, as additional insureds thereunder. Any such commercial general liability insurance policy shall have a combined single limit of coverage of not less than \$2,000,000 for any one accident or occurrence. All such policies shall be issued by insurance companies licensed to do business in California, and certificates or other evidence of the existence of the insurance required hereby shall be given by Authority to City and StadCo upon request. The insurance to be maintained hereunder may be provided by a separate policy, or as part of a single policy also providing coverage required to be provided by Authority under the Ground Lease or the Stadium Lease.

13. No Dedication. Nothing contained in this Agreement, and no use of the licenses or rights granted herein shall be deemed to be, or to result in, any gift or dedication of any portion of the Parking Parcels to the general public or for any public purpose.

14. Default. In the event of a breach or threatened breach of any restriction or other provision of this Agreement, any party may prosecute any proceedings at law or in equity to enjoin such breach or threatened breach and, as the exclusive remedies for such breach or threatened breach, obtain an injunction or recover damages for any such breach; *provided* that no party shall be deemed to be in default under this Agreement until it has received written notice of such default and has failed to cure the same within thirty (30) days after receipt of such notice, or such longer period of time as may be reasonably necessary in order to cure the particular default, so long as such party commences the cure of such default within such thirty (30) day period and thereafter diligently prosecutes it to completion. Under no circumstances shall the default by any party with respect to the performance of any obligation hereunder result in the termination of this easement or the rights of any party hereunder, and the sole remedies of a party alleging a breach or default by another party shall be an action to recover damages or for an injunction or other equitable relief.

15. Mortgagee Protection. The breach of any restriction or other provision of this Agreement shall not defeat or render invalid or unenforceable the lien of any bona fide mortgage or deed of trust or other security instrument that secures a loan made by a bona fide lender (each, a "**Mortgagee**"), in good faith and for value, to any party to this Agreement. City agrees that each Mortgagee of the interest of StadCo shall be entitled to the protections set out in Exhibit F attached hereto.

16. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing and shall be personally delivered, sent by Federal Express or other reputable overnight courier service, with charges prepaid for next business day delivery, or mailed by first class, certified United States mail, postage prepaid, addressed to the parties hereto at their respective addresses listed in this Section, or such subsequent addresses as a party may have specified hereunder. Notices, demands or requests given in accordance with this Section 16 shall be deemed to have been properly given upon personal delivery, or on the third business day following deposit with the U.S. Postal Service, or on the next business day following deposit with such courier service. Any party shall have the right from time to time to change its address for notices, demands and requests, provided such new address shall be within the United States of America. As of the date hereof, the notice addresses of the parties are as follows:

If to City: City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Jennifer Sparacino, City Manager

with a copy to: City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Richard E. Nosky, Jr., City Attorney

If to Authority: Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Jennifer Sparacino, Executive Director

with a copy to: Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Richard E. Nosky, Jr., General Counsel

If to StadCo: Forty Niners SC Stadium Company, LLC
4949 Centennial Boulevard
Santa Clara, CA 95054
Attn: John Edward York, President

with copies to: Forty Niners SC Stadium Company, LLC
4949 Centennial Boulevard
Santa Clara, CA 95054
Attn: Larry MacNeil, CFO

and

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

17. Miscellaneous.

17.1 Modification. This Agreement shall not be amended, modified or terminated without the written agreement of City, Authority and its Mortgagees, and StadCo and its Mortgagees.

17.2 No Merger. The licenses and other rights created herein shall not be extinguished by merger should any one person or entity now or hereafter own more than one of the Parcels. City hereby declares that the reference to and description of licenses herein shall not be affected by a merger of estates, but shall constitute a special restriction as to the affected Property that runs with the land. If City transfers title to any Parcel to a third party such that all

of the Parcels are no longer under common ownership, the rights specified in this Agreement shall be deemed to constitute valid and binding easements wherein the Stadium Site is the dominant tenement and the Parking Parcels are the servient tenements,

17.3 Attorneys' Fees. If any party brings an action or proceeding for damages for an alleged breach of any provision of this Agreement, or to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs.

17.4 Relationship of Parties. Nothing in this Agreement shall be deemed or construed to create or establish any relationship of partnership, joint venture, agency, or any similar relationship between the parties.

17.5 Rights of StadCo. City and Authority acknowledge that StadCo is an intended third-party beneficiary of this Agreement, and City and Authority each agrees to give StadCo a copy of each notice given by either of them to the other pursuant to this Agreement.

17.6 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

17.7 Entire Agreement. The terms of this Agreement are intended by the parties as the final expression of their agreement with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement.

17.8 Interpretation. The headings of the sections and subsections of this Agreement are for convenience of reference only and shall not be used to interpret any term or provision hereof.

17.9 Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent allowed by law.

17.10 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

17.11 Exhibits. Exhibits A through F attached to this Agreement are hereby incorporated in this Agreement by this reference.

[Signatures on Following Page]

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below, effective as of the day and year first above written.

APPROVED AS TO FORM:

CITY:

RICHARD E. NOSKY
City Attorney

THE CITY OF SANTA CLARA, CALIFORNIA,
a California municipal corporation

By: _____
Name: JENNIFER SPARACINO
Its: City Manager

Attest:

RON DIRIDON, JR.
City Clerk

APPROVED AS TO FORM:

Authority:

RICHARD E. NOSKY
Stadium Authority Counsel

SANTA CLARA STADIUM AUTHORITY
a Joint Exercise of Powers Entity, created through
Government Code sections 6500 *et seq.*

By: _____
Name: JENNIFER SPARACINO
Its: Executive Director

Attest:

RON DIRIDON, JR.
Secretary

List of Exhibits:

- Exhibit A: Legal Description of Stadium Site
- Exhibit B: Legal Description of Surface Lots
- Exhibit C: Legal Description of Tasman Drive Garage
- Exhibit D: Legal Description of Convention Center / Techmart
- Exhibit E: Permitted Encumbrances
- Exhibit F: Mortgagee Protection Provisions

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EXHIBIT A
LEGAL DESCRIPTION OF STADIUM SITE

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EXHIBIT B
LEGAL DESCRIPTION OF SURFACE LOTS

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EXHIBIT C
LEGAL DESCRIPTION OF TASMAN DRIVE GARAGE

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EXHIBIT D
LEGAL DESCRIPTION OF CONVENTION CENTER/TECHMART

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EXHIBIT E
PERMITTED ENCUMBRANCES

EXHIBIT F
MORTGAGEE PROTECTION PROVISIONS

Notwithstanding anything contained in this Agreement to the contrary, Authority may grant any pledge, collateral assignment or other security interest or agreement to any person pursuant to which all or any portion of the rights created by this Agreement are encumbered, collaterally assigned or transferred as security for any bonds, notes, other evidences of indebtedness, credit facility or other financial obligation or guarantee of Authority (each such pledge, collateral assignment or other security interest or agreement, a "Security Interest"). With respect to each Security Interest of which City receives written notice including the name and address of the holder of such Security Interest (a "Recognized Secured Party"), City agrees that following receipt of such notice by City, and as long as such Security Interest remains unsatisfied of record or until written notice of satisfaction is given by the Recognized Secured Party thereunder to City, the following provisions shall apply:

(a) No termination, cancellation, surrender or modification of this Agreement by Authority, or waiver by Authority of any of the provisions of this Agreement or giving by Authority of any consent shall be effective as to the Recognized Secured Party unless consented to in writing by the Recognized Secured Party;

(b) The Recognized Secured Party shall have the right, but not the obligation, to perform any covenant or agreement under this Agreement to be performed by Authority (and City and Authority each agree the Recognized Secured Party may enter onto the Parking Parcels (or any part thereof) for purposes of effecting such performance), and City shall accept such performance by any Recognized Secured Party or at its direction as if such performance was made by Authority, including performance of covenants relating to payments of money.

(c) City shall, upon providing Authority with any notice of (i) default under this Agreement, (ii) a termination of this Agreement, or (iii) a matter on which City may predicate or claim a default, at the same time provide a copy of such notice to the Recognized Secured Party. City shall have no liability for the failure to give any such notice, except that no such notice by City to Authority shall be deemed to have been duly given to the Recognized Secured Party, or to be effective, unless and until a copy thereof has been so provided to the Recognized Secured Party. From and after the date such notice has been given to the Recognized Secured Party, the Recognized Secured Party shall have the right (but not the obligation) to cure Authority's defaults within thirty (30) days (the "Secured Party's Grace Period") following the later of (x) its receipt of City's notice with respect to such default and (y) the expiration of the grace period, if any, provided to Authority to cure such default, subject to extension of such Secured Party's Grace Period for the additional periods of time specified in subsections (d) and (e) of this Exhibit F. The effectiveness of any default by Authority shall be suspended for all purposes under this Agreement during the Secured Party's Grace Period.

(d) Notwithstanding anything contained in this Agreement to the contrary, City shall have no right to terminate this Agreement in any circumstance where termination would otherwise be allowed under this Agreement unless, following the expiration of the period of time given Authority to cure such default or the act or omission that gave rise to such default, City shall notify the Recognized Secured Party of City's intent to so terminate at least thirty (30) days in advance of

the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least ninety (90) days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money. The provisions of paragraph (e) below shall apply only if during such 30 or 90-day termination notice period, the Recognized Secured Party shall: (i) notify City of Recognized Secured Party's desire to nullify such notice; and (ii) pay or cause to be paid all amounts (A) then due hereunder and in arrears as specified in the termination notice to Recognized Secured Party and (B) any of the same that become due during such 30 or 90-day period as and when they become due; and (iii) comply, or with reasonable diligence commence in good faith to comply, with all non-monetary requirements of this Agreement then in default and reasonably susceptible of being complied with by the Recognized Secured Party.

(e) (i) If City shall elect to terminate this Agreement in any circumstance where termination otherwise would be allowed under this Agreement, and the Recognized Secured Party shall have proceeded in the manner provided for by paragraph (d) above, this Agreement shall not be terminated as long as the Recognized Secured Party shall: (A) pay or cause to be paid any monetary obligations of Authority under this Agreement as the same become due, and continue its good faith efforts to perform all of Authority's other obligations under this Agreement excepting (x) past non-monetary obligations then in default and not reasonably susceptible of being cured by Recognized Secured Party; and (B) if not enjoined or stayed, take reasonable steps to acquire or sell the interest of Authority subject to the Security Interest by foreclosure or any other appropriate and lawful means. Nothing contained in this clause (e)(i) shall be construed to extend this Agreement beyond the original term hereof, nor to require the Recognized Secured Party to continue such foreclosure or other appropriate proceedings after all defaults have been cured. If all defaults are cured and the Recognized Secured Party discontinues such foreclosure or other appropriate proceedings, this Agreement shall continue in full force and effect as if Authority had not defaulted under this Agreement. If a Recognized Secured Party shall obtain possession of all or a portion of Authority's interest in or rights under this Agreement by the initiation of foreclosure, power of sale or other enforcement proceeding under any Security Interest, or by obtaining an assignment thereof in lieu of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding (any of the foregoing being referred to as a "Security Interest Enforcement Proceeding"), and shall have assumed Authority's obligations under this Agreement pursuant to an instrument reasonably satisfactory to City, then any termination notice will be deemed to have been withdrawn and all alleged defaults described therein waived or satisfied, and all rights of Authority under this Agreement which may have been terminated or suspended by virtue of such notice or alleged defaults shall be reinstated in favor of such Recognized Secured Party;

(ii) The making or granting of a Security Interest shall not be deemed to constitute an assignment or transfer of this Agreement or the interest or rights hereby created, nor shall the Recognized Secured Party, as such, be deemed to be an assignee or transferee of this Agreement or of the rights hereby created (other than as collateral assignee), so as to require the Recognized Secured Party, as such, to assume the performance of any of the terms, covenants or conditions on the part of Authority to be performed hereunder, unless the Recognized Secured Party shall acquire the interest or rights hereby created in any proceedings for the foreclosure of the Security Interest, by deed in lieu of foreclosure or any other lawful means;

(iii) Any Default Successor of the Security Interest pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings, any immediate or remote assignee of such Default Successor (which immediate or remote assignee shall for all purposes hereof be deemed to be a Default Successor), and any party to a New Agreement as described in paragraph (f) below, may, upon acquiring the rights under this Agreement, without the consent of City, sell and assign this Agreement and/or any or all rights hereunder to a further Default Successor and thereafter be relieved of all obligations under this Agreement, provided that such further Default Successor has delivered to City its written agreement to be bound by the terms and provisions of this Agreement. As used herein, "Default Successor" means a Recognized Secured Party or any other person or entity succeeding to the interest of Authority at a foreclosure sale, an assignment or transfer in-lieu thereof or other proceedings.

(f) If this Agreement is terminated in whole or in part for any reason, including the rejection or disaffirmance of this Agreement in connection with a bankruptcy, insolvency or similar proceeding by or against Authority, City shall promptly provide the Recognized Secured Party with written notice that this Agreement has been terminated (the "New Agreement Notice"), together with a statement of all sums that would at that time be due under this Agreement but for such termination, and of all other defaults, if any, then known to City. City agrees to enter into a new real property license agreement ("New Agreement") with respect to the Parking Parcel(s) with the Recognized Secured Party or its designee (which for all purposes hereof shall be deemed to be a Default Successor) for the remainder of the term of this Agreement, effective as of the date of termination, upon the same terms, covenants and conditions of this Agreement provided that:

(i) the Recognized Secured Party shall make a written request upon City for such New Agreement within thirty (30) days after the date that the Recognized Secured Party receives City's New Agreement Notice given pursuant to this paragraph (f);

(ii) the Recognized Secured Party or a Default Successor shall pay or cause to be paid to City, at the time of the execution and delivery of such New Agreement, any and all sums that would at the time of execution and delivery thereof be due pursuant to this Agreement but for such termination and, in addition thereto, all reasonable out-of-pocket expenses, including reasonable attorneys' fees, which City shall have incurred by reason of such termination and the execution and delivery of the New Agreement and that have not otherwise been received by City from Authority or any other party in interest under Authority. In the event of a controversy as to the amount to be paid to City pursuant to this clause (f)(ii), the payment obligation shall be satisfied if City is paid the amount not in controversy, and the Recognized Secured Party or such Default Successor agrees to pay any additional sum ultimately determined to be due. The parties shall cooperate to determine any disputed amount promptly in accordance with the terms of this Agreement;

(iii) concurrently with the execution and delivery of the New Agreement, the Recognized Secured Party or such Default Successor shall agree to remedy any of Authority's defaults of which the Recognized Secured Party was notified by City's New Agreement Notice and that are reasonably capable of being so cured by the Recognized Secured Party or such Default Successor. If, commencing on the effective date of the New Agreement, the Recognized Secured Party or such Default Successor fails to cure all such defaults within the time periods required,

such failure shall constitute an event of default under the New Agreement and City shall have all rights and remedies with respect thereto provided in the New Agreement;

(iv) any New Agreement made pursuant to this paragraph (f) shall have the same priority with respect to any security interest or other liens or encumbrances on the Parking Parcel(s), or any part thereof, as this Agreement, and the Recognized Secured Party or such Default Successor shall have the same right, title and interest in and to the Parking Parcel(s) under such New Agreement as Authority has under this Agreement as of the date of the New Agreement, provided the requirements of clauses (ii) and (iii) above with respect to defaults by Authority and unpaid sums have been satisfied.

(g) Nothing herein contained shall require the Recognized Secured Party or a Default Successor as a condition to its exercise of rights hereunder to cure any default of Authority which by its terms is not reasonably susceptible of being cured by the Recognized Secured Party or such Default Successor in order to comply with the provisions of paragraph (d) or (e) above, or as a condition of entering into the New Agreement provided for by paragraph (f). No default, the cure of which, and no obligation of Authority, the performance of which, requires access to the Parking Parcel(s) shall be deemed reasonably susceptible of cure or performance by the Recognized Secured Party or a successor to Authority's interest under this Agreement or a New Agreement without access to the Parking Parcel(s), provided that such holder is complying with the requirements described in clause (e)(i)(B) above or to otherwise legally and peaceably obtain access to the Parking Parcel(s) and upon obtaining access promptly proceeds to cure any such default then reasonably susceptible of cure by the Recognized Secured Party or such successor.

(h) Notices from City to the Recognized Secured Party shall be mailed to the address or addresses furnished to City pursuant to the first paragraph of this Exhibit, and notices from the Recognized Secured Party to City shall be mailed to the address or addresses designated pursuant to the provisions of Section 12 of the Agreement. Such notices, demands and requests shall be given in the manner described in Section 12 of the Agreement and shall in all respects be covered by the provisions of that Section.

(i) If this Agreement is rejected in connection with a bankruptcy proceeding by Authority or a trustee in bankruptcy for Authority, such rejection shall be deemed an assignment by Authority to the Recognized Secured Party of all rights of Authority under this Agreement and all of Authority's interest under this Agreement, and this Agreement shall not terminate and the Recognized Secured Party shall have all rights and obligations of the Recognized Secured Party under this Exhibit as if such bankruptcy proceeding had not occurred, unless the Recognized Secured Party shall reject such deemed assignment by notice in writing to City within thirty (30) days following rejection of this Agreement by Authority or Authority's trustee in bankruptcy, unless the foregoing is prohibited by any applicable laws; the Recognized Secured Party shall reimburse City for all reasonable costs and expenses incurred by City directly in connection with such assignment. If any court of competent jurisdiction shall determine that this Agreement shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Authority or Authority's trustee in bankruptcy in connection with any such proceeding, the rights of the Recognized Secured Party to a New Agreement from City pursuant to paragraph (f) above shall not be affected thereby, subject to any contrary determination by the bankruptcy court.

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(j) Notwithstanding anything to the contrary set forth in this Exhibit, no Recognized Secured Party shall be liable under this Agreement unless and until such time as it becomes the owner of the applicable portion of Authority's rights hereunder or Authority's interests under this Agreement, and then only for such obligations of Authority which accrue during the period while it remains the owner of such rights or interests; if a New Agreement in favor of the Recognized Secured Party is in place, the terms thereof shall prevail.

(k) City agrees to enter into such additional and further agreements as any Recognized Secured Party reasonably shall request to confirm and give effect to the rights of such Recognized Secured Party as provided in this Exhibit as long as such agreements do not increase the obligations of City or reduce the obligations of Authority under this Agreement in any material respect.

(l) In the event that Authority shall grant Security Interests to more than one Recognized Secured Party, then at the request of City, Authority shall appoint one such Recognized Secured Party (selected by Authority in its sole discretion) as agent for all of the Recognized Secured Parties and City shall satisfy its notice obligations under this Exhibit by providing notice to such agent. If more than one Recognized Secured Party shall seek to exercise the rights provided for in this Exhibit, the Recognized Secured Party with the most senior lien priority (or with the senior priority right established under an intercreditor agreement) shall be entitled, as against the others, to priority in the exercise of such rights.