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C. NORMAN HOLLEMAN
REGISTER OF DEEDS
BY E. NAVARRO
DPTY

BK: RE 2913

PG: 2197-2225

Prepared by/Return to:

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3737 Glenwood Avenue, Suite 400
Raleigh, North Carolina 27612

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STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

TRI-PARTY AGREEMENT

THIS TRI-PARTY AGREEMENT (this "Agreement") is made this ^{21st} day of September, 2009 (the "Effective Date"), by Sports Menagerie Corp, a Delaware corporation ("Menagerie"), Sports Menagerie, LLC, a Delaware limited liability company ("Menagerie Franchise"), and Sports Menagerie Stadium LLC, a North Carolina limited liability company ("Menagerie Stadium") (Menagerie, Menagerie Franchise and Menagerie Stadium, each a "Borrower" and collectively, "Borrowers"), with an address of 926 Brookstown Avenue, Winston-Salem, North Carolina 27101, and Brookstown Development Partners, LLC, a North Carolina limited liability company ("Brookstown" and with Borrowers, each a "Loan Party" and collectively, the "Loan Parties"), with an address of 104 Cambridge Plaza Drive, Winston-Salem, North Carolina 27104; The City of Winston-Salem (the "City"), which City has an address of City Hall, 100 North Main Street, Winston-Salem, North Carolina 27101; and Bank of America, N.A., a national banking association, as Administrative Agent on behalf of itself as a Lender and the other Lenders (as "Administrative Agent", "Lender" and "Lenders" are defined in the Loan Agreement described below) (together with its successors and assigns, "Agent"), which Agent has an address of 380 Knollwood Street, NC4-512-02-08, Suite 201, Winston-Salem, North Carolina 27103-1834.

WITNESSETH:

THAT WHEREAS, contemporaneously with the making of this Agreement, Brookstown is transferring to the City, and the City is or will be the fee simple owner of, that tract of land located in the City of Winston-Salem, County of Forsyth and State of North Carolina described on **Exhibit A** attached hereto and incorporated herein by reference (the "Land"), together with all buildings, structures, improvements and appurtenances now located or to be constructed upon the Land (the "Improvements" and with Land, collectively, the "Property");

WHEREAS, the City, as landlord, and Brookstown, as tenant, are parties to that Ground Lease Agreement dated of even date herewith, (the "Prime Land Lease"), a memorandum of which has been recorded in Book 2913, Page 2024, in the Office of the Forsyth County Register of Deeds, wherein the City leases to Brookstown, and Brookstown leases from the City, the Land;

WHEREAS, the City, as landlord, and Menagerie Stadium, as tenant, are parties to that Ground Lease Agreement dated of even date herewith (the "Prime Improvements Lease") (the Prime Land Lease and Prime Improvements Lease are each a "Prime Lease" and collectively the "Prime Leases"), a memorandum of which has been recorded in Book 2913, Page 2096, in the Office of the Forsyth County Register of Deeds, wherein the City leases to Menagerie Stadium, and Menagerie Stadium leases from the City, the Improvements;

WHEREAS, Brookstown has ground subleased the Land to Menagerie Stadium, by Ground Sublease Agreement dated of even date herewith, between Brookstown and Menagerie Stadium, a memorandum of which has been recorded in Book 2913, Page 2080, in the Office of the Forsyth County Register of Deeds (the "Ground Sublease");

WHEREAS, Menagerie Stadium has further ground subleased the Property to Menagerie Franchise, by Ground Sublease Agreement dated of even date herewith, between Menagerie Stadium and Menagerie Franchise, a memorandum of which has been recorded in Book 2913, Page 2093, in the Office of the Forsyth County Register of Deeds (the "Ground Sub-Sublease" and with the Prime Land Lease, the Prime Improvements Lease and the Ground Sublease, each a "Ground Lease" and when more than one, collectively, the "Ground Leases");

WHEREAS, Brookstown has entered into a parking lease with Menagerie Franchise by Lease Agreement dated of even date herewith (the "Parking Lease"), covering certain real property owned by Brookstown and more particularly described in the Parking Lease (the "Parking Areas");

WHEREAS, as partial security for the Loan (as defined below), Menagerie Franchise has encumbered for the benefit of Lenders all of its rights, title and interest in and to the Parking Lease pursuant to that Assignment of Parking Lease dated of even date herewith (the "Assignment of Parking Lease");

WHEREAS, Lenders have made a loan to Borrowers, in the aggregate amount of up to Fifteen Million and No/100 Dollars (\$15,000,000.00) (the "Loan"), evidenced from time to time by one or more Promissory Notes in the aggregate amount of the Loan and dated of even date herewith (collectively, the "Notes"), which Loan is described in and governed by that certain

Credit Agreement dated of even date herewith between Borrowers, Agent and Lenders party thereto from time to time (the "Loan Agreement");

WHEREAS, as partial security for the Loan, Brookstown, Menagerie Stadium and Menagerie Franchise have each encumbered all of their respective right, title and interest in and to the Ground Leases in favor of Lenders, pursuant to those three (3) Deeds of Trust, Assignment, Security Agreement and Fixture Filing, each of even date herewith (each "Deed of Trust" and collectively the "Deeds of Trust") (the Notes, the Loan Agreement, the Assignment of Parking Lease, the Deeds of Trust, and all other documents, guaranties, indemnities, instruments, financing statements and agreements evidencing, guarantying or securing the Loan are herein referred to as the "Loan Documents");

WHEREAS, the proceeds of the Loan are to be used by Menagerie Stadium to complete the construction of the Improvements on the Land as more particularly described in the Loan Agreement;

WHEREAS, the City and Brookstown, Menagerie, Menagerie Stadium, and Menagerie Franchise are parties to that Amended and Restated Incentives Agreement dated September 21, 2009 (the "Incentives Agreement");

WHEREAS, contemporaneously with the making of the Incentives Agreement, the City and Brookstown, Menagerie, Menagerie Stadium, and Menagerie Franchise are entering into that Stadium Infrastructure Improvements Agreement (the "Improvements Agreement" and with the Incentives Agreement collectively, the "City Agreements");

WHEREAS, on or before the Effective Date of this Agreement, and in conjunction with the Incentives Agreement the City (i) has funded Eight Million and No/100 Dollars (\$8,000,000.00) to Brookstown, contemporaneously with the transfer of the Property from Brookstown to the City, and (ii) has funded Six Million Seven Hundred Thousand and No/100 Dollars (\$6,700,000.00) for certain hard construction costs associated with the Improvements (the "City Funding");

WHEREAS, the respective obligations of Brookstown and Menagerie Stadium (and any other Loan Party) to the City to repay the City Funding is intended to be repaid to the City in the form of base rent, additional rent, and any other payment obligations due and payable under, and as described in, the Prime Land Lease and the Prime Improvements Lease (collectively, "Rent");

WHEREAS, the City agrees that the payment of Rent to the City shall be and is subordinate in all respects to the payments due under the Loan to Lenders;

WHEREAS, the Prime Land Lease and Prime Improvements Lease provide Agent and Lenders with various rights and privileges in the event that Lenders either (i) foreclosure their interest under the Deed of Trust from Brookstown and/or Menagerie Stadium, as applicable, or (ii) accept a new lease to replace the Prime Land Lease and/or Prime Improvements Lease in the event of a termination of the Prime Land Lease and/or Prime Improvements Lease; and

WHEREAS, the City wishes to see the Loan made and the Improvements completed.

NOW, THEREFORE, for the mutual promises contained herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Agent (on behalf of itself as Administrative Agent and Lender and on behalf of all Lenders), the Loan Parties and the City, intending to be fully bound, hereby agree and warrant as follows:

1. **Recitals; Defined Terms.** The recitals set out above are an integral part of this Agreement and are fully incorporated herein by reference. Capitalized terms not otherwise defined herein shall have the meaning set out in the Loan Agreement (as the same may be amended from time to time).

2. **Acknowledgements and Agreements as to Loan .**

(A) **Notice.** Agent agrees that it shall provide the City, at the address set forth in the preamble, with a copy of any notice of Default provided to any Loan Party under the Loan Documents. The failure of Agent to provide such notice; however, shall not adversely effect the rights of Agent or Lenders under the Loan Documents in any way, nor shall it be a defense of such Loan Party as to such Default.

(B) **Opportunity to Cure.** Agent will allow the City (but the City will not have any obligation) to cure any Default occurring under the Loan, provided such cure is effected within the time periods, if any, provided in the Loan Documents allowing the Loan Parties to cure such Default.

(C) **Notice of Loan Assignment or Amendment.** Agent will provide the City with written notice in the event either (i) there is a new Agent under the Loan, or (ii) all Lenders' interest under the Loan are assigned. It is understood that the Lenders shall be free to assign interests in the Loan from time to time without notice to the City, provided that the assignment shall be expressly subject to the terms of this Agreement and the assignee's acceptance of the assignment shall constitute its assumption of the Lenders' obligations under this Agreement. Agent shall provide the City with written notice following the assignment or transfer of interest of the Loan, referencing the identify of the assignee and notice address of such assignee.

(D) **Cross Default.** The parties acknowledge that the occurrence of a Default as defined in the Ground Leases, (herein a "Lease Default") by one or more Loan Parties under a Ground Lease beyond any grace or cure period provided under that Ground Lease shall constitute an Event of Default under the Loan, unless such Lease Default is waived in writing by the City, as landlord, prior to the expiration of the applicable grace or cure period and a copy of such waiver is delivered to Agent. Notwithstanding the preceding sentence, Agent agrees that in the event the City agrees in writing prior to the expiration of any grace or cure period provided under the Ground Lease to extend the applicable Loan Party's opportunity to cure such Lease Default under a written forbearance agreement or similar instrument, and a copy of such forbearance agreement or similar instrument is delivered to Agent prior to the expiration of the grace or cure period provided under the Ground Lease, Agent and Lenders agree to likewise forbear in the exercise of remedies under the Loan Documents (for the Event of Default under the Loan Documents occurring by reason of the Lease Default, but not for any other Event(s) of Default that may be occurring under the Loan Documents) during the period of forbearance under the Ground Lease while such tenant is in compliance with the terms of the forbearance.

The City agrees that it shall immediately provide Agent notice of the expiration or termination of any such forbearance agreement, or a Lease Default by the applicable tenant under any such forbearance agreement.

(E) Agreement to Make Loan Information Available for City Review. Within ten (10) days following City's written request, Agent shall provide City with a reasonable opportunity to review information, at Agent's office, regarding the status of the Loan, including the current amount of the Loan outstanding, the status of certain collateral for the Loan (e.g. the balance of collateral accounts), copies of any amendments to the Loan Documents, information regarding changes in guarantors or other information reasonably requested by City in its evaluation of the Loan from the perspective of a prospective purchaser thereof. The City will not remove such Loan material from Agent's office, nor shall it make copies of such material. Provided that there is no existing Default under the Loan or Lease Default under the Ground Leases, City will not request the review of such information more frequently than once in any nine (9) month period. The Loan Parties expressly agree that Agent and Lenders may disclose to City the information referenced in this paragraph, including information Agent or Lenders now have or hereafter obtain pertaining to the Loan Documents, or any Loan Party or guarantor, including information regarding any security for the Loan or for any guaranty. The City agrees that it will comply with Section 10.07 of the Loan Agreement.

(F) Notice of Transfer Event. Agent shall provide City not less than thirty (30) days prior written notice of any Loan Default Transfer (defined below).

3. Loan Parties' Agreements and Acknowledgements as to Ground Leases; City's Non-Exclusive Right to Purchase Loan. Brookstown, Menagerie Stadium and Menagerie Franchise hereby agree, represent, covenant and warrant for the benefit of Agent, Lenders and the City, and their respective successors and assigns, as follows (provided, that as to agreements, representations, covenants and warranties relating to a Ground Lease, the agreements, representations, covenants and warranties extend only the Ground Leases(s) in which such entity is a party) :

(A) Status of Ground Leases. Brookstown, Menagerie Stadium and Menagerie Franchise covenant for the benefit of Agent, Lenders and the City that (a) the Ground Leases are in full force and effect and have not been amended or modified to the date of this Agreement; (b) all Rent under the Ground Leases and any other consideration for the use and occupancy of the Property that is due and payable has been paid to and including the date hereof; (c) No Rent has been paid more than one month in advance under any Ground Lease; (d) all obligations of Brookstown, Menagerie Stadium, and Menagerie Franchise under their applicable Ground Lease to have been performed to and including the date of this Agreement have been performed in accordance with the terms and conditions set forth in the applicable Ground Lease.

(B) No Default; No Changes to Ground Leases. Brookstown, Menagerie Stadium and Menagerie Franchise will not cause an event of Lease Default under any Ground Lease.

(C) Notice to be Provided City. The Loan Parties agree for the benefit of City, Agent and Lenders to immediately furnish City and Agent with a copy of any notice (including a

notice of default) received from any party under any Ground Lease (in the case of a notice from the City, the Loan Parties do not need to provide such notice to the City).

(D) City's Right to Purchase Loan; Lender Assigns; Disclosure of Information. The Loan Documents are for the benefit of Agent, Lenders and their respective successors and assigns. The City has the non-exclusive right to purchase the Loan, in whole but not in part, without recourse to Agent or any Lender, at any time prior to the satisfaction of the Loan. The purchase price for the Loan shall be one hundred percent (100%) of the then-existing principal balance of the Loan plus all accrued and unpaid interest (including any default rate of interest if applicable). In the event of such purchase, the Loan Documents and all other rights of the Lenders thereunder, together with any then-existing collateral or security interests shall be transferred to the City, including, without limitation, all remaining rights and benefits of Lenders under any guaranty or any remaining collateral securing the obligations of the Loan Parties under the Loan Documents. The Loan Parties waive notice of any transfer or assignment of the Loan to the City. The Loan Parties shall execute, and shall cause all guarantors to execute, acknowledge and deliver any and all instruments reasonably requested by the City in connection therewith, and to the extent, if any, specified in any such assignment or conveyance the City shall have the same rights and benefits with respect to the Loan Documents and collateral or other undertakings securing the performance of the Loan as it would have if it were Lender. The Loan Parties agree that Agent may disclose to City, any information Agent or Lenders now have or hereafter obtain pertaining to the Loan Documents, or any Loan Party or guarantor, including information regarding any security for the Loan or for any guaranty, and/or credit or other information on any Loan Party, guarantor and/or any other person liable, directly or indirectly, for any part of the Loan obligations.

(E) Notices Pertaining to the Loan. The Loan Parties shall provide City with no less than ten (10) days prior written notice of any proposed modification of a Loan Document, substitution of a guarantor, or refinancing of the Loan, together with copies of all documents related to the same.

(F) No Acquisition by Eminent Domain. The Land being conveyed by Brookstown to the City was not acquired by Brookstown in conjunction with an eminent domain taking procedure

4. The City's Acknowledgments and Agreements as to the Ground Leases.

(A) Acknowledgments as to the Decds of Trust. The City hereby acknowledges for the benefit of Agent and Lenders that the Deeds of Trust executed and delivered by Brookstown, Menagerie Stadium and Menagerie Franchise for the benefit of Lenders are expressly permitted under the terms of the Ground Leases and do not constitute a default under any of the Ground Leases.

(B) Status of Lease. The City covenants for the benefit of Agent and Lenders (and not the Loan Parties) that as of the Effective Date (a) the Prime Leases are each in full force and effect and have not been amended or modified to the date of this Agreement; (b) all Rent under the Prime Leases and any other consideration for the use and occupancy of the Property that is due and payable has been paid to and including the date of this Agreement; (c) the City

has not received any advance Rent under either Prime Lease; (d) all obligations of the City, as landlord, under the Prime Leases to have been performed to and including the date of this Agreement have been performed in accordance with the terms and conditions set forth therein and the City is not in default of any of its obligations under the Prime Leases; and, (e) to its knowledge, no default by Brookstown under the Prime Land Lease or Menagerie Stadium under the Prime Improvements Lease has occurred and is continuing and, to its knowledge, no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default under the applicable Prime Lease.

(C) Notices to be Provided Lenders. The City hereby agrees for the benefit of Agent and Lenders to furnish to Agent written notice of Lease Default under the Prime Land Lease or Prime Improvements Lease, and a copy of any other notice provided to Brookstown or Menagerie Stadium by the City under the applicable Prime Lease. No notice under the Prime Land Lease by the City to Brookstown, or under the Prime Improvements Lease by the City to Menagerie Stadium, shall be deemed effective until delivered to Agent.

(D) Lenders' Right to Cure Defaults under the Prime Leases. The City hereby agrees for the benefit of Agent and Lenders that they shall be given an opportunity to cure any Lease Default of the applicable tenant under the Prime Leases; provided such cure is effected within the time periods, if any, provided in the applicable Prime Lease allowing the tenant thereunder to cure such default (including any applicable extensions or forbearance granted to the applicable tenant).

(E) Foreclosure; Non-disturbance. The foreclosure of the interest of Brookstown and/or Menagerie Stadium in one or both of the Prime Leases pursuant to the Deeds of Trust, or the conveyance of Brookstown's and/or Menagerie Stadium's interest therein in lieu of foreclosure (or any similar action) shall not require the consent of the City nor constitute any default under either Prime Lease, and upon such foreclosure, conveyance in lieu of foreclosure, or similar proceeding, the City shall recognize Agent (or its assignee or nominee, or any foreclosure sale purchaser) as "Tenant" under the Lease. If Agent or such assignee, nominee or purchaser, becomes tenant under one or both Prime Lease, Agent or such assignee, nominee or purchaser, shall be liable for the obligations of the tenant under the Prime Lease only for the period of time that Agent, such assignee, nominee or purchaser is the tenant under the Prime Lease. The City agrees that so long as Agent is not in default of its obligations after succeeding to the interests of Brookstown and/or Menagerie Stadium under the Prime Lease(s), as applicable, such Prime Lease shall remain in full force and effect (subject to the modifications described herein), and Agent's possession and its rights and privileges under such Prime Lease will not be diminished or interfered with and its occupancy and rights to use the Property will not be disturbed.

(F) Lenders' Protection Clause Under Prime Leases. Section 16 of the Prime Land Lease, and Section 21 of the Prime Improvements Lease, contain certain mortgagee protection provisions, including certain provisions specific to Agent and its assigns, that are hereby incorporated into this Agreement by reference. In the event of a conflict between the terms of Section 16 of the Prime Land Lease or Section 21 of the Prime Improvements Lease and this Agreement, the terms of this Agreement shall control.

(i) The City agrees that Agent shall enjoy all of the rights and privileges described in Section 16 of the Prime Land Lease and Section 21 of the Prime Improvements Lease. Agent and Lenders are third-party beneficiaries under the terms of Section 16 of the Prime Land Lease and Section 21 of the Prime Improvements Lease and such provisions are enforceable as against the City by Agent and Lenders. The City agrees that Agent and Lenders shall have the right, without further consent of the City, to assign the Loan, and upon such assignment of the Lenders' interest in full, or the replacement of the Agent under the Loan Agreement, any assignee shall be considered Agent and Lenders hereunder, provided any such assignee shall be bound by the terms of this Agreement.

(ii) The City agrees that in the event of a foreclosure, deed in lieu of foreclosure, or other similar transfer event following an Event of Default under the Loan (a "Loan Default Transfer"), then the terms of the Prime Leases shall each automatically, and without need for amendment, adjust to the Transfer Terms described in Section 4(F)(iv) below. Notwithstanding the foregoing, at the request of either the City or Agent, the parties shall enter into an agreement acknowledging the manner in which the Prime Leases have been modified in a self-operative manner to be consistent with the Transfer Terms. In the event of a Loan Default Transfer, Agent shall not be required to cure any then-existing tenant defaults under the Prime Leases, including any payment defaults. It is understood that the rights granted Agent relating to a Loan Default Transfer, and the amendments to the Prime Leases in the event of such Loan Default Transfer, shall also fully extend to any purchaser at foreclosure sale or like transfer or any assignee of the rights of Agent under this Section 4(F)(ii).

(iii) In the event of the termination of either Prime Lease prior to the scheduled expiration of the applicable Prime Lease Term of such Prime Lease (the "Term") and while the Loan remains outstanding, whether by summary proceedings to dispossess, service of notice to terminate, or otherwise, due to default of Brookstown under the Prime Land Lease or Menagerie Stadium under the Prime Improvements Lease, as applicable, or for any other reason, including without limitation a rejection of either Prime Lease in any bankruptcy or other similar proceeding, the City shall serve upon Agent written notice that the applicable Prime Lease has been terminated. Such Agent shall thereupon have the option (the "Lender Option") to obtain a new or direct lease with the City upon the Transfer Terms described in Section 4(F)(iv) below. To exercise the Lender Option, Agent must, within sixty (60) days after the service by the City of the notice and statement required to be given under this Section 4(F)(iii), give notice to the City of its intention to exercise the Lender Option. Agent shall have the right, but not the obligation, to exclusive possession of the Property during this sixty (60) day option period. In the event of the exercise of the Lender Option, Agent shall not be required to cure any then-existing tenant defaults under the Prime Leases (with the single exception of the obligation of the tenant to pay ad valorem taxes), including any payment defaults.

(iv) In the event of either a Loan Default Transfer as described in Section 4(F)(ii) above, or in the event Agent exercises the Lender Option described in Section 4(F)(iii) above, the terms of the Prime Leases shall be adjusted as follows (the "Transfer Terms"):

(a) Rent under each Prime Lease shall be adjusted to One Dollar (\$1.00) per year throughout the Prime Lease's Term (as defined in the Prime Leases)

(including any extensions) payable on or before January 5 of each year. No other rent (including any additional rent, Nominal Rent (as defined in the Prime Improvements Lease), Overage Rent (as defined in the Prime Improvements Lease)) shall be due and Section 4 of the Prime Land Lease and Section 5 of the Prime Improvements Lease shall be deleted in their entirety. Agent shall have the right, but not the obligation, to pre-pay this Base Rent for all or any portion of the Term. The foregoing notwithstanding, the tenant (whether Agent or its transferee) shall remain obligated for the payment of taxes, utilities and other operational costs associated with the property under the Prime Leases.

(b) The initial Term of each Prime Lease shall adjust such that the Expiration Date (as defined in the Prime Leases) shall thereafter be the twenty-five (25) year anniversary of the Loan Default Transfer or exercise of the Lender Option (as applicable). In lieu of any rights of extension or renewal contained in the Prime Leases, Agent shall instead have two (2) extension options of twenty-five (25) years each and a third (3rd) extension option of twenty-four (24) years (for a maximum total Term, including all extensions of ninety-nine [99] years). The exercise of such extension options shall be self-operative, and deemed automatically exercised, unless Agent sends thirty (30) days prior written notice to the City that it does not intend to exercise the next available option.

(c) Notwithstanding anything contained in the Prime Leases to the contrary, including Section 10 of the Prime Land Lease or Section 12 of the Prime Improvements Lease, Agent shall have the right, without any further consent of the City, to make any alterations or changes to the Improvements Agent deems fit in its sole discretion, including demolition of the improvements and re-construction of alternative improvements. Agent will provide the City with sixty (60) days prior written notice of its intention to make Material Alterations to the Improvements. For the purposes hereof, "Material Alterations" shall mean alterations, changes, renovation, demolition, additions to Improvements, and construction of new Improvements where such activity (i) materially and adversely affects the use of the Property as an athletics stadium; or (ii) costs in excess of Three Million and No/100 Dollars (\$3,000,000.00).

(d) Notwithstanding anything contained in the Prime Leases to the contrary, including Section 15 of the Prime Land Lease or Section 20 of the Prime Improvements Lease, Agent shall have the right, without any further consent of the City, to enter into a sublease or subleases upon "arms length" terms at any time and from time to time. Agent will provide the City with thirty (30) days prior written notice of an intended sublease of all or any portion of the Property. Such notice shall include the material terms of the proposed sublease, including the identity of the proposed subtenant, the length of term, and the principal financial terms of the agreement. The City agrees that in the event of a termination or early expiration of one or both Prime Leases, including by reason of the exercise of the Buy Out Right defined below, the City agrees that, provided that the City received no less than thirty (30) days prior written notice before the sublease was executed, and further provided that the sublease is entered into prior to the City's exercise of the Buy Out Right, then the City shall take assignment of all subleases honor same, and such subleases shall continue in full force and effect and become a direct lease as between the City and such subtenant. Likewise, any subtenant, by its entry into the sublease, shall be deemed to acknowledge and consent to the City's Buy Out Right and shall attorn to the City if the City takes assignment of the sublease. Upon the request of Agent, the City agrees to execute such non-disturbance agreements or other similar agreements

for the benefit of any such subtenant, acknowledging the terms of this paragraph. Any attempted assignment or sublease either: (i) prior to the City's receipt of thirty (30) days prior written notice in accordance with this Paragraph; or (ii) following the City's exercise of its Buy Out Right; shall be void and shall not be binding upon the City.

(e) Notwithstanding anything contained in the Prime Leases to the contrary, including Section 15 of the Prime Land Lease or Section 20 of the Prime Improvements Lease, Agent shall have the right, without any further consent of the City, to assign its rights under either or both Prime Leases, in whole or in part, at any time and from time to time to a third party on an "arms length" basis. Agent will provide the City with thirty (30) days prior written notice of an intended assignment of a Prime Lease. Upon the request of Agent, the City agrees to execute such non-disturbance agreements or other similar agreements for the benefit of any such assignee, acknowledging the terms of this paragraph.

(f) Notwithstanding anything contained in the Prime Leases to the contrary, in the event of a casualty, Agent shall have full right and control over insurance proceeds; provided, however, that in the event the City exercises its Buy Out Right described below following a casualty and before use of proceeds for reconstruction, such right to then-undisbursed insurance proceeds shall be assigned to the City. Likewise, to the extent that insurance proceeds are not applied toward the reconstruction of the Improvements and not assigned to the City, but rather are received and retained by Agent and applied toward the balance of the Loan, then the City shall receive a credit toward the Buy Out Consideration in the amount of such proceeds actually received and retained by Agent.

(g) The following Sections of the Prime Land Lease shall no longer apply to the Prime Land Lease and shall be deleted:

- (i) Section 2 (Term), revised to reflect the terms of this Section 4(F);
- (ii) Section 3(b) (Rent Commencement), revised to reflect the terms of this Section 4(F);
- (iii) Section 4 (Rent), revised to reflect the terms of this Section 4(F);
- (iv) Section 5 (Permitted Use);
- (v) Section 10 (Alterations and Improvements);
- (vi) Section 15 (Assignment and Subletting);
- (vii) Section 17(b)(ii)(3), Section 17(b)(ii)(4), and Section 17(b)(ii)(6) (Non-Monetary Default);
- (viii) Section 45 (Financial Reports);
- (ix) Section 46 (Budget);
- (x) Section 51 (Option to Purchase).

It is the intent of the parties that the Prime Land Lease shall, in all respects, conform to the terms of this Section 4(F) following a Loan Default Transfer or an exercise of the Lender Option, and to the extent that terms of the Prime Land Lease conflict with the terms of this Section 4(F), then this Section 4(F) shall control. For further purposes of clarification, it is understood that in no event shall there be a further requirement to construct, maintain or operate the "Stadium" as defined in the Prime Land Lease or any other improvements.

(h) The following Sections of the Prime Improvements Lease shall no longer apply to the Prime Improvements Lease and shall be deleted:

- (i) Section 2 (Term), revised to reflect the terms of this Section 4(F);
- (ii) Section 3(b) (Rent Commencement), revised to reflect the terms of this Section 4(F);
- (iii) Section 4(a) (Definitions), Section 4(b) (Budgets), Section 4(c) (Application of Gross Revenue), Section 4(d) (Tax Distribution), Section 4(e) (Rent Reserve), Section 4(f) (Tenant's Representations and Warranties), Section 4(g) (Requirement to Cure Ground Lease Default), Section 4(h) (Notice and Obligation to Cure by Franchise), Section 4(i) (Limitation on Distribution), Section 4(j) (Capital Expenditures above the Capital Expense Maximum);
- (iv) Section 5 (Rent), revised to reflect the terms of this Section 4(F);
- (v) Section 6 (Construction of Improvements);
- (vi) Section 8 (Permitted Use);
- (vii) Section 12 (Alterations and Improvements);
- (viii) Section 20 (Assignment and Subletting);
- (ix) Section 22(b)(ii)(3), Section 22(b)(ii)(4), Section 22(b)(ii)(5), Section 22(b)(ii)(7), Section 22(b)(ii)(10), and Section 22(b)(ii)(11) (Non-Monetary Default);
- (x) Section 37 (Option to Purchase);
- (xi) Section 50 (Financial Reporting and Audit Rights);
- (xii) Section 51 (Use of Stadium by Landlord);
- (xiii) Section 53 (Parking).

It is the intent of the parties that the Prime Improvements Lease shall, in all respects, conform to the terms of this Section 4(F) following a Loan Default Transfer or an exercise of the Lender Option, and to the extent that terms of the Prime Improvements Lease conflict with the terms of

this Section 4(F), then this Section 4(F) shall control. For further purposes of clarification, it is understood that in no event shall there be a further requirement to construct, maintain or operate the "Stadium" as defined in the Prime Land Lease or any other improvements.

(i) Agent may terminate either or both Prime Leases at any time during the Term by sending thirty (30) days written notice to the City and by the payment of One Dollar (\$1.00) consideration.

(j) The self-operative changes in the Prime Leases described in this Section 4(F) shall only take effect following a Loan Default Transfer or an exercise of the Lender Option. Except as provided in this Section 4(F), the terms of the Prime Leases following Agent and Lender's taking over the rights of tenant under the Prime Lease pursuant to a Loan Default Transfer or exercise of the Lender Option shall remain unchanged. While the changes in the Prime Lease described in this Section 4(F) are self-operative following a Loan Default Transfer or the exercise of the Lender Option, at the request of either the City or Agent, the parties shall enter into an instrument further evidencing and acknowledging such changes.

(v) The City shall have a "Buy Out Right" (herein so called) to purchase and extinguish Agent's and Lenders' rights under the Prime Leases, and take assignment of any and all remaining rights to the Loan, at any time during the Term, whether prior to or after a Loan Default Transfer or the exercise of the Lender Option. City may exercise this Buy Out Right by delivering irrevocable written notice of exercise to the Agent, together with a check in the amount of \$50,000 ("Buy Out Deposit") which shall be applied to the Buy Out Consideration (defined below) at closing. Following delivery of notice of intent to exercise the Buy Out Right and prior to the closing, absent City's prior written approval, the Agent and Lenders shall not take or permit any further action under the Loan Documents, this Agreement, any Ground Leases that would adversely affect the Loan, the City's direct or indirect rights under any of the Ground Leases, or City's prospective interests therein. For example, and without limitation, the Agent and Lenders shall not transfer or consent to any transfer of interests, or enter into or consent to any assignments, subleases, Loan Document modifications, release of collateral, release of guarantors. Agent and Lenders may, however, continue any enforcement action against any Loan Parties or otherwise actively pursue remedies available under the Loan. Closing of the purchase of the Loan shall occur sixty (60) days following the City's exercise of its option ("Closing Date"). The purchase price of the Loan (the "Buy Out Consideration") shall be equal to the outstanding principal and interest (including Swap breakage costs [if any] and default interest and less Swap breakage credits [if any]), at the time of closing of the Buy Out, but excluding yield premiums, late fees or other fees charged by Agent and Lender and payable under the Loan Documents. No operating losses or operating profits shall be considered in calculating the Buy Out Consideration. No "credit bid" or other bid at foreclosure shall effect a reduction in the Buy Out Consideration. In the event Agent and Lenders recoup cash from any Loan Party under the Loan, or any guarantor or other source (including any cash collateral accounts or other collateral held by Agent or Lenders as security for the performance of the obligations contained in the Loan Documents) or in the event Agent or Lenders apply any escrow or reserves held by Agent or Lenders against the Loan balance, then such cash payments shall reduce the Buy Out Consideration. By way of example, assume (i) the outstanding principal and interest on the Loan at the time of a Loan Default Transfer is \$14,500,000, (ii) Lenders "credit bid" \$14,500,000 at foreclosure and was the high bidder at foreclosure, (iii)

Lenders receive a cash payment from a guarantor or guarantors of \$1,500,000, and (iv) Lenders hold escrows or reserves under the Loan Documents in the amount of \$1,000,000 and applies all of such escrows or reserves against the outstanding Loan balance; then in such example the Buy Out Consideration would be \$14,500,000 – \$1,500,000 - \$1,000,000.00 = \$12,000,000. The Buy Out Consideration would be further reduced by any undisbursed insurance proceeds received and retained by Lenders as described above. The Buy Out Consideration is to be paid in immediately available funds on the effective day of purchase. Upon the Closing Date, Agent and Lenders shall transfer to the City all of its then-remaining right, title and interest in and to the Loan and all of the Loan Documents, if any, on a non-recourse basis, together with all then-existing collateral, security interests and other rights securing the repayment of the Loan or the performance of the obligations of the Loan Parties and guarantors thereunder. To the extent that the terms of the Loan Documents or other related agreements provide the Agent or Lenders with rights of set off or similar rights against accounts or other collateral that may not be exercisable by the City based upon the fact that one or more of the Lenders holds the account or collateral, it is the intent of the parties that, in the event that the City purchases the Loan after an Event of Default, then the Agent or Lenders would make reasonable efforts, in the ordinary course, to exercise its rights against such accounts or collateral prior to the Closing Date, if permitted under the Loan Documents and applicable law, and apply such amounts against principal balance of the Loan (and thereby reduce the Buy Out Consideration). In all other circumstances, the Agent and Lenders shall take such reasonable actions to provide the City (on and after the Closing Date) with possessory rights and security interests equivalent to those of Agent and Lenders in such accounts or other collateral. The transfer of the Loan and closing of the City's purchase shall be made pursuant to documents reasonably acceptable to the City, Agent and Lenders and consistent with the terms of this Agreement. If the City exercises the right to purchase the Loan but fails to close as a result of a default by City hereunder, then Agent and Lenders shall, as their sole and exclusive remedy, be entitled to retain the Buy Out Deposit as liquidated damages, and the Prime Leases shall continue with Agent and Lenders as the tenant, as such Prime Leases are self-amended to include the Transfer Terms described above. The foregoing imposes no obligation upon Agent or Lenders to seek recourse against the borrower or any guarantor under the Loan.

(vi) The City covenants and warrants for the benefit of Agent and Lenders that the City has obtained all necessary approvals, and has complied in all respects with Federal, State and local laws and regulations, in the making of this Agreement, including, without limitation the provisions of this Section 4(F) relating to Agent's and Lenders' rights as to Section 16 of the Prime Ground Lease and Section 21 of the Prime Improvements Lease. To the extent permitted by law, the City shall indemnify, protect and defend Agent and Lenders from any and all loss, claim or damages in the event this covenant and warranty is untrue or inaccurate in any respect.

(G) Assignment and Assumption of Loan Documents to the City. Upon receipt of the full Buy Out Consideration from the City, and upon the request of the City, Agent and Lenders will then transfer to the City all of Lender's then-remaining rights and remedies under the Loan Documents. Such assignment shall be made without recourse to Agent or Lenders. The parties shall enter into documentation reasonably acceptable to both parties to evidence such assignment.

(H) Subordination of Lease Payments to Lender Obligations. The City shall be entitled to have and retain all payments of Rent made by Brookstown, Menagerie Stadium or Menagerie Franchise prior to receipt of notice by the City from Agent that any of the Loan Parties is in Default with respect to the Loan Documents. If at any time a Default occurs with respect to the Loan Documents, the City shall deliver to Agent any payments received by the City from Brookstown or Menagerie Stadium after receipt of notice of such Default, and while such Default continues, for application to the Loan, endorsed or assigned, if necessary, to effect transfer to Agent. Agent will endeavor to notify Brookstown and Menagerie Stadium that payments to the City have been and will be forwarded to Agent and that such payments shall not be deemed to be payments on the applicable Prime Lease; however, any failure by Agent to so notify Brookstown and/or Menagerie Stadium will not result in the waiver of any rights of Agent to collect such payments. The City agrees that in the event of any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of a Loan Party or the proceeds thereof, to creditors of a Loan Party, or upon any indebtedness of a Loan Party, by reason of the liquidation, dissolution or other winding up of a Loan Party or Loan Party's business, or any sale, receivership, insolvency or bankruptcy proceeding, or assignment for the benefit of creditors, or any proceeding by or against a Loan Party for any relief under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, compositions or extensions, then, and in any such event, any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to the Prime Leases, shall be paid or delivered directly to Agent to be applied to the Loan until the Loan is paid in full. The City agrees that should the City accept or receive any payment, distribution or security or proceeds thereof upon or with respect to any part of a Prime Lease following receipt of a written notice from Agent that a Default exists under the terms of the Loan Documents, then, thereafter (until receipt of written confirmation from Agent that the Default has been cured), except as expressly permitted by this Agreement, the City shall hold same in trust as property of Agent, shall not commingle said payments, distributions or security or proceeds thereof with other funds or property of the City and agrees that the City shall have absolutely no right, title or interest in or to or dominion over such funds or property except to deliver them promptly to Agent in the form received (except for the addition of any endorsement or assignment necessary to effect a transfer of all rights therein to Agent); and the City hereby covenants to do so. Until such funds or property are delivered to Agent, the City shall be liable to Agent for same, together with all reasonable attorneys' fees and costs incurred by Agent in collecting such payments from the City.

(I) No Modification, Surrender. The City agrees that the Prime Leases may not be amended, modified, restated, or surrendered for any reason without the prior written consent of Agent, which consent shall be in Agent's sole and absolute discretion. Any amendment, modification, restatement or surrender of the Prime Leases made without Agent's prior written consent shall be void.

(J) Consent to Transfer. Following the Effective Date, and prior to the earlier of: (i) the end of the term of the Prime Leases (including any new Prime Lease entered into with Agent pursuant to Agent's right to a new Prime Lease described herein in the event of a termination or the original Prime Lease); or (ii) the satisfaction of the Loan; the City agrees for the benefit of the Agent (and not the Loan Parties or any other person or entity) that it will not

transfer fee simple title to the Land, or otherwise assign its interests in the Prime Leases, to a third party absent the Agent's prior written consent, not to be unreasonably withheld, conditioned or denied.

5. **Personalty.**

(A) **Personalty Defined.** For the purposes of this Agreement, "**Personalty**" means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which the tenant under any Ground Lease now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) all fixtures, equipment, machinery, furniture, furnishings, appliances, inventory, goods, supplies and other articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by such tenant under a Ground Lease, which are now or hereafter in, on or about the Property; (b) all accounts of a tenant under a Ground Lease within the meaning of the Uniform Commercial Code of the State of North Carolina, derived from or arising out of the use, occupancy or enjoyment of the Property or for services rendered therein or thereon; (c) all franchise, license, management or other agreements with respect to the operation of the Property or the business conducted therein and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, taxes, assessments, charges or deposits paid to any governmental authority related to the Property or the operation thereof; and (e) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of any tenant under a Ground Lease with Agent related to the Property; together with all additions to and proceeds of all of the foregoing. For purposes of clarification, Personalty shall not include (i) the franchise rights in the Franchise (as defined in the Loan Agreement), including the present and future protected territorial rights in connection therewith, the Player Development Agreement (as defined in the Loan Agreement) and all uniforms, bats, balls and other baseball equipment, and (ii) any and all now owned or hereafter acquired or arising rights of Borrowers and BDP (as defined in the Loan Agreement) to the payment of money from the City and Forsyth County arising under or in connection with: (A) the Incentives Agreement (as defined in the Loan Agreement), including, without limitation, Brookstown Project Incentives (as defined therein) and Advances on the Brookstown Project Incentives (as defined therein) and (B) any agreement adopted pursuant to the Resolution Authorizing the Expenditure of County General Funds for an Economic Development Project and Authorizing Execution of an Agreement with Brookstown Development Partners, LLC, Sports Menagerie, LLC and a designated Non-Profit Corporation as adopted by the Board of Commissioners of Forsyth County on March 12, 2007.

(B) **Landlord Consent and Waiver.** For the benefit of Agent (but not the Loan Parties), (i) the City as to the Prime Leases, (ii) Brookstown as to the Ground Sublease, and (iii) Menagerie Stadium as to the Ground Sub-Sublease, hereby each waive and releases unto Agent (i) any contractual landlord's lien and any other landlord's lien which it may be entitled to at law

or in equity against any Personalty; (ii) any and all rights granted by or under any present or future laws to levy or distrain for rent or any other charges which may be due under such Ground Lease to the landlord under such Ground Lease against the Personalty; and (iii) any and all claims, liens and demands of every kind which it has or may hereafter have against the Personalty. For the benefit of Agent (but not the Loan Parties), (i) the City as to the Prime Leases, (ii) Brookstown as to the Ground Sublease, and (iii) Menagerie Stadium as to the Ground Sub-Sublease each acknowledge that the Personalty is and will remain personal property and not fixtures even though it may be affixed to or placed on the Property. For the benefit of Agent (but not the Loan Parties) (i) the City as to the Prime Leases, (ii) Brookstown as to the Ground Sublease, and (iii) Menagerie Stadium as to the Ground Sub-Sublease each agree that, subject to the terms of the Loan Agreement and the other Loan Documents, Agent has the right to remove the Personalty from the Property at any time free and clear of any claims by the City, Brookstown and Menagerie Stadium for unpaid rent or other monetary obligations, provided, that Agent shall repair any damage arising from such removal. For the benefit of Agent (but not the Loan Parties), (i) the City as to the Prime Leases, (ii) Brookstown as to the Ground Sublease, and (iii) Menagerie Stadium as to the Ground Sub-Sublease each further agree that it will not (i) remove any of the Personalty from the Property except as expressly permitted under the Loan Documents or (ii) hinder Agent's actions in removing Personalty from the Property. The City, Brookstown and Menagerie Stadium each acknowledge that Agent shall have no obligation to remove the Personalty from the Property.

6. **Brookstown's and Menagerie Franchise's Agreements and Acknowledgements as to Parking Lease.** Brookstown and Menagerie Franchise hereby agree, represent, covenant and warrant for the benefit of Agent and the City, and their respective successors and assigns, as follows:

(A) **Status of Parking Lease.** Brookstown and Menagerie Franchise covenant for the benefit of Agent and Lenders and the City that (a) the Parking Lease is in full force and effect and has not been amended or modified to the date of this Agreement; (b) all rent under the Parking Lease and any other consideration for the use and occupancy of the Parking Area have been paid for the entire initial one-year term of the Parking Lease; (c) all obligations of Menagerie Franchise under the Parking Lease to have been performed to and including the date of this Agreement have been performed in accordance with the terms and conditions set forth in the Parking Lease; and (e) Menagerie Franchise is not in default of any of its obligations under the Parking Lease.

(B) **No Changes to Parking Lease.** Neither Brookstown nor Menagerie Franchise will terminate, cancel, rescind, modify or amend, or change in any way the Parking Lease without the prior written consent of Agent and the City. Unless and until agreed in writing by (i) Agent, (ii) the City, (iii) the owner of the Land, (iv) the owner of the Improvements, and (v) the tenant under any Ground Lease, Brookstown and Menagerie Franchise shall continue to extend the Parking Lease for so long as the Improvements are used or intend to be used for the Baseball Business, or enter into a New Parking Arrangement. For the purposes hereof, the term "**New Parking Arrangement**" shall refer to a parking lease, license or other similar arrangement for a minimum of eight hundred (800) parking spaces ("Parking Spaces") in the Parking Areas, the Additional Parking Areas (as defined in the Parking Lease), other property within a one-half mile radius of the Improvements, and/or some other location(s). Brookstown shall have the same

right to relocate Parking Spaces under a New Parking Arrangement as it does under the Parking Lease. Any such New Parking Arrangement shall be subject to the prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed) of (i) Agent, (ii) the City, (iii) the owner of the Land, (iv) the owner of the Improvements, and (v) the tenant under any Ground Lease. At any time and from time to time Brookstown may propose a New Parking Arrangement, and the parties to this Agreement agree to work cooperatively and in good faith with respect to the review and consideration of any proposed New Parking Arrangement. Any such New Parking Arrangement shall be treated for all purposes as the Parking Lease under this Agreement. The terms of this paragraph shall be subject to the right of specific performance by (i) Agent, (ii) the City, (iii) the owner of the Land, (iv) the owner of the Improvements, and (v) the tenant under any Ground Lease. Without limiting any other provision herein, it is understood that a failure to maintain the Parking Lease, or an approved New Parking Arrangement, at all times shall be (i) an Event of Default by the Loan Parties under the Loan Agreement and (ii) a default under the Prime Leases; provided, however, Agent and the City agree that Brookstown and Menagerie Franchise shall have a period expiring on the earliest of (i) of one hundred twenty (120) days following such failure if such failure does not occur during an ongoing baseball season, or (ii) opening day of the upcoming baseball season, or (iii) thirty (30) days following such failure if such failure occurs any time during an ongoing baseball season, to enter into an approved New Parking Arrangement prior to such failure being an Event of Default under the Loan Agreement or a default under the Prime Lease. Notwithstanding the preceding sentence, in the event Agent, or any successors or assigns of Agent (including any bidder at foreclosure or purchaser from Agent or a bidder at foreclosure), becomes the tenant under either or both of the Prime Leases, by the exercise of foreclosure or otherwise, a failure to maintain the Parking Lease, or an approved New Parking Arrangement shall no longer be an event of default under the Prime Leases.

7. Further Acknowledgments and Agreements as to the Parking Lease.

(A) Menagerie Franchise and Agent hereby agree with the City that, in the event the City becomes the owner of the Parking Areas, then the Parking Lease shall be subordinate to the City's interest in the Parking Areas and Menagerie Franchise or Agent (as applicable) shall attorn to and recognize the City as landlord under the Parking Lease for the remainder of the term thereof.

(B) The City acknowledges that Menagerie Franchise will execute and deliver to Agent the Assignment of Parking Lease as security for the Loan, and the City hereby expressly consents to such Assignment of Parking Lease. The City further acknowledges that the Parking Lease contains certain provisions that allow for Agent to enter into a new Parking Lease in the event the original Parking Lease is terminated for any reason prior to the payment in full and satisfaction of all obligations under the Notes.

(C) The City agrees for the benefit of Agent and Lenders (only, and not for the benefit of any of the Loan Parties) that in the event the City becomes the owner of the Parking Areas, then unless and until agreed in writing by Agent (for so long as the Loan remains outstanding), the City shall continue to extend the Parking Lease to the tenant under the Ground Sub-Sublease, or enter into a new parking lease with Agent on substantially the same terms and conditions as the original Parking Lease, (subject to the tenant entering into an amendment to the

Parking Lease reasonably satisfactory to the City providing for a market-based rent adjustment to Rent (for surface parking leases)). Any such new parking lease replacing the original Parking Lease shall be subject to the prior written approval of parties referenced in the preceding sentence, and any such new parking lease replacing the original Parking Lease shall be treated for all purposes as the Parking Lease under this Agreement. The terms of this paragraph shall be subject to the right of specific performance by Agent.

8. **City Estoppel.**

(A) **Statements for the Benefit of Lender.** In addition to the representations and warranties contained elsewhere herein, the City further hereby represents to Agent (for the Agent's benefit only and not for the benefit of the Loan Parties) that, as of the date of this Agreement:

(i) The City Agreements are in full force and effect and have not been modified or amended.

(ii) To City's knowledge, there are no existing uncured defaults under the terms of the City Agreements; nor is the City aware of any facts which, with notice or passage time, would constitute a default under the terms of the City Agreements.

(iii) The Land being conveyed by Brookstown to the City is not being conveyed to the City through an eminent domain taking procedure.

(B) **Parking.** The City acknowledges and agrees that, as of the Effective Date, the Property has sufficient parking for its intended use as a baseball stadium. The City further acknowledges and agrees that the Property itself does not have parking spaces on the Property, but rather derives its rights to parking from the Parking Lease affecting other properties in the vicinity of the Property. The City agrees that in the event the Property lost some or all of the parking rights with respect to the Parking Leases, at any time, the City would (i) work cooperatively and in good faith with the then-owner or operator (including tenant) of the Property with respect to alternative parking arrangements, (ii) work cooperatively to endeavor to reserve as "event parking" in all, or substantially all, of the parking spaces in the City-owned parking deck commonly known as the "Fourth Street Parking Deck" located approximately one-half mile from the Property during the time of baseball games at the Property (to the extent that the City owns such parking deck at the time that the parking rights with respect to the Parking Leases are lost). The City fully understands the status of parking and that some or all of the parking servicing the Property is subject to removal from service.

9. **City Funding; Subordination of Certain Terms of City Agreements.**

(A) Contemporaneously with the making of this Agreement, the City has fully funded and disbursed the portion of the City Funding to be funded to Brookstown, and has funded all or a portion of the City Funding to be funded to Menagerie Stadium (the balance of such funding, if applicable, to be funded pursuant to the terms of the Prime Improvements Lease). The City acknowledges for the benefit of Agent that full disbursement of any remaining City Funding shall occur on the Effective Date of this Agreement.

(B) The City expressly agrees that any rights of the City under the City Agreements to require any re-conveyance of leasehold interests or otherwise terminate one or more Prime Lease shall be and is subject and subordinate to this Agreement, the Loan and the Loan Documents, including the lien of the Deeds of Trust, and all other rights of Agent and Lenders hereunder and under the Loan. Without limiting the generality of the foregoing, the terms of Section 8(b)(ii) and 8(b)(iii) of the Improvements Agreement and the terms of Section 13(b)(ii) and 13(b)(iii) shall be subordinate in all respects to the Loan, and the City may not require conveyance of any leasehold interests as provided in the Improvements Agreement without the prior written consent of Agent.

(C) The City expressly understands and agrees that Agent and Lenders shall not be bound in any manner by the terms and conditions of the City Agreements.

10. **Opinion of Counsel.** Contemporaneously with the making of this Agreement, the City shall provide a legal opinion in form and content satisfactory to Agent, and from a law firm satisfactory to Agent, confirming, among other things, that this Agreement and the provisions of Section 16 of the Prime Land Lease and Section 21 of the Prime Improvements Lease are duly authorized and valid and binding obligations of the City, enforceable by Agent and Lenders in accordance with their terms.

11. **Specific Performance.** It is expressly understood that, except as expressly provided in Section 4(F)(v) above, Agent and the City shall have all rights and remedies at law and equity, including that of specific performance, with respect to the provisions of this Agreement in the event of a breach or non-performance of the terms of this Agreement.

12. **Further Agreements.** The parties to this Agreement, and their respective successors or assigns, shall execute, acknowledge and deliver, upon the other's request, any and all further agreements or other instruments, in recordable form, that the requesting party, its successors or assigns, may hereafter reasonably require for carrying out the purpose and intent of this Agreement.

13. **Loan Modifications; Limitation on Loan Increases; City Prompt Review of Proposed Loan Modifications During Pendency of Buy Out Right.**

(A) Without the further consent or approval of the City, Agent may, in its sole discretion: (a) release or compromise any obligation of any nature with respect to the Loan Documents; (b) release its security interest in, or surrender, release or permit any substitution or exchange of all or any part of any properties securing repaying of the Notes; (c) retain or obtain a security interest in any property to secure payment of the Notes; or (d) modify, amend, defer, extend, consolidate or supplement any of the original or subsequent Loan Documents. Agent shall provide the City with prompt written notice of a material amendment to the Loan and allow the City to review documentation evidencing such action in a manner consistent with Section 2(E) above (including, without limitation, any of the foregoing actions and any proposed change in loan terms, proposed refinance, termination (other than following payment in full and satisfaction of) the Loan or any Loan Document). Agent shall endeavor to provide the foregoing notice to the City at least thirty (30) days prior to the proposed amendment or action, but shall

not be deemed to be in default hereunder for its failure to provide such prior notice (nor shall such failure affect the validity of such amendment).

(B) The foregoing notwithstanding: (i) Agent shall not increase the principal amount of the Loan, absent City's prior written consent in the City's sole discretion; and (ii) Agent shall not take any of the other foregoing actions following City's exercise of its Buy Out Right, without the prior written consent of the City, such consent not to be unreasonably withheld, conditioned or delayed. In the event Agent wishes to take an action otherwise restricted by provision (ii) of the preceding sentence, it shall send written notice to the City. The City shall either approve or reject (with a detailed explanation as to the reason for such rejection) such request, in writing, within fourteen (14) days of Agent's request, and in the event the City fails to send a response within such fourteen (14) day period, the request shall be deemed granted.

14. **Loan Parties Not Third Party Beneficiaries.** Except where expressly referenced herein as benefiting the Loan Parties, the provisions of this Agreement shall not impair or prejudice in any manner the rights and remedies, of Agent or Lender against the Loan Parties under the Loan Documents, or of the City against the Loan Parties under the Prime Leases or the Parking Lease.

15. **Successors and Assigns; Benefits Referenced as Running to Agent Extend to Lenders; Extension of Rights Under this Agreement to New Lender.** Agent and Lenders shall have the right to assign all or any portion of its rights and obligations under this Agreement at any time and without the further consent of any other party. Where this Agreement references a certain benefiting running to Agent, it is understood that such benefit runs to Agent in its capacity as a Lender under the Credit Agreement and as Administrative Agent on behalf of all Lenders under the Credit Agreement. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, and their respective successors and assigns. In the event that the Loan is refinanced either with the original Lenders or with another lender, the City and Loan Parties agree to reasonably cooperate with the new Lender(s) and extend the terms of this Agreement to include the new lender, provided that such new lender assumes Lenders' obligations hereunder and agrees to be bound by the terms of this Agreement (or a replacement agreement upon substantially similar terms).

16. **City Capacity.** For purposes of fulfilling its indemnity obligations and other responsibilities hereunder, City is entering this Agreement in its capacity as the owner of the Land and as a landlord under the Prime Leases, rather than in its capacity as a governmental authority with statutory and common law protections (which are waived to the extent permissible under law) of a governmental authority.

17. **Governing Law.** This Agreement shall be governed by the laws of the State of North Carolina.

18. **Severability.** If any clause, provision or section of this Agreement shall be determined illegal, invalid or unenforceable by any court, the illegality or unenforceability of such clause, provision, or section shall not affect any of the remaining clauses, provisions or

sections hereof, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, provision or section had not been contained herein.

19. **Notices.** All notices required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service or by certified United States mail, postage prepaid, addressed to the party to whom directed at the applicable address specified in the preamble to this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any notice shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein; provided that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. Notice may be sent by the applicable party's legal counsel. Notice to the then-current Agent under the Loan shall be deemed to constitute notice to all parties then-comprising Lenders.

20. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the undersigned executed the foregoing instrument the day and year first above written.

LOAN PARTIES:

SPORTS MENAGERIE CORP., a Delaware corporation

BY: _____
TITLE: President

SPORTS MENAGERIE, LLC, a Delaware limited liability company

By: Sports Menagerie Corp., a Delaware corporation, its Manager

BY: _____
TITLE: Manager

SPORTS MENAGERIE STADIUM LLC, a North Carolina limited liability company

BY: _____
TITLE: Manager

BROOKSTOWN DEVELOPMENT PARTNERS, LLC, a North Carolina limited liability company

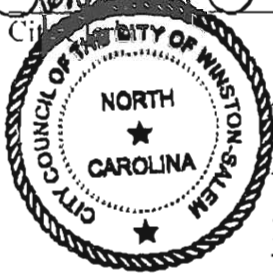
BY: _____
TITLE: Manager

THE CITY:
THE CITY OF WINSTON-SALEM

Approved as to form and legality.
This 21st day of September 2009
By Angela Davis Attorney

BY: _____
TITLE: City Manager

Attest:
Genie L. Phillips
City



AGENT:
BANK OF AMERICA, N.A., a national banking association, as Administrative Agent and Lender

BY: _____
TITLE: Sr. Vice President

STATE OF North Carolina

COUNTY OF Forsyth

I, the undersigned, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, and

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a
- A credible witness has sworn to the identity of the principal(s):

each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Name	Capacity
<u>Billy D. Prim</u>	President of Sports Menagerie Corp., a Delaware corporation

Date: September 18, 2009

Emily M. Long
 Emily M. Long, Notary Public
 (print name)

(official seal)

My commission expires: October 7, 2013



STATE OF North Carolina

COUNTY OF Forsyth

I, the undersigned, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, and

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a
- A credible witness has sworn to the identity of the principal(s);

each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Name	Capacity
<u>Billy D. Prim</u>	President of Sports Menagerie Corp., a Delaware corporation, the Manager of Sports Menagerie, LLC., a Delaware limited liability company

Date: September 18, 2009

Emily M. Long
Emily M. Long Notary Public
(print name)

(official seal)

My commission expires: October 7, 2013



STATE OF North Carolina

COUNTY OF Forsyth

I, the undersigned, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, and

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a
- A credible witness has sworn to the identity of the principal(s):

each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Name	Capacity
<u>Billy D. Prim</u>	Manager of Sports Menagerie Stadium LLC a North Carolina limited liability company

Date: September 18, 2009

Emily M. Long
Emily M. Long, Notary Public
(print name)

(official seal)

My commission expires: October 7, 2013



STATE OF North Carolina
COUNTY OF Forsyth

I, the undersigned, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, and

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a
- A credible witness has sworn to the identity of the principal(s);

each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Name	Capacity
<u>Billy D. Prim</u>	Manager of Brookstown Development Partners, LLC a North Carolina limited liability company

Date: September 18, 2009

Emily M. Long
Emily M. Long Notary Public
(print name)

(official seal)

My commission expires: October 7, 2013



STATE OF North Carolina

COUNTY OF Forsyth

I, the undersigned, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, and

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a
- A credible witness has sworn to the identity of the principal(s);

each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

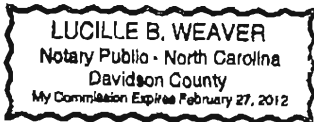
Name	Capacity
<u>Lee D. Garrity</u>	<u>City Manager</u> of The City of <u>Winston-Salem</u>

Date: September 18, 2009

Lucille B. Weaver
 Lucille B. Weaver Notary Public
 (print name)

(official seal)

My commission expires: February 27, 2012



STATE OF North Carolina

COUNTY OF Forsyth

I, the undersigned, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, and

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a NCDL 6319979
- A credible witness has sworn to the identity of the principal(s);

each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Name	Capacity
<u>Gregory A. Cox</u>	<u>Sr.</u> Vice President of Bank of America, N.A., a national banking association

Date: September 18, 2009

Emily M. Long
 (print name) Emily M. Long Notary Public

(official seal)

My commission expires: October 7, 2013



Exhibit A

Legal Description

Being a certain tract of land located in the City of Winston-Salem, Winston Township, Forsyth County, North Carolina, and being more particularly described as follows:

Being all of REVISED LOT 1 containing 8.561 acres, more or less, as shown on plat of DOWNTOWN WINSTON-SALEM BASEBALL STADIUM recorded in Plat Book 54, Pages 182-184, Forsyth County Registry, reference to which plat is hereby made for a more particular description.

Together with, and subject to the rights of others in and to, a non-exclusive perpetual easement for ingress, egress and regress, over, across and through "Ballpark Way" and that "Variable Width Private Access & Public Utility Esmt." shown on plat recorded in Plat Book 54, Pages 82-84 and Plat Book 54, Pages 182-184, Forsyth County Registry.

Together with that 26 foot private access easement leading to Broad Street as shown on that plat recorded at Plat Book 54, pages 182-184, Forsyth County Registry.

Together with that 20 foot storm drainage easement identified as "Private S.D.E. (PB54 PP 82-4)" crossing the western corner of Revised Lot 2, all as shown on that plat recorded at Plat Book 54, pages 182-184.