

Dated 19 December 2014

LOAN AGREEMENT

for three hundred and fifty thousand pounds (£350,000)

YORK CITY FOOTBALL CLUB LIMITED

and

CITY OF YORK COUNCIL

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THIS AGREEMENT dated 19 December

2014 is made BETWEEN:

- (1) YORK CITY FOOTBALL CLUB LIMITED (CN 4689338) whose registered office is at Bootham Crescent, York YO30 7AQ (the "Borrower"); and
- (2) CITY OF YORK COUNCIL of West Offices, Station Rise, York YO1 6GA (the "Lender").

IT IS AGREED as follows:

1. INTERPRETATION

1.1 In this Agreement, the following expressions have the following meanings:

"BCH"	Bootham Crescent Holdings Limited;
"Business Day"	a day (excluding a Saturday or a Sunday) on which clearing banks are open for general business in London;
"Completion Date"	has the meaning given in Schedule 1 of the Deed of Priorities;
"DBOM Agreement"	an agreement between the Lender (1) and Greenwich Leisure Limited (2) under which a new community stadium shall be built for the Borrower to use (with other tenants) pursuant to the terms of the Match Day Agreement;
"Deed of Priorities"	an agreement between the Football Stadium Improvement Fund Limited (1), the Lender (2), the Borrower (3), BCH (4) and JM Packaging Limited (5) completed on or around the date of this Agreement;
"Default Interest Rate"	
"Disposal"	any sale, lease, transfer or other disposal of the Property by the Borrower on terms approved by the Lender;
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commission or relevant Government Department in relation to such regulations;
"Event of Default"	any event or circumstance mentioned in clause 10 (Default);
"Financial Indebtedness"	any loan, facility or other sum due from the Borrower to any person other than the Lender;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commission or relevant Government Department in relation to such act;
"Interest Rate"	
"Legal Charge"	means the legal charge to be granted by Bootham Crescent Holdings Limited in favour of the Lender over the Property;

"Loan"	the loan facility described in clause 2;
"Match Day Agreement"	the lease and match day agreement dated on or around the date of this Agreement and made between the Borrower and the Lender;
"MEIP Rate"	the base rate set in accordance with the communication from the European Commission on the revision of the method of setting the reference and discount rates (2008/C 14/02) or any replacement method of calculation prescribed by the European Commission;
"Property"	the property at Bootham Crescent, York and registered at the Land Registry under title number NYK239566;
"Security Interest"	includes a mortgage, pledge, lien, charge, right of set-off, retention of title, assignment or security interest or any other agreement or arrangement which has the effect of creating security or payment priority; and
"Term"	a term of years from the date of this Agreement to the tenth anniversary of the Completion Date.

1.2 In this Agreement each reference to:

- 1.2.1 the Borrower and the Lender includes, where appropriate, persons deriving title under either of them;
- 1.2.2 "dispose" includes charging, selling, leasing, assigning or transferring or agreeing to do any of the same, granting an option or similar right, creating a trust or other equitable interest or sharing or parting with possession or occupation;
- 1.2.3 any gender includes any other gender; and
- 1.2.4 a document (including this Agreement) is a reference to that document as amended, supplemented or replaced.

## 2. LOAN

2.1 The Lender shall make available to the Borrower a loan facility of three hundred and fifty thousand pounds (£350,000) in one (1) single payment on the date on which all of the conditions referred to in clause 3 have been satisfied.

2.2 The Loan shall be secured by the Legal Charge.

## 3. CONDITIONS PRECEDENT

The Loan shall not be available to be drawn down until the Lender confirms to the Borrower that it has received (in each case in form and substance satisfactory to the Lender) all of the documents and other matters set out in Schedule 1.

## 4. REPAYMENT

The Borrower shall, commencing on the Completion Date, make repayments of the Loan in annual instalments of thirty five thousand pounds (£35,000) ("Repayments of Principal Debt") plus interest (at the Interest Rate) on the outstanding balance of the Loan as at the date of such repayment, such instalments being paid on each anniversary of the Completion Date. Any outstanding balance of the Loan shall be repaid in full on the last day of the Term.

5. **PREPAYMENT**

- 5.1 The Borrower may prepay the Loan in whole only (and not in part) by prepaying an amount equal to three hundred and fifty thousand pounds (£350,000) to the Lender.
- 5.2 The Loan must be prepaid by the Borrower in accordance with clause 5.1 following a Disposal of the Property.
- 5.3 Amounts prepaid or repaid will not be available for redrawing.
- 5.4 All prepayments under this Agreement shall be made together with accrued interest on the amount prepaid.
- 5.5 If the Loan is prepaid by the Borrower in accordance with clause 5.1, the Lender will repay to the Borrower all Repayments of Principal Debt (but not interest on such amounts) previously made by the Borrower in accordance with clause 4 of this Agreement.

6. **INTEREST**

6.1 **Interest Rate**

- 6.1.1 The Borrower shall pay to the Lender interest at the Interest Rate.
- 6.1.2 Interest will be calculated on the outstanding balance of the Loan and will accrue from day to day and be calculated both before and after judgment.
- 6.1.3 Interest shall be paid annually in arrears from the date of drawdown until the last day of the Term.

6.2 **Default Interest**

- 6.2.1 If the Borrower fails to pay any amount payable by it under this Agreement on the due date it shall pay interest on that amount from (and including) the due date up to (but excluding) the date of actual payment, as well after as before judgment, at the Default Interest Rate.
- 6.2.2 Any default interest which becomes payable must be paid monthly in arrears and if not paid will itself bear interest at the Default Interest Rate.

7. **REPRESENTATION AND WARRANTIES**

7.1 The Borrower represents and warrants that:

- 7.1.1 there is no law or provision having the force of law or any contractual obligation which would prevent the Borrower from borrowing the Loan or from complying with any of its obligations under this Agreement;
- 7.1.2 it has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of, this Agreement and any security for the Loan to which it is or will be a party;
- 7.1.3 it is not and has not at any time, engaged in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010;
- 7.1.4 no Associated Person of it has bribed another person (within the meaning given in section 7(3) of the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of its business and it has in place adequate procedures in line with guidance published by the Secretary of State under section 9 of the

Bribery Act 2010 designed to prevent its or their Associated Persons from undertaking any such conduct (where "Associated Person" means a person who performs or has performed services for or on its behalf);

7.1.5 except as disclosed to the Lender prior to the date of this Agreement or as created by security referred to in Schedule 1, there are no Security Interests affecting the Property; and

7.1.6 there are no legal or other proceedings pending or threatened before any court, tribunal or regulatory authority which will materially adversely affect the financial position of the Borrower.

7.2 The representations and warranties set out in this clause 7 are made by the Borrower on the date of this Agreement and deemed to be repeated by the Borrower on the date of each drawdown under this Agreement and on each date the Borrower makes a payment of interest under this Agreement in each case with reference to the facts and circumstances then existing.

## **8. POSITIVE UNDERTAKINGS**

8.1 The Borrower shall immediately give notice to the Lender of any facts or circumstances which may adversely affect the financial position of the Borrower or the value of the Property and shall deliver to the Lender such other financial or other information relating to the Borrower and/or the Property as the Lender may reasonably require.

8.2 The Borrower shall notify the Lender of any Event of Default immediately upon becoming aware of its occurrence.

8.3 The Borrower shall procure that BCH maintain with financially sound and reputable insurers adequate insurance with respect to the Property against such liabilities and contingencies and of such types and in such amounts as are consistent with prudent business practice and with the Lender as co-insured in respect of the Property.

8.4 The Borrower will maintain in place adequate procedures in line with guidance published by the Secretary of State under section 9 of the Bribery Act 2010 designed to prevent any Associated Person of the Borrower from bribing another person within the meaning given in section 7(3) of the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of the business of the Borrower (where "Associated Person" means a person who performs or has performed services for or on the Borrower's behalf).

## **9. NEGATIVE UNDERTAKINGS**

9.1 Without the prior written consent of the Lender, the Borrower shall not create or permit to subsist any Security Interest on the Property. The Lender is aware of the Security Interests already on the Property at the date of this Agreement.

9.2 The Borrower shall not engage in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.

## **10. DEFAULT**

10.1 Each of the events set out in clause 10.2 is an Event of Default.

10.2 The events are:

10.2.1 the Borrower does not pay on the due date any amount due to the Lender (and such sum remains unpaid for a period of two (2) Business Days);

- 10.2.2 any amount due in respect of Financial Indebtedness is not paid when demanded or due or an event or default (howsoever described) occurs under any document relating to Financial Indebtedness;
  - 10.2.3 the Borrower does not comply with any provision of this Agreement or any security (other than those referred to in clause 10.2.1 and clause 10.2.2) and, where such non-compliance is capable of remedy, it continues unremedied for a period of five (5) Business Days after the Borrower becomes aware of such non-compliance;
  - 10.2.4 any Security Interest granted over or in respect of the Property becomes enforceable;
  - 10.2.5 a representation, warranty or statement made or repeated by the Borrower in or in connection with this Agreement or any security granted in relation to this Agreement is incorrect in any material respect when made or repeated;
  - 10.2.6 the Borrower is or becomes unable to pay its debts as they fall due or admits inability to pay its debts as they fall due;
  - 10.2.7 proceedings are initiated against the Borrower under any applicable bankruptcy or insolvency laws in any jurisdiction, other than the issue of a statutory demand or winding up petition where either are disputed by the Borrower or any step is taken by any person to appoint a trustee in bankruptcy, an administrator, administrative receiver or receiver or liquidator in relation to it or in relation to the whole or any part of its assets;
  - 10.2.8 an encumbrancer takes possession of the whole or a part of the Borrower's assets;
  - 10.2.9 distress or execution or other process is levied or enforced upon or sued out against the whole or any part of the Borrower's assets;
  - 10.2.10 the Borrower convenes a meeting of or makes a conveyance or assignment for the benefit of, or enters into or proposes any composition or other arrangement with its creditors or generally;
  - 10.2.11 any security for the Loan or any guarantee of the Borrower's obligations to the Lender is terminated, discontinued or is not effective or is alleged to be terminated or ineffective for any reason; or
  - 10.2.12 any event or series of events occurs which would have a material adverse effect on the financial condition of the Borrower and/or its business or its ability to comply with its obligations under this Agreement.
- 10.3 On and at any time after the occurrence of an Event of Default the Lender may by notice to the Borrower declare that the whole amount of the outstanding Loan, together with accrued interest and all other amounts accrued under this Agreement and any security be immediately due and payable, whereupon they shall become immediately due and payable.

#### 11. FEES AND EXPENSES

The Borrower shall immediately on demand pay to the Lender the amount of all costs and expenses (including legal fees) incurred by it together with value added tax in connection with the enforcement of, or the preservation of any rights under this Agreement or any security granted in connection with this Agreement.

12. **VALUER**

The Lender may at any time instruct a valuer at its own cost to provide a valuation of the Property and the Borrower will facilitate that the valuer has access to the Property for such purpose, provided that the Lender shall not do so more than once in any year (except where an Event of Default has occurred) and the Borrower acknowledges that any such valuer is acting only for the Lender.

13. **FREEDOM OF INFORMATION**

13.1 The Borrower and the Lender acknowledge that the Lender is subject to the requirements of the FOIA and the Environmental Information Regulations and the Borrower shall facilitate the Lender's compliance with its information disclosure requirements pursuant to the same in the manner provided for in clauses 13.2 to 13.4 (inclusive) below.

13.2 Where the Lender receives a request for information in relation to information that the Borrower is holding on its behalf, the Lender shall transfer to the Borrower such request for information that it has received as soon as practicable and in any event within five (5) Business Days of receiving a request for information and the Borrower shall:

13.2.1 provide the Lender with a copy of all such information in the form that the Lender requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Lender acting reasonably may specify) of the Lender's request; and

13.2.2 provide all necessary assistance as reasonably requested by the Lender in connection with any such information, to enable the Lender to respond to a request for information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Regulations.

13.3 Following notification under clause 13.2 and up until such time as the Borrower has provided the Lender with all the information specified in clause 13.2.1, the Borrower may make representations to the Lender as to whether or not or on what basis the information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Lender shall be responsible for determining at its absolute discretion:

13.3.1 whether the information is exempt from disclosure under the FOIA and the Environmental Information Regulations;

13.3.2 whether the information is to be disclosed in response to a request for Information, and

in no event shall the Borrower respond directly or allow its sub-contractors to respond directly to a request for information unless expressly authorised to do so by the Lender.

13.4 The Borrower shall ensure that all information held on behalf of the Lender is retained for disclosure for at least the number of years from the date it is acquired and shall permit the Lender to inspect such information as requested from time to time.

13.5 The Lender shall transfer to the Borrower any request for information received by the Lender as soon as practicable and in any event within two (2) Business Days of receiving it.

13.6 In the event of a request from the Lender pursuant to clause 13.2, the Borrower shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Lender of the Borrower's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Lender under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Lender's own such costs in respect of such request for information) will exceed the



appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations the Lender shall inform the Borrower in writing whether or not it still requires the Borrower to comply with the request and where it does require the Borrower to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Lender is entitled to under Section 10 of the FOIA. In such case, the Lender shall notify the Borrower of such additional days as soon as practicable after becoming aware of them and shall reimburse the Borrower for such costs as the Borrower incurs in complying with the request to the extent the Lender is itself entitled to reimbursement of such costs in accordance with the Lender's own FOIA policy from time to time.

- 13.7 The Borrower acknowledges that (notwithstanding the provisions of this clause 13) the Lender may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "FOIA Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Borrower or this Agreement:

13.7.1 in certain circumstances without consulting with the Borrower, or

13.7.2 following consultation with the Borrower and having taken their views into account.

Provided always that where clause 13.7.1 applies, the Lender shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Borrower prior to any disclosure.

#### 14. MISCELLANEOUS

- 14.1 If any provision of this Agreement or any related security is found by any court or authority of competent jurisdiction to be invalid or unenforceable, the validity or enforceability of the remaining provisions shall not be affected in any way.
- 14.2 Any variation of or addition to any of the provisions of this Agreement shall not affect the validity and enforceability of any security or guarantee in any way.
- 14.3 The Lender may assign the benefit of this Agreement only to any successor body and give to a proposed assignee on a confidential basis such information relating to the Borrower as it thinks fit.
- 14.4 All notices shall be delivered by hand or sent by first class post to the recipient's address as shown above. The Lender may send notices or communications to the Borrower by e-mail. Any notice sent by first class post will be effective three business days after being deposited in the post postage prepaid in an envelope addressed to the recipient. Any notice delivered by hand will be effective on delivery and any notice or communication sent by the Lender by e-mail shall be effective when received in readable form.

#### 15. LAW AND JURISDICTION

- 15.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 15.2 The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of England and Wales in connection with this Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter and any security granted in respect of this Agreement.

16. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of this Agreement.

#### **SCHEDULE 1 - CONDITIONS PRECEDENT**

1. A copy of a resolution of the board of directors of the Borrower:
  - 1.1 approving the terms of and the transactions contemplated by this Agreement and resolving that it execute this Agreement and the Legal Charge as deeds;
  - 1.2 authorising a specified person or persons to execute each such document on its behalf; and
  - 1.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents, certificates and notices to be signed and/or despatched by it under or in connection with this Agreement, the Legal Charge and any other security.
2. Copies of the resolutions of the board of directors of the FSIF and JM Packaging Limited respectively approving the terms of and the transactions contemplated by the Deed of Priorities.
3. Copies of the insurance policies effected by BCH for the Property together with evidence that the interest of the Lender is noted on such policies.
4. A certified copy of the Deed of Priorities (with the form of the Match Day Agreement annexed thereto) duly executed by all parties thereto.
5. Completion of the DBOM Agreement.