

NORTH CAROLINA )

FORSYTH COUNTY )

INCENTIVES AGREEMENT

THIS INCENTIVES AGREEMENT, made and entered into as of the 21<sup>st</sup> day of November, 2007, by and between the CITY OF WINSTON-SALEM (the "CITY") and BROOKSTOWN DEVELOPMENT PARTNERS, LLC ("BDP"), SPORTS MENAGERIE CORP. ("SMC") and SPORTS MENAGERIE, LLC ("SM") to assist SMC in developing a 5,500-seat baseball stadium on approximately 7.2 acres (the "Stadium") to be constructed in downtown Winston-Salem (the "Phase I Project"), and to assist BDP in a possible associated retail, residential and business development on approximately 32.5 acres (the "Phase II Project"), as an economic development project pursuant to the provisions of N.C.G.S. § 158-7.1, subject to the restrictions and conditions set forth herein. This economic development project, a mixed use development that, if developed in full, would have an estimated taxable value of \$189 million, will stimulate the local economy, create a substantial number of jobs, promote business, and increase the population, taxable property, business prospects, property tax base and revenues of the CITY;

RECITALS:

- A. The CITY is vitally interested in the economic welfare of its citizens, the creation and maintenance of jobs, encouraging tourism and growing its property tax base, and therefore wishes to provide the necessary conditions to stimulate investment in the local economy, promote business and create and retain jobs and encourage economic growth and development.

- B. SMC is responsible for developing the Phase I Project in the CITY, and proposes to make capital investments in the CITY in the form of public infrastructure improvements, site preparation investments and the construction of a new 5,500-seat baseball stadium. BDP and its partners or assignees intend to develop the Phase II Project. The Phase II Project may include office, retail and residential space and a possible multi-plex movie theater. If both phases are completed, the new facilities will represent a significant capital investment in the CITY.
- C. The CITY recognizes that the Phase I Project and the Phase II Project will bring direct and indirect benefits to the CITY, and has offered economic development incentives in the form of upfront cash incentive grants (hereinafter referred to as grants, grant funds, economic development funds, assistance or incentives) to induce SMC to build the Stadium and develop the Phase I Project in the CITY and annual incentive grants to induce BDP to develop the Phase II Project in the CITY.
- D. The CITY hereby acknowledges that the terms of this Agreement constitute a material inducement to SMC to develop the Phase I Project and to BDP to develop the Phase II Project. Similarly, SMC hereby acknowledges that its decision to develop the Phase I Project in the CITY resulted from the inducement by the CITY of the upfront economic development incentives described in this Agreement. BDP hereby acknowledges that the annual incentive grants described in this Agreement are a key inducement in its determination to develop the Phase II Project. The parties hereto have estimated that if developed in full, the Phase I Project and the Phase II Project could have a total taxable value of \$189 million for the mixed use development.

WITNESSETH:

Now, therefore, in consideration of receipt of a grant or appropriation of funds from the CITY as more particularly described herein for the Phase I Project and the Phase II Project (together, the “Economic Development Project”), and the substantial capital investments for site improvements and infrastructure costs and construction of the Phase I Project by SMC and the Phase II Project by BDP, the CITY, SMC and BDP do hereby agree to abide by the following terms of this Agreement:

- (1) Funds. SMC and BDP covenant and agree that the CITY economic development funds, which are the subject of and consideration under this Agreement, represent reimbursements for expenditures made by SMC and BDP in accordance with the provisions of N.C.G.S. § 158-7.1, consistent with the purposes outlined herein and in the Project Description in Exhibit A attached hereto and incorporated herein by reference. Any conflict between the provisions of this Agreement and the express provisions of the Project Description will be resolved in favor of the Project Description. Funds made available to SMC and BDP pursuant to this Agreement represent reimbursements for expenditures made in accordance with applicable federal, state and local laws. Payment for Phase I Project Incentives (as defined herein) will be made only upon written request of SM and submission to the CITY of appropriate documentation of capital investments and expenditures for site improvements and infrastructure costs not reimbursed by other funding sources as outlined herein and reasonably acceptable to the CITY. Funds paid in accordance with this Agreement are to be used in accordance with N.C.G.S.

§ 158-7.1 and the provisions of this Agreement, to fund the costs of the development of the Phase I Project and Phase II Project.

- (2) Phase I Project. Promptly upon execution of this Agreement, SMC, as manager of SM, will cause SM to commence developing the Phase I Project, including site acquisition, site preparation and the development of a minimum 5,500-seat baseball stadium in the CITY's downtown area. It is anticipated that the Phase I Project will cost \$22.6 million and will be completed within 28 months after execution of this Agreement.
  - (a) Real Property Acquisition. In connection with the Phase I Project, the CITY agreed to sell to BDP or its assigns, and BDP or its assigns have agreed to purchase, those parcels of real property designated on Exhibit B hereto. Such properties will be sold at their fair market value, \$1,192,872.
  - (b) Park. During the construction of the Phase II Project, BDP agrees to convey, and the CITY agrees to accept conveyance of, at least 0.60 acres of land for use as a new City Park. Such park will be owned by the CITY and will not be taxable property.
  - (c) Growth Management Area (GMA1). The CITY has amended the LEGACY Comprehensive Plan Boundary for the City and Town Centers Growth Management Area (GMA1) to include all property within the boundaries of the Phase I Project, and all Phase II Project property east of Peters Creek Parkway, as more specifically designated on Exhibit C

hereto, in order to enable the CITY to contract for development pursuant to N.C.G.S. § 160A-458.3.

- (d) Incentive Payments. The CITY agrees to provide \$12 million of upfront economic development incentives to assist SMC in the construction of the baseball stadium, including land, infrastructure and site work (the “Phase I Project Incentives”). The CITY will pay such funds to SMC in twelve (12) equal monthly installments. The first payment will be made promptly after execution of this Agreement, in the amount of Five Million Dollars (\$5,000,000), representing the payments for August, September, October, November and December 2007. Thereafter, the remaining seven (7) payments of One Million Dollars (\$1,000,000) each will be made on the first day of each subsequent month, commencing January 1, 2008, subject to the requirements of Section (1) above. In the event SMC does not have sufficient reimbursable expenses in any month to trigger the entire \$1,000,000 monthly reimbursement payment, such unpaid funds will be carried over to subsequent months during the Phase I incentive payment period and will be paid out to SMC when sufficient expenses are presented for reimbursement of such funds. The CITY’s obligation to make payments will be conditioned upon SMC’s obtaining and maintaining such grading, sewer, water and building permits as are necessary for the applicable phase of construction at the time of such payments.
- (e) Source of Funds. The CITY anticipates that the source of funds for the Phase I Project Incentives will include:

- (i) \$5,500,000 from the sale of Ernie Shore Field, or, at the CITY's discretion, other funds of the CITY that are made available as a result of the sale of Ernie Shore Field.
- (ii) \$1,000,000 from the CITY's Economic Development Project Fund;
- (iii) \$5,500,000 from financing to be obtained by the CITY for this Economic Development Project (the "CITY Debt").

The parties specifically agree that the timing of the monthly payments of the Phase I Project Incentives is not contingent upon receipt by the CITY of funds from the foregoing anticipated sources of funds.

- (f) Ticket Surcharge. In order to assist the CITY in repaying the CITY Debt and to reimburse the CITY for the funds provided in subsection (2)(c)(iii) above, SMC will implement, or cause SM to implement, a surcharge on tickets for minor league baseball games at the Stadium. SMC will make annual payments to the CITY from the revenues received from such surcharge, as more specifically set forth on Exhibit D hereto. SMC will make such payments regardless of the actual amount of ticket surcharge revenues that it collects. Any amounts received by SMC in excess of the required payment amounts set forth on Exhibit D will be retained by SMC. In order to secure SMC's payment obligation described in this subsection (2)(f), SMC will provide the CITY with a letter of credit, in form reasonably satisfactory to the CITY. The letter of credit requirements are listed on Exhibit E hereto.

- (g) Additional Funds for Phase I Project. In addition to the Phase I Project Incentives, funds for the development will be obtained as follows:
- (i) \$1,339,000 from the Millennium Fund.
  - (ii) Up to \$4 million of federal or state funding for site improvements, roads and other infrastructure (the “Transportation and Infrastructure Funds”), of which \$1,718,000 has been previously awarded to the CITY under the U.S. Department of Transportation SAFETEA-LU Program. The CITY will match the \$1,718,000 grant with \$429,500 of CITY funds. The CITY will use its reasonable best efforts to obtain the additional \$2 million of state or federal Transportation and Infrastructure Funds. Transportation and Infrastructure Funds will be disbursed as provided in subsection (2)(j) below.
  - (iii) \$8.6 million from SMC. SMC will provide evidence of a lending commitment for \$8.6 million prior to January 17, 2008, before the CITY will issue financing for the Phase I Project.
- (h) Cost Overruns. SMC will be responsible for any cost overruns or additional expenses related to the Phase I Project.
- (i) Additional Incentives. Except as described in this Section (2), the CITY will not be responsible for any additional incentive payments related to the Phase I Project.
- (j) Transportation and Infrastructure Funds. The parties acknowledge that the CITY will administer the Transportation and Infrastructure Funds

described in subsection (2)(g) above on behalf of the federal and state government granting agencies, as applicable. The parties anticipate that such funds will be expended on the projects described on Exhibit F attached hereto, or such other projects as are agreed to by the CITY and SMC. All expenditures will be made in accordance with the requirements of the applicable federal or state grants from which the funds were received.

(3) Phase II Project. The parties agree that the Phase II Project may be developed, in the sole discretion of BDP, at any time during or after the development of the Phase I Project. In the event, and only in the event, that BDP determines to proceed with the Phase II Project, the following terms and conditions will apply:

(a) Phase II Project Description. As currently envisioned, the Phase II Project may involve one or more office buildings and mixed use commercial developments, including commercial, office and residential properties, and a possible multi-plex movie theater. The parties acknowledge that the type and uses of properties to be developed in the Phase II Project will be determined by BDP in its sole discretion. Funding for all Phase II construction activities would be provided by BDP or its assignees, including commercial lending sources.

(b) Phase II Project Incentives. The parties acknowledge that BDP will not be able to proceed with the Phase II Project without the benefit of the economic development incentives described herein. Commencing on



July 1 of the year first following the payment of property taxes by BDP on properties comprising the Phase II Project, and continuing for a period of 25 years, BDP will receive an amount equal to but not to exceed 100% of the property taxes paid by BDP to the CITY with respect to Phase II Project properties and improvements during the previous tax year. Cumulative grants would never exceed 100% of the property taxes created by the Phase II Project and would be capped at the annual and total amounts shown on Exhibit G hereto (the "Phase II Project Incentives"). As described in subsection 2(g)(iii) herein, SMC agrees to provide at least \$8.6 million of funding for the Phase I Project. Accordingly, as reflected on Exhibit G, the Phase II Project Incentives will be a maximum of \$8,012,252.

- (c) Title to Stadium. Upon receipt of the final payment from the CITY at the end of the 25 year payment period described in Exhibit G, SMC will convey title to the baseball stadium and underlying property to the CITY for no additional consideration.
- (d) Option to Purchase Stadium. After conveyance of title to the Stadium and underlying property to the CITY, as described in subsection (3)(c) above, or in subsection (4)(b) of this Agreement, SMC is hereby granted the option to purchase the Stadium and underlying property at its fair market value at the time such option is exercised. Such option must be exercised within one (1) year of the transfer of the Stadium and underlying property to the CITY.

- (e) Parking Facilities. In addition to providing the Phase II Project Incentives, the CITY commits to purchase up to 1,000 parking spaces in one or more parking facilities which may, in BDP's discretion, be constructed as a part of the Phase II Project, at a cost not to exceed \$16.34 million or \$16,340 per parking space; provided that all parking deck spaces purchased by the CITY must be self-funding. Self-funding may be demonstrated based on projected new property taxes from the Phase II Project that are not otherwise allocated to Phase II Project Incentives that are to be paid to BDP, and other guaranteed financial commitments made by BDP or third parties at the time that the CITY enters into an agreement with BDP or such third parties for the purchase of these spaces. Revenues to cover the CITY's self-funding requirement could take the form, among other things, of (i) parking fees or other charges; (ii) surcharges imposed on tickets sold at any movie theater developed as a part of the Phase II Project; (iii) surcharges or other fees imposed upon developers, owners or tenants of properties developed as a part of the Phase II Project and based on square footage of properties or other agreed measures; or (iv) other similar financial commitments. However, the CITY's specific participation will be better defined and considered by the Winston-Salem City Council, at the appropriate time based upon the Phase II Project occurring as described herein.

(4) Additional Covenants.

- (a) Home Games. During the term of the repayment of the CITY Debt, SMC agrees that substantially all home games of its franchised minor league club will be played in the Stadium.
- (b) Repayment of CITY Debt. SMC agrees that in the event that SMC's franchised club should be relocated before the CITY has completed repayment of the CITY Debt, SMC will be responsible to pay the CITY the amount necessary to repay the balance remaining on the CITY Debt that is outstanding on the effective date of such relocation. Upon such payment, SMC would be released from its obligation to pay the ticket surcharges shown on Exhibit D and SMC would convey title to the Stadium and underlying property to the CITY.
- (c) Option Related to Parking. In the event that BDP opts not to build the Phase II Project, then at the time of the transfer of title to the Stadium pursuant to subsections (3)(c) or (4)(b) of this Agreement, BDP will grant the CITY an option, exercisable within one (1) year of such transfer, to purchase the then existing Stadium parking areas or facilities in the Phase II Project area or, at the CITY's option, such real property in the Phase II Project area sufficient to enable the CITY to build parking decks and facilities in order to support the Stadium. The real property will be such locations within the Phase II Project area as are agreed to by the CITY and BDP, will be conveyed at fair market value and will be

sufficient to enable the CITY to comply with the applicable parking requirements of the zoning ordinance then in effect in the CITY.

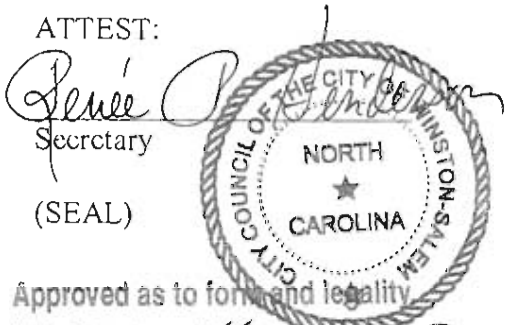
- (5) SMC and BDP agree that they will annually supply such non-confidential records, information and verification relating to expenditures of the funds or the operations of SMC and BDP as may reasonably be requested by the CITY to confirm that the levels of capital investment as outlined herein have been achieved. SMC and BDP agree that the CITY shall have access to the records and premises of SMC and BDP at all reasonable times, and SMC and BDP agree to submit such reports as the CITY shall reasonably request pertaining to the funds granted herein. SMC and BDP shall maintain a written accounting and documentation of capital investments which are the subject of this Agreement. The CITY reserves the right to require a certified audit pertaining to the use of the grant funds, or may perform the audit through the use of its internal staff. Nothing in this Section (5) will be deemed to require SMC and BDP to supply their annual financial statements to the CITY.
- (6) If for any reason the payment of grant funds is suspended or terminated due to a breach of this Agreement by SMC or BDP, SMC or BDP, as the case may be, agree to promptly remit to the CITY any payments previously received by SMC or BDP which the CITY reasonably deems to have been paid and received by SMC or BDP in violation of the provisions of this Agreement.
- (7) This Agreement, the grant funds and the obligations which are the subject of this Agreement may be assigned by BDP to one or more third parties and by SMC to

one or more affiliated corporations or entities controlled by the current owners of BDP or SMC; provided, however, any such assignment by SMC will not relieve SMC of any liabilities or obligations under this Agreement.

- (8) This Agreement is the entire agreement between the parties as to the subject matter referenced herein, and no amendment may be made to this Agreement except with the prior written consent of all parties.
- (9) This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to choice of law principles.
- (10) In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be replaced with a revision which accomplishes the purposes outlined herein and shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement, not contingent thereon, shall remain in full force and effect.


IN WITNESS WHEREOF, the CITY and GRANTEE have caused this Agreement to be duly executed as of the date first above written.

ATTEST:

  
Secretary  
(SEAL)


Approved as to form and legality  
This 31 day of November 2007  
By Ronald B. [unclear] Attorney

CITY OF WINSTON-SALEM

By:   
City Manager

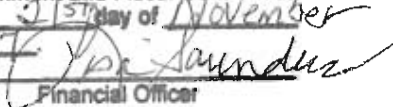
GRANTEE:

BROOKSTOWN DEVELOPMENT PARTNERS, LLC

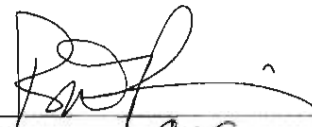
By:   
Billy D. Prim  
Manager

ATTEST:

  
(SEAL)

This instrument has been presaudited in the manner required by the Local Government and Fiscal Control Act.  
This 21<sup>st</sup> day of November 2007  
  
Financial Officer

SPORTS MENAGERIE CORP.

By:   
Title: CEO

SPORTS MENAGERIE, LLC

By: Sports Menageric Corp., its Manager

By:   
Title: CEO