

DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF SAINT PAUL
AND
ST. PAUL SAINTS BASEBALL CLUB, INC.

DATED AS OF _____, 2013

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made as of the _____ of _____, 2013, by and between the City of Saint Paul, a municipal corporation of the State of Minnesota (the “City”), and St. Paul Saints Baseball Club, Inc., a Minnesota corporation (the “Saints”).

BACKGROUND

A. The City currently operates programs of youth and community recreation at Midway Stadium (as defined below), located in the City, in accordance with the Act (as defined below).

B. The Saints are currently a member of the American Association of Professional Baseball Clubs and have for twenty (20) years operated a baseball club at Midway Stadium. Upon completion of the Ballpark (as defined below), the City plans to transfer all of its right, title and interest in Midway Stadium to the Saint Paul Port Authority, a public body politic and corporate of the State of Minnesota.

C. Minnesota Statutes section 116J.433 established the business development through capital projects grant program, which provided for the making of competitive grants to local governmental units for eligible projects and public infrastructure to support an eligible project. The City has applied for and received a conditional commitment from the State to award such a grant for the Project (as defined below). Contemporaneously with the execution of this Agreement, the City and the State have entered into the State Grant Agreement (as defined below).

D. The City has determined that the financing, construction, and operation of a new regional ballpark and the performance of this Agreement are in the best interests of the City and serve a public purpose, and the City has passed Resolution 12-213 and Resolution 12-193 in relation to the Project. Among other things, the construction and operation of the Ballpark will: (i) provide a multi-purpose stadium and related infrastructure for a broad range of civic, community, athletic, educational, cultural, and commercial activities, including professional and amateur baseball; (ii) further the vitality of downtown Saint Paul, in particular the Lowertown area, by generating increased economic activity among its convention and tourism industries; and (iii) further economic development and stimulate the local economy overall.

E. Contemporaneously with the execution of this Agreement, the Saints and the City have entered into the Use Agreement (as defined below).

F. This Agreement is executed to provide for the planning, acquisition, design, financing, development, and construction of the Project, and operation of the Ballpark and related activities constituting the Project prior to its completion and during the term of this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into this Agreement, and the mutual promises, undertakings and covenants

hereinafter set forth, and intending to be legally bound hereby, the City and the Saints covenant and agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Defined Terms.

In addition to other terms defined herein, the following terms used in this Agreement shall have the meaning set forth below:

“Act” shall mean Minnesota Statutes sections 471.15 through 471.191, as enacted or hereafter amended or supplemented, and including any successor law, providing for, among other things, the operation and financing of youth and community recreation programs and facilities.

“Advisory Committee” shall have the meaning set forth in Section 2.2(b).

“Agreement” shall mean this Development Agreement by and between the City and the Saints, as the same may be amended, modified or supplemented from time to time.

“Appurtenant Area” shall mean the plaza, sidewalks, adjacent areas, and any other areas as defined and determined by the City and the Saints, as depicted in Exhibit B.

“Ballpark” shall mean the new regional ballpark, including the Appurtenant Area, to be owned by the City for the use of the Saints and other users, which will: be constructed on the Site; have a minimum of 6,500 fixed seats with a capacity of at least 7,000; have at least four (4) fixed suites; have a stadium club with a capacity of 250; have a commissary of approximately 2,500 square feet; have approximately 4,000 square feet of office space; have concessions equipment as required to accommodate an event capacity of 7,000; have lights sufficient to allow the playing of baseball both during the day and at night; have a scoreboard as described in the Program; and have such other components as may be reasonably required for the purposes of operating a professional baseball club at a AA caliber level or as agreed to by the City and the Saints from time to time pursuant to the terms of this Agreement. The Ballpark is a municipal stadium as set forth in Minnesota Statutes section 272.01, subdivision 2(b)(1), as such statute may be amended, modified, or replaced from time to time.

“Ballpark Bonds” shall have the meaning set forth in Section 4.2(b) hereof.

“Ballpark Rent” shall have the meaning set forth in Section 3.2(c) of the Use Agreement.

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which banks are required or authorized to close in Saint Paul, Minnesota.

“Change Orders” shall mean any change orders or change directives that amend or modify the Contract Documents.

“City” shall mean the City of Saint Paul, a municipal corporation of the State of Minnesota.

“City Contribution” shall mean Twenty-Five Million and No/100 Dollars (\$25,000,000.00) provided by the City as described in Section 4.2(b).

“City Indemnified Persons” shall mean the City and its elected officials, appointed officials, board members, officers, employees, agents and attorneys.

“City Loan” shall mean the amount actually advanced by the City as an internal loan made for purposes of financing the Project, up to a maximum authorized amount of Six Million and No/100 Dollars (\$6,000,000.00).

“City Representative” shall mean the City’s Director of Parks and Recreation, his or her designee, or any successor to the foregoing Person designated by the City by written notice to the Saints.

“Claim” shall mean any claim, demand or dispute between or among the Parties relating to this Agreement or the Project.

“Completion Date” shall mean the date that is the earlier of (a) the date on which the Saints have commenced occupancy of the Ballpark pursuant to the Use Agreement, or (b) the date on which the following have occurred: (i) the Design/Builder has issued to the City a certificate of Substantial Completion (as defined in the Use Agreement); and (ii) a temporary certificate of occupancy has been issued by the City.

“Completion Deadline” shall have the meaning set forth in Section 2.3(b).

“Construction Documents” shall mean the working drawings and specifications prepared by the Design/Builder describing the size, character, appearance, functionality, design, construction, materials, finishes, structural and mechanical, electrical and all other systems, amenities and components of the Project prepared from the Project Design Documents and which are used for obtaining Permits and constructing the Project.

“Construction Team” shall mean the Design/Builder and any other consultants, such as an owner’s representative, a representative designated by the Saints, and others deemed necessary by the City to assist in the design, construction, or development of the Project.

“Contamination” shall mean the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from the Site, which pursuant to Environmental Laws requires notification or reporting to any Governmental Authority, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or other Response Action to such Regulated Substances, or which otherwise constitutes a violation of Environmental Laws.

“Contract Documents” shall mean the Design/Build Agreement, the final Construction Documents, and any Change Orders or other equivalent construction contract documents entered into to complete the Project.

“Contract Sum” shall mean the final fixed and stipulated construction price not to exceed a GMP for the cost of constructing, furnishing and equipping the Project, which shall be established as set forth in the Design/Build Agreement.

“Cost Overrun” shall mean any Project Costs in excess of the sum of Sixty-Three Million and No/100 Dollars (\$63,000,000.00).

“Damages” shall mean any loss, liability, claim, damage, cost and expense, including costs of investigation and defense and reasonable attorneys’ fees, whether the action is for money damages, or for equitable or declaratory relief. In no event shall Damages against either Party include incidental or consequential damages.

“DEED Funds” shall mean, collectively, the One Million and No/100 Dollars (\$1,000,000.00) grant and the One Million and No/100 Dollars (\$1,000,000.00) partially forgivable loan from the Minnesota Department of Employment and Economic Development to the City.

“Design/Builder” shall mean Ryan Companies US Inc. and such firm’s subconsultants which together will provide design, preconstruction and construction services and construction administration for the Project pursuant to the Design/Build Agreement.

“Design/Build Agreement” shall mean that certain Agreement between Owner and Design-Builder for Design of the Lowertown Ballpark, dated February 19, 2013 entered into by and between the City and Design/Builder, as the same may be amended, modified or supplemented from time to time.

“Design Documents” shall refer to, as applicable, the Project Concept Design Documents, the Project Design Documents and the Construction Documents.

“Disbursement Request” shall have the meaning set forth in Section 4.4.

“Disbursing Agent” shall have the meaning set forth in Section 4.4.

“Disbursing Agreement” shall have the meaning set forth in Section 4.4.

“Environmental Law” shall mean all Laws, including, without limitation, any consent decrees, settlement agreements, judgments, or orders, issued by or entered into with a Governmental Authority pertaining or relating to: (a) pollution or pollution control; (b) protection of human health or the environment; (c) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; (d) the presence of Contamination; or (e) the protection of endangered or threatened species.

“Environmental Reports” shall mean, collectively, (i) the Response Action Plan, (ii) the Phase I and Phase II, and (iii) the historical environmental reports listed on Exhibit G attached hereto.

“Event of Default” shall have the meaning set forth in Section 8.1 hereof.

“Force Majeure” shall mean acts of God, accidents, fire or other casualty, earthquake, hurricane, tornadoes, named storms, flood, war, riot, intervention by civil or military authorities of government, insurrection or other civil commotion, governmental action (excluding any governmental action or inaction with respect to the granting or withholding of any governmental approvals or Permits needed for the construction of the Project, operation of the Ballpark or Infrastructure, or the acquisition of the Site), material shortages, strikes, boycotts, lockouts or labor disputes (but not including player labor stoppages, whether attributable to strikes or lockouts), or any other similar or like event or occurrence beyond the reasonable control of a Party hereto, that causes such Party to be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder. Unavailability of funds shall not constitute Force Majeure.

“GMP” shall mean guaranteed maximum price.

“Governmental Authority” shall mean any federal, state, county, city, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof.

“Guarantors” shall mean each principal owner of the Saints individually owning twenty percent (20%) or more of the Ownership Interests, as defined in the Use Agreement, as of April 4, 2013.

“Guaranty” shall mean, individually and collectively, the joint and several personal guaranties of the Guarantors in the amount of the maximum annual debt service on the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013, executed by Guarantors pursuant to Section 7.2(a) in the form attached as Exhibit F.

“Indenture” shall have the meaning set forth in Section 4.3.

“Infrastructure” shall mean offsite roads, bike paths and other related infrastructure deemed necessary and desirable by the City to facilitate the use and development of the Ballpark.

“Law” or “Laws” shall mean any law, statute, code, ordinance, rule, regulation or constitutional or charter provision, duly enacted or adopted by any Governmental Authority.

“League” shall mean the American Association of Independent Professional Baseball, an independent professional baseball league, in which the Saints currently hold a membership or any successor or other league in which the Saints hold a membership from time to time.

“Legal Requirements” shall mean present and future Laws (including Environmental Laws) applicable to the design, development, construction, equipping, use, occupancy, possession, operation, maintenance and management of the Project, including all Laws relating to the issuance of any bonds or the exclusion of interest on such bonds from gross income for federal tax purposes, if such bonds are issued by any Governmental Authority in connection with the financing of the Project.

“Master Project Schedule” shall mean the master project schedule as developed by the Design/Builder and updated in accordance with the Design/Build Agreement.

“Midway Stadium” shall mean the municipal stadium located at 1771 Energy Park Drive, Saint Paul, Minnesota 55108, owned by the City, used in part by the Saints for professional league baseball, and used by other users for a broad range of civic, community, athletic, educational, cultural, and commercial activities, including amateur baseball.

“MPCA” shall have the meaning set forth in Section 3.2(b) hereof.

“Party” or “Parties” shall mean either or both of the City and the Saints.

“Permits” shall mean any permit, license or approval to be issued by any Person, including Required Environmental Permits, required for construction, demolition, installation, alteration or repair of any improvements related in any manner to the Project.

“Person” shall mean any natural person, sole proprietorship, corporation, partnership, trust, limited liability company, limited liability association, unincorporated association, joint venture, joint-stock company, Governmental Authority, or any other entity.

“Phase I” shall mean the Phase I Environmental Site Assessment Report prepared by Braun Intertec Corporation, dated October 16, 2012.

“Phase II” shall mean any further environmental assessment required or contemplated by the Phase I to determine the extent and nature of any Contamination.

“PLA” shall have the meaning set forth in Section 2.6 hereof.

“Port Authority” shall mean the Port Authority of the City of Saint Paul, a public body, corporate and politic.

“Prime Rate” shall mean that rate of interest published from time to time in the Money Rates column of The Wall Street Journal as the “Prime Rate” or “Prime Interest Rate.”

“Privately Financed Enhancement” shall mean additions or enhancements to the Project agreed upon by the Parties that are paid for solely by the Saints or other private entities and which are not included in Project Costs.

“Program” shall mean a program for the use of the Ballpark agreed to by the City and the Saints.

“Project” shall mean the Ballpark and all activities relating to the planning, acquisition, design, financing, development, and construction of the Ballpark.

“Project Accounts” shall mean those accounts to be established by the City for the administration and disbursement of Project Funds as described in Sections 4.2, 4.3 and 4.4 hereof.

“Project Agreements” shall have the meaning set forth in Section 10.22 hereof.

“Project Budget” shall mean the budget for the Project, which is comprised of all costs necessary or desirable to develop, finance, acquire, construct, equip, and improve the Project, including, but not limited to, the following specific elements:

- (i) construction;
- (ii) furniture, fixtures and equipment, including concessions, fit outs and scoreboard;
- (iii) stormwater treatment;
- (iv) all costs for any structural elements, including pilings;
- (v) all costs associated with bond financing;
- (vi) all costs of acquisition and eminent domain, and related relocation, land assembly, building demolition, environmental investigation and remediation;
- (vii) relocation and installation of utilities;
- (viii) connections to offsite roads and bike paths and other related infrastructure deemed necessary and desirable by the City;
- (ix) public art requirements;
- (x) permits and approvals;
- (xi) sustainable guidelines required by state bond financing; and
- (xii) professional services and consultants including, but not limited to, project management, inspectors, legal services and the like.

The Project Budget is Sixty-Three Million and No/100 Dollars (\$63,000,000.00), plus any Privately Financed Enhancements. The current Project Costs included within the Project Budget are as set forth in Exhibit D attached hereto.

“Project Concept Design Documents” shall mean the Program statement and other conceptual design documents prepared by the Design/Builder listed on Exhibit C attached hereto.

“Project Costs” shall mean all costs and expenses included in the Project Budget attached hereto as Exhibit D or as agreed to by the Parties.

“Project Design Documents” shall mean drawings and specifications prepared by the Design/Builder based upon and refining the Project Concept Design Documents and illustrating the scope, relationship, forms, size, functionality and appearance of the Project, which shall provide detail regarding the exterior and interior public spaces of the Project, including materials and colors, by means of plans, sections and elevations, typical construction details, equipment schedules and layouts and specifications and that show all significant Project components, all in sufficient detail to define for the Saints and the City the scope, character and quality of the entire Project.

“Project Funds” shall mean the Saints Contribution, the City Contribution, the State Grant, and the DEED Funds.

“Regulated Substances” shall mean any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a “hazardous substance,” “hazardous waste,” “toxic substance,” “extremely hazardous substance,” “toxic chemical,” “toxic waste,” “solid waste,” “industrial waste,” “residual waste,” “municipal waste,” “special handling waste,” “mixed waste,” “infectious waste,” “chemotherapeutic waste,” “medical waste,” “regulated substance,” “pollutant” or “contaminant” or any other substance, material or waste, regardless of its form or nature that otherwise is regulated by Environmental Laws.

“Representative” or “Representatives” shall mean one (1) or more of the City Representative or the Saints Representative.

“Required Environmental Permits” shall mean Permits, licenses, bonds, consents, programs, approvals or authorizations required under Environmental Laws for the construction of the Project, or required by the Saints or the City to conduct their respective operations, maintain or use the Ballpark or construct, maintain, operate or use any alterations or improvements, regardless of whether such Permits are required to be or have been obtained by the City or the Saints.

“Response Action” shall mean the investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or any other response action to the presence of Regulated Substances or Contamination in, on, at, under or emanating from the Site, including the correction or abatement of any violation required pursuant to Environmental Laws, Required Environmental Permits or by a Governmental Authority.

“Response Action Plan” shall mean the Additional Investigation Results, Response Action Plan and Construction Contingency Plan prepared by Braun Intertec Corporation, dated October 12, 2012.

“Saints” shall mean St. Paul Saints Baseball Club, Inc., a Minnesota corporation.

“Saints \$1.5M Contribution” shall have the meaning set forth in Section 4.2(a) and, except as provided herein, is non-refundable.

“Saints Additional Contribution” shall have the meaning set forth in Section 4.2(a).

“Saints Contribution” shall mean, collectively, the Saints \$1.5M Contribution, the Saints Additional Contribution, and the Ballpark Rent payable under the Use Agreement as set forth in Section 4.2(a).

“Saints Representative” shall mean Tom Whaley, Executive Vice President, or any successor to the foregoing Person designated by the Saints by written notice to the City.

“Site” shall mean the real property, rights, easements, and access areas, if any, described on Exhibit A within the area depicted on Exhibit B.

“State” shall mean the State of Minnesota, acting by and through the Commissioner of Management and Budget.

“State Grant” shall mean the grant to be obtained for the Project by the City from the State in an amount of Twenty-Five Million and No/100 Dollars (\$25,000,000.00).

“State Grant Agreement” shall mean that certain Grant Agreement dated May 12, 2012, by and between the State and the City for the State Grant.

“State Grant Legal Requirements” shall have the meaning set forth in Section 10.22.

“State Grant Program” shall mean the business development through capital projects grant program established by Minnesota Statutes section 116J.433, subdivision 3, under which the State Grant is to be provided.

“Taxable City G.O. Bonds” shall have the meaning set forth in Section 4.2(b).

“Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013” shall have the meaning set forth in Section 4.2(a).

“Tax-Exempt Bonds” shall have the meaning set forth in Section 10.1.

“Trust Agreement” shall have the meaning set forth in Section 4.3(a).

“Trustee” shall mean U.S. Bank National Association, which will act as trustee in connection with the Project.

“Use Agreement” shall mean the Ballpark Use Agreement dated as of the date of this Agreement and entered into between the City and the Saints with respect to the Ballpark, as the same may be amended, modified or supplemented from time to time.

Section 1.2 Construction of Terms.

As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word “including” or any variation thereof is used herein, it shall mean “including, without limitation” and shall be construed as a term of illustration, not a term of limitation. Wherever the words “and” or “or” are used herein, they shall mean “and/or.”

ARTICLE 2 DESIGN AND CONSTRUCTION

Section 2.1 Collaborative Effort.

(a) In General. The City shall be responsible for and shall manage and oversee the design, construction and equipping of the Project. The City agrees to meet, confer, and consult with the Saints throughout the design and construction process as necessary or appropriate, or as the Saints may reasonably request, to ensure that Project and Program requirements are met in a

cost-effective manner and that the design and construction enhance efficient operation of the Ballpark and its utilization by the Saints.

(b) Project Representatives.

(i) Saints Representative. The Saints have designated the Saints Representative as its agent and representative authorized to act on the Saints' behalf with respect to the Project. The Saints Representative is the Saints' exclusive representative insofar as this Agreement is concerned. All instructions from the Saints to the City relating to this Agreement shall be issued or made in writing (or as otherwise agreed to by the Parties) through the Saints Representative. All communications and submittals from the City to the Saints with respect to matters covered by this Agreement shall be issued or made through the Saints Representative, unless the Saints or the Saints Representative shall otherwise direct in writing. The City recognizes that the Saints may have additional representatives involved in the Project, however, official determinations by the Saints must be made through the Saints Representative.

(ii) City Representative. The City has designated the City Representative as its agent and representative authorized to act on the City's behalf with respect to the Project, except in cases where approval by the City Council is denoted or reserved by the City Council or required by Law. The City Representative is the City's exclusive representative insofar as this Agreement is concerned. All instructions from the City to the Saints relating to this Agreement shall be issued or made in writing (or as otherwise agreed to by the Parties) through the City Representative. All communications and submittals from the Saints to the City with respect to matters covered by this Agreement shall be issued or made through the City Representative, unless the City or the City Representative shall otherwise direct in writing. The Saints recognize that the City may have additional representatives involved in the Project, however, official determinations by the City must be made through the City Representative.

Section 2.2 Design Phase.

(a) Design/Build Agreement. The City has entered into the Design/Build Agreement pursuant to which the Design/Builder will prepare Design Documents for the Project. The City shall have the sole right to approve or disapprove any change, modification or amendment to the Design/Build Agreement, except as specifically set forth herein.

(b) Design Meetings.

(i) The City Representative and the Saints Representative shall receive notice of all Project design meetings and have the right to attend all design meetings regarding the design of the Project. The purpose of the design meetings is to enable the orderly review of progress during design, provide for systematic discussion and analysis of problems that might arise, coordinate the work, answer questions, resolve problems, review schedules, and discuss technical aspects or concerns regarding the Project. All design meetings shall be held in Ramsey County, Minnesota, unless otherwise agreed by

the Parties and shall be scheduled at a regular time that generally allows the Saints Representative, the City Representative, and other City and Saints staff to attend.

(ii) In addition, pursuant to City Resolution 12-213, the City has or will be creating an advisory Lowertown Ballpark Design and Construction Committee (the "Advisory Committee") and may be holding other neighborhood meetings regarding the design and construction of the Project. The City Representative and the Saints Representative shall receive notice of all Advisory Committee and neighborhood meetings, shall in all events have the right to attend such meetings and shall, if necessary for the meeting, be required to attend and present or answer questions at such meetings. The purpose of such meetings is to keep the public informed and seek public input as to the Project.

(c) Design Process.

(i) Upon completion of each design phase for the Project (i.e., Project Concept Design Documents, Project Design Documents, and Construction Documents), the City will submit the respective Design Documents along with updated Project Costs estimates and schedule to the Saints Representative for submission to the Saints for comment. For each respective design phase for the Project, the Saints will review the documents submitted and submit comments to the City, if any, in writing or as otherwise agreed by the Parties, within five (5) Business Days of their receipt by the Saints Representative. Unless comments are received within five (5) Business Days after receipt of each submission, the City may assume that the Saints have no comments. In response to comments received from the Saints, the City may cause corrections to be made or may submit a written explanation to the Saints Representative, within five (5) Business Days of the receipt of the Saints' comments, as to why corrections cannot or will not be made. The City is under no obligation to make any corrections or provide a written explanation based on the Saints' comments; provided, however, that in considering comments from the Saints, the City will act in accordance with the provisions of this Agreement.

(ii) The City shall submit to the Saints Representative for submission to the Saints for comment all changes to the Design Documents that the City believes are material. Such changes will be accompanied by reasonable estimates as to the impact thereof on the Project. The City is not required to notify the Saints of any changes that the City reasonably believes are not material. The City may not implement any material change without providing such change to the Saints for comment. Unless comments are received within five (5) Business Days after receipt of each submission, the City may assume that the Saints have no comments to the proposed material change. The City is under no obligation to make any corrections based on the Saints' comments; provided, however, that in considering comments from the Saints, the City will act in accordance with the provisions of this Agreement.

(d) Design/Builder to Provide Detailed Estimate. Upon completion of the Project Design Documents, the Design/Builder shall provide a detailed estimate of the cost of construction of the Ballpark based upon the Project Design Documents. The Design/Builder

shall meet with the Parties and Representatives as reasonably requested to provide information regarding the estimate and value engineering proposals.

(e) Construction Documents. Upon completion of the Project Design Documents, the Design/Builder shall prepare Construction Documents based on the approved Project Design Documents. The City shall review the Construction Documents to determine whether the Construction Documents are consistent with the approved Project Design Documents. The City will submit the Construction Documents to the Saints for review and comment pursuant to the procedure outlined in Section 2.2(c).

Section 2.3 Construction Phase.

(a) Project Delivery Method. The Project will be constructed on the basis of a design-build GMP construction process, in which the Design/Builder shall assume responsibility to complete the design, deliver final Construction Documents, and construct the Project for a GMP that includes all the required costs of finishing design and construction. The design-build project delivery method is expressly authorized by the State Grant Program.

(b) City Oversight of Design/Builder. The City shall be solely responsible for oversight of the Design/Builder and shall cause the Design/Builder to:

- (i) prepare the Project Budget;
- (ii) develop a Master Project Schedule and cause the Master Project Schedule to be updated on at least a monthly basis and timely deliver a copy of same to the City Representative and the Saints Representative;
- (iii) provide detailed estimates as set forth in Section 2.2(d);
- (iv) develop an initial Contract Sum and final Contract Sum, and a Completion Date for approval by the City;
- (v) obtain or cause to be obtained all Permits;
- (vi) review the Design Documents and make recommendations to the City and the Saints;
- (vii) maintain complete and accurate books and records, consistent with industry standards, regarding the design and construction of the Project, including, without limitation, records relating to the Contract Documents, shop drawings, Change Orders, as built drawings, applications for payment, Permits, insurance policies, correspondence, bills, vouchers, receipts and lien waivers;
- (viii) develop and implement a plan to mitigate the impacts of construction on surrounding neighborhoods;
- (ix) develop and implement a plan for construction staging and storage;

(x) notify promptly the City of any claim, suit, proceeding or action that is initiated or threatened or that facts reasonably indicate may be initiated or threatened in connection with the Project;

(xi) provide the City Representative and the Saints Representative with monthly progress reports and at such other times as may be reasonably requested containing such financial information as the City may reasonably request relating to Project Costs, including a status report on the progress of the Project construction;

(xii) supervise and coordinate the construction of the Project so that the Project is constructed, equipped, furnished and substantially completed in a good and workmanlike manner in accordance with the Contract Documents, lien free, by February 27, 2015 (subject to Force Majeure) in accordance with all Legal Requirements (the "Completion Deadline");

(xiii) take all steps and follow all processes necessary to cause all temporary and total certificates of occupancy to be issued on or before the Completion Deadline; and

(xiv) develop a transportation management plan for the construction period, including traffic control, truck routing and street closures, for any required City approval.

(c) Change Orders. In general, any Change Order that results in a Cost Overrun, is caused by an enhancement to the Project that exceeds the Project Budget, is caused by a Privately Financed Enhancement that results in a Cost Overrun, or that exceeds the Project Budget, may, at the City's sole discretion, be subject to City Council approval.

(i) The City shall be solely responsible for the approval and execution of all Change Orders initiated by the City or the Saints. If a Change Order that results in a Cost Overrun is approved, then the Party requesting such Change Order shall, prior to the City executing the Change Order, deposit an amount equal to such Cost Overrun in the Project Accounts containing the Project Funds.

(ii) The Saints may submit a request to the City for a Change Order related to an enhancement to the Project that exceeds the Project Budget and for which the Saints do not have funding. The City shall be under no obligation to complete any such requested enhancement, but may, in its sole discretion, issue additional bonds for the same provided that the Saints secure credit for such bonds acceptable to the City in its sole discretion. If the City agrees to complete such enhancement and is able to obtain funding for the same, the City will execute a Change Order for the same.

(iii) The Saints may also request a Change Order related to a Privately Financed Enhancement. The City Representative shall review for approval a Saints-requested Change Order for a Privately Financed Enhancement. If any Saints-requested Change Order relates to a Privately Financed Enhancement and the City Council approves the same, then the Saints, prior to the City executing the Change Order, shall deposit an amount equal to such Privately Financed Enhancement in the Project Accounts containing the Project Funds. Such amount shall be held in a separate subaccount of the Project Accounts specifically identified for the Privately Financed Enhancement.

(d) Construction Team Meetings. The City Representative and the Saints Representative shall receive from the Design/Builder advance notice of all Project meetings. During the term of this Agreement, such Representatives shall have the right to attend all of the Construction Team meetings. The City Representative and the Saints Representative shall meet regularly in order to stay informed throughout the duration of the planning, design and construction of the Project.

(e) Value Engineering. If at any time during construction, the City reasonably believes that the Project Budget might be exceeded, then, following reasonable consultation with the Saints, the City shall be entitled to undertake such value engineering as may be reasonable and appropriate to cause the Project Budget not to be exceeded.

Section 2.4 City Responsibilities.

(a) The City shall be responsible for the administration of the Design/Build Agreement.

(b) The City shall select and negotiate contracts with all consultants and professionals that shall comprise the Construction Team; provided, however, that the City shall have the right to assign or delegate some or all of such responsibilities to the Design/Builder or other third parties, including the Saints if the City and the Saints agree to the same.

(c) The City shall provide accounting services for the Project, including records that reasonably detail Project Costs. The City shall establish standards for tracking and allocating such costs. The standards will incorporate the highest level of transparency commensurate with the public investment in the Project and will reflect the need for financial reporting and accountability to multiple Governmental Authorities.

(d) In addition to the requirements of Section 2.3(b), the City shall cause the Design/Builder and all subcontractors, as applicable, to:

(i) comply with the requirements of Section 183.04 of the Saint Paul Legislative Code and the Rules Governing Affirmative Requirements in Employment adopted by the Saint Paul Human Rights Commission;

(ii) comply with all local, state and federal labor standards;

(iii) comply with the City's Vendor Outreach Program, as required by Chapter 84 of the St. Paul Administrative Code, with minority and women owned businesses participating in subcontracts meeting at least the Project inclusion goals set forth in Exhibit E and provide status and progress reports to the City as requested; and

(iv) comply with the Saint Paul Sustainable Building Policy (see www.sustainablebuildingpolicy.umn.edu/saintpaul) and the State B3 – Minnesota Sustainable Building Guidelines v. 2.1.

(e) The City shall take all action reasonably required to comply with all Legal Requirements and take all reasonable action to cause the Design/Builder and all other agents and

contractors engaged by, or acting on behalf of, the City to design and construct the Project in accordance with all Legal Requirements.

(f) The City will comply or cause the Design/Builder to comply with all of the applicable provisions contained in Minnesota Statutes Chapter 177, and specifically those provisions with regard to prevailing wage law contained in Minnesota Statutes sections 177.41 through 177.435, as they may be amended, modified or replaced from time to time.

(g) The City shall supervise punchlist and warranty work after the Completion Date.

Section 2.5 Permits.

Except to the extent that the City is unable to do so due to the Saints' failure to perform its obligations under this Agreement, the City shall comply with and keep in effect all Permits and other approvals obtained from any Governmental Authorities, regardless of the procurer of such Permits, that relate to the construction of the Project.

Section 2.6 Project Labor Agreement.

Acknowledging the City's policy regarding the use of project labor agreements ("PLA"), the City shall cause the Design/Builder to negotiate a PLA.

Section 2.7 Insurance.

The City or the Design/Builder will obtain and continuously maintain, or cause to be obtained and continuously maintained, insurance on the Project in the form and amounts which are customary for projects of this sort, and shall furnish proof to the Saints, upon written request, that the premiums for such insurance have been paid and the insurance is in effect. All insurance proceeds shall be considered Project Funds and will be deposited in the Project Accounts to pay for Project Costs. The City shall cause the Saints to be named as an additional insured on the comprehensive general liability insurance maintained for the Project by the Design/Builder.

Section 2.8 Saints Participation in Design and Construction.

The City will give the Saints notice and a reasonable opportunity to review (not to exceed five (5) Business Days) any documents entered into by the City after the date of this Agreement in connection with the design or construction of the Project, before such documents are executed and, once executed, before such documents are amended. The City will, thereafter, consult with the Saints as to any comments that they might have to any such documents or amendments if the provisions subject to such comments are likely to result in: (a) an increase in the cost of the Project; (b) a delay in completion of the Project; (c) an increase in the cost of operating or maintaining the Project; or (d) a reduction in the size, capacity or amenities of the Ballpark. No change will be made to the Project that results in a material change to the Ballpark described herein without the prior written consent of the Saints.

ARTICLE 3 SITE ACQUISITION

Section 3.1 Acquisition of Site.

The City shall be responsible for the acquisition, including the use of eminent domain, of any and all property required for the Project and the costs associated with acquisition or the use of eminent domain are Project Costs. The Parties acknowledge that it is anticipated that an additional parcel, PID: 32-29-22-31-0048, current owner: 401 East 4th Building Partnership (the "401 Parcel"), will be acquired by the City for the Project. Upon acquisition by the City of the 401 Parcel, the parties agree to amend this Agreement for the purpose of adding the 401 Parcel to the Site. The 401 Parcel will not be funded with State Grant proceeds.

Section 3.2 Environmental Matters.

(a) The City has obtained the Phase I for the Site. The City has caused or shall cause such Phase II environmental work to be performed as is recommended by the Phase I or as otherwise determined to be reasonably necessary by the City. The City has obtained the Response Action Plan and shall cause the Design/Builder to implement the Response Action pursuant thereto.

(b) The cost of the Phase I (including the cost to prepare the Phase I), the Phase II (including the cost to prepare any report of the results thereof, if any), and the Response Action Plan shall be paid as part of the Project Costs. In the event any additional Contamination is discovered during the course of construction that, pursuant to applicable Environmental Laws, requires the performance of a Response Action, the City shall prepare another response action plan or amend the Response Action Plan, in all events sufficient to obtain from the Minnesota Pollution Control Agency (the "MPCA") a "No Further Action" letter for soils at the Site and shall obtain approval of such plan or amendment by the MPCA. The City shall cause the Design/Builder to cause such Response Action to be performed in accordance with the approved plan as expeditiously as is reasonably possible and the Design/Builder shall demonstrate that the costs for such Response Action are based upon competitive pricing. The costs of any Response Action shall be paid as a Project Cost.

(c) If any Contamination is discovered during the course of construction, then the City shall notify the Saints immediately and before such Contamination is disturbed, but in no event later than five (5) days after either (i) the date the City first observes the conditions or (ii) the date that such Contamination is reported to the City by the Design/Builder. The Parties may explore in good faith the procurement of insurance coverage for any legal liability relating to Contamination at the Site other than as disclosed in the Environmental Reports and such insurance cost shall be a Project Cost. In the unlikely event that the Saints discover any Contamination, the Saints shall notify the City of the same pursuant to the procedures above.

Section 3.3 Site Acquisition and Environmental Project Costs.

(a) In addition to other items specified in this Agreement, the Project Costs shall include the cost of the following items:

(i) a title commitment and the premium for any title policy issued pursuant to such commitment;

(ii) a boundary survey or other such legal description of the Site identifying new and existing confines of the Site. Such survey shall incorporate proposed road and utility relocation and any proposed property and street vacation;

(iii) a final report concerning the site-use assessment of historical and archaeological artifacts including any necessary surveys and investigations, together with clearance by the appropriate public agencies approving findings and recommendations identified in the final report; and

(iv) obtaining approval of the Response Action Plan and any response action plan or amendment required under Section 3.2(b), and obtaining a “No Further Action” letter covering soils at the Site and a “No-Association Determination,” as appropriate, from the MPCA stating that any such Contamination discovered during the Phase II has been removed or remediated to the extent required by the MPCA, and that the Saints and the City, and their respective successors and assigns and lenders, will not become associated with such Contamination as a result of acquiring title to the Site or constructing and operating the Ballpark.

(b) If conditions are encountered at the Site that are subsurface structures or conditions or materials that differ substantially from those indicated in the Environmental Reports, then the City shall notify the Saints immediately, and before such conditions are disturbed, but in no event later than five (5) days after either (i) the date the City first observes the conditions or (ii) the date that such conditions are reported to the City by the Design/Builder. In the unlikely event that the Saints discover any such conditions, the Saints shall notify the City of the same pursuant to the procedures above. The City Representative and the Saints Representative shall promptly investigate such conditions. If such conditions could not have been foreseeable from the information available, and cause an increase in the cost of, or time required for, performance of any part of the Project, such costs shall be a Project Cost.

Section 3.4 Ownership of Project.

The Saints acknowledge and agree that the Site, together with all real and personal property constructed, installed, and placed on the Site, including the Ballpark and the Infrastructure, and all right, title, and interest thereto and therein, shall be the property of and owned by the City, subject, however, to such use rights as are conferred on the Saints pursuant to the Use Agreement. In furtherance thereof, the Saints, at the request of the City, will execute and deliver a confirmatory quit claim deed or quit claim bill of sale in form and substance reasonably acceptable to the City. The provisions of this Section are specifically subject to the rights of the Saints under the Use Agreement and exclude any Saints Property (as defined in the Use Agreement).

ARTICLE 4
FINANCING OF THE PROJECT

Section 4.1 Project Budget.

The City and the Saints agree that the Project Costs shall be paid pursuant to the Project Budget. The initial Project Budget is set forth in Exhibit D. The Project Budget shall include reasonable contingencies, including a three and two-tenths percent (3.2%) overall Project contingency. The Project Budget may be revised from time to time by agreement of the Parties as design, development, and construction of the Project progresses, provided that in determining whether or not to agree to a proposed revision to the Project Budget, the Saints shall be entitled to consider its plans with respect to the possibility of making Saints Ballpark Purchases, as provided in Section 4.2(a)(ii), below. Any changes to the final approved Project Budget that result in a Cost Overrun or any Change Order that exceeds the Project Budget may, at the City's sole discretion, require City Council approval. The City and the Saints may, individually or collectively, seek additional funding from other sources for Project Costs. The Parties shall work in good faith so that at least Sixty-Three Million and No/100 Dollars (\$63,000,000.00) shall be spent on the Project Costs, to the end that as many Program elements, amenities and design features as are reasonable for a multi-purpose regional professional ballpark and related infrastructure are included in the Project.

Section 4.2 Financing.

Subject to the terms and conditions of this Agreement, the financing for the Project is as follows:

(a) Saints Contribution.

(i) The Saints shall deposit One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) of the Saints Contribution (the "Saints \$1.5M Contribution") into the Project Accounts as provided herein. Upon execution of this Agreement, the Saints shall remit the Saints \$1.5M Contribution by wire transfer or such other method or methods as the City may direct for deposit into one or more Project Accounts as directed by the City, for use in the payment of Project Costs. The Saints \$1.5M Contribution shall be held in escrow in the Project Accounts until the date, anticipated to be on or about November 15, 2013, on which Five Million Five Hundred Thousand and No/100 Dollars (\$5,500,000.00) of the cash portion of the balance of the City Contribution is deposited to the Project Accounts as set forth in Section 4.2(b)(iii) below, and on that date the Saints \$1.5M Contribution shall be released from escrow, but shall remain in the Project Accounts. The Saints \$1.5M Contribution is unconditional as to sources of payment and, except as expressly provided herein, the Saints \$1.5M Contribution is non-refundable. It is the intention of the Parties that the Saints \$1.5M Contribution will be spent on Project Costs proportionally with the cash portion of the City Contribution, which includes the Ballpark Bonds and the City Loan, any cash portion of the Saints Additional Contribution, and the State Grant, subject, however, to the City's control and discretion to determine the appropriate matching of sources and uses of funds as contemplated by

Section 4.4(d) of this Agreement and the terms and conditions of the State Grant Agreement.

(ii) The Saints shall make an additional contribution to the Project in the amount of One Million and No/100 Dollars (\$1,000,000.00) (the "Saints Additional Contribution"), which shall be in the form of cash, verified purchases or in-kind contributions made by or on behalf of the Saints for the Ballpark ("Saints Ballpark Purchases"), or increased Ballpark Rent. The Saints shall inform the City of the selected form or forms for the Saints Additional Contribution by written notice to the City no later than ten (10) days prior to the date on which the final resolution authorizing the issuance of the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013 (described below) is to be considered by the Port Authority, and shall be given credit for the Saints Additional Contribution as follows:

(A) If all or a portion of the Saints Additional Contribution is in the form of cash, the Saints shall deposit such cash into the Project Accounts by wire transfer or such other method or methods as the City may direct in escrow in accordance with (i), above immediately upon the later of (x) execution of this Agreement or (y) the giving of the notice of selection to the City in accordance with (ii) above. Any cash portion of the Saints Additional Contribution will be spent on Project Costs proportionally with the Saints \$1.5M Contribution, the cash portion of the City Contribution, which includes the Ballpark Bonds and the City Loan, and the State Grant, subject, however, to the City's control and discretion to determine the appropriate matching of sources and uses of funds as contemplated by Section 4.4(d) of this Agreement and the terms and conditions of the State Grant Agreement.

(B) If all or a portion of the Saints Additional Contribution is in the form of Saints Ballpark Purchases, the items so purchased or contributed must be verified, part of the approved Project Budget and reasonably within the Program description, consistent with outfitting a first class ballpark. The Saints shall be given full credit against this undertaking for items purchased or contributed by or on behalf of the Saints based on estimated costs in the approved Project Budget. The Saints shall coordinate its activities in purchasing or contributing items to be included as Saints Ballpark Purchases with those of the City, and shall deliver those items when reasonably required under the Project Schedule.

(C) If all or a portion of the Saints Additional Contribution is in the form of increased Ballpark Rent, the City shall increase or cause the Port Authority to increase the amount of the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013 to the principal amount supported by such increased Ballpark Rent, and the Saints Additional Contribution shall be the difference between such increased principal amount and the \$8,500,000 principal amount described in (iv) below.

(iii) The balance of the Saints Contribution shall be in the form of Ballpark Rent payable by the Saints under the Use Agreement in amounts and at the times

sufficient to pay the principal and interest due on the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013 as described in (iv) below.

(iv) The City will issue or cause the Port Authority to issue Eight Million Five Hundred Thousand and No/100 Dollars (\$8,500,000.00) principal amount of Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013 (the "Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013"). In the event the Saints determine that all or a portion of the Saints Additional Contribution will be in the form of increased Ballpark Rent, as set forth in (ii)(C) above, the City will increase or cause the Port Authority to increase the original principal amount of the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013 to the amount supported by such increased Ballpark Rent, not to exceed an additional One Million and No/100 Dollars (\$1,000,000.00) of principal. The Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013 are to be secured by the Use Agreement and the Ballpark Rent payable thereunder, the debt service reserve funded initially from proceeds of the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013, and the rent guaranty account funded initially from funds made available to the Saints through a loan to the Saints from the City's Housing and Redevelopment Authority. Both the debt service reserve and the rent guaranty account will be funded initially in an amount equal to maximum annual debt service on the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013. The Guaranty will provide for the replenishment of the rent guaranty account up to an aggregate payment equal to maximum annual debt service on the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013. The City will consult or cause the Port Authority to consult with the Saints prior to the issuance of the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013 as to the terms of such bonds, and the provisions of the documents relating to the payment of Ballpark Rent.

(v) The Use Agreement (or related agreement between the City and the Saints) shall provide that the Saints shall receive credit (to be determined and applied at such times, in such manner and otherwise as set out in the Use Agreement or such other agreement) for investment earnings, if any, on amounts held from time to time in the debt service account and debt service reserve established for the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013.

(vi) The Saints acknowledge and agree that:

(A) the proceeds of the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013, any monies held in or credited to any funds or accounts established under any indenture, bond resolution or similar instrument related to the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013, and (except as provided in (v) above) any investment earnings thereon, are the sole and exclusive property of the City and the Saints shall have no right, title, interest or claim or recourse in or to, or any right to apply or direct the application of, any such proceeds, monies, funds, accounts, or earnings; provided, however, that the City shall, in all respects, be required to apply and direct such proceeds,

monies, funds, accounts, and earnings in a way that is consistent with the requirements of this Agreement; and

(B) the Saints may not and may not attempt or purport to, pledge, hypothecate, encumber, assign, or otherwise grant or create a security interest in or lien on any such proceeds, monies, funds, accounts or earnings.

(b) City Contribution.

(i) As part of the City Contribution, the City will issue general obligation bonds secured by the City in the principal amount of Eight Million Five Hundred Thousand and No/100 Dollars (\$8,500,000.00) (the "Taxable City G.O. Bonds"). The City will also issue or cause to be issued the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013, described in subsection (a) of this Section 4.2. The Taxable City G.O. Bonds and the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013 are collectively referred to as the "Ballpark Bonds."

(ii) The City anticipates that the Ballpark Bonds will be issued in two (2) series on or before December 31, 2013; provided, however, that the number of series and their issuance dates remain within the sole discretion of the City, but shall occur no later than the preceding date. The proceeds of the Ballpark Bonds shall be deposited by the City with the Trustee simultaneously with the release of the Saints \$1.5M Contribution and any cash portion of the Saints Additional Contribution, and shall be used, proportionally with the Saints \$1.5M Contribution, the cash portion of the City Contribution, which includes the Ballpark Bonds and the City Loan, any cash portion of the Saints Additional Contribution, and the State Grant, to pay Project Costs, subject, however, to the City's control and discretion to determine the appropriate matching of sources and uses of funds as contemplated by Section 4.4(d) of this Agreement and the terms and conditions of the State Grant Agreement.

(iii) The Sixteen Million Five Hundred Thousand and No/100 Dollars (\$16,500,000.00) balance of the City Contribution, which includes the City Loan, may be in the form of cash or in-kind contributions, including, specifically, the contribution of the land acquired and in-kind services obtained and transferred by the Port Authority and valued at Three Million and No/100 Dollars (\$3,000,000.00). Five Million Five Hundred Thousand and No/100 Dollars (\$5,500,000.00) of the cash portion of the balance of the City Contribution shall be made by wire transfer or such method or methods as the City may determine for deposit into one or more of the Project Accounts simultaneously with the release of the Saints \$1.5M Contribution and any cash portion of the Saints Additional Contribution. The remaining balance of the cash portion of the City Contribution will be deposited into one or more of the Project Accounts as needed for construction draws. It is the intention of the Parties that the cash portion of the balance of the City Contribution will be spent on Project Costs proportionally with the Saints \$1.5M Contribution, the Ballpark Bonds, any cash portion of the Saints Additional Contribution, and the State Grant, subject, however, to the City's control and discretion to determine the appropriate matching of sources and uses of funds as contemplated by Section 4.4(d) of this Agreement and the terms and conditions of the State Grant Agreement.

(iv) Prior to the deposit of the balance of the City Contribution into the Project Accounts as provided in clause (iii), above, all such monies (and any investment earnings thereon) may be held, invested and used as the City may determine or direct in the City's sole discretion.

(c) State Contribution.

(i) State Grant. The Project has been determined by the State to be an eligible project under the State Grant Program. The contribution from the State, in the form of the State Grant, will be requested by the City from the State pursuant to the State Grant Agreement, and as and when needed to pay Project Costs. The City shall have the sole right to request disbursements and draw down, receive, expend or direct the expenditure of, and invest, proceeds of the State Grant; provided, however, that the City shall apply and direct such State Grant proceeds, moneys, funds, accounts and earnings to pay Project Costs in a way that is consistent with the requirements of the State Grant Agreement.

(ii) DEED Funds. The Project has been determined by the Minnesota Department of Employment and Economic Development ("DEED") to be an eligible project for the receipt of funding from DEED. This contribution from the State, in the form of a grant and partially forgivable loan will be requested by the City from DEED to pay Project Costs. The City shall have the sole right to request disbursements and draw down, receive, expend or direct the expenditure of, and invest, proceeds of DEED Funds, provided, however, that the City shall apply and direct such DEED Funds, proceeds, moneys, accounts and earnings to pay Project Costs in a way that is consistent with the requirements of the DEED Funds.

(d) Investment Earnings. The City shall have the sole right to invest or direct the investment of Project Funds and any other amounts in the Project Accounts, in accordance with Minnesota Statutes Chapter 118A. Any investment earnings on amounts in the Project Accounts shall not be deemed a part of or credited against any part of the City Contribution or, except as provided in Section 4.2(a)(v), the Saints Contribution. All such investment earnings shall be paid to the City from time to time for repayment of the City Loan or for deposit into the operating or capital reserves for the Ballpark or Infrastructure (or for application consistent with Section 4.2(a)(v)), all of which shall be under the sole and exclusive custody and control of the City. The allocation of amounts for deposit into one or more accounts or reserves, and the investment and disbursement of all such funds, shall be as determined by the City in the City's sole discretion.

(e) Project Cost Savings. Subject to the undertaking of the Parties set forth in the last sentence of Section 4.1, savings realized in the Project Budget as of the Completion Date, and assuming that construction of the Ballpark has then been completed in compliance with this Agreement, shall be applied: (i) 8/9^{ths} to repay the City Loan and (ii) 1/9th to either: (A) the Building Enhancement Fund; or (B) refunded to the City and the Saints, proportionally, at the Saints' option. Once the City Loan is paid in full, all savings shall be applied as set forth in the preceding clause (ii)(A) or (B).

(f) Additional Funds. Funds obtained by the Saints or the City beyond the amount of the Saints Contribution, the City Contribution or the State Grant, subject to any conditions on the application or use of such funds, may be applied to Project Costs solely as determined by the City, after consultation with the Saints. The City and Saints agree to work cooperatively in seeking and securing third party contributions to add to or enhance the Project.

Section 4.3 Project Accounts and Termination of Project Accounts.

(a) As soon as reasonably practical after the date of this Agreement, the Project Accounts shall be established by the City and the Port Authority pursuant to a trust agreement (the "Trust Agreement") with the Trustee. The Project Accounts shall include separate accounts under the Trust Agreement for the State Grant, the Saints \$1.5M Contribution, any cash portion of the Saints Additional Contribution, the cash portion of the City Contribution, and the Ballpark Bonds. The Trust Agreement shall contain terms and conditions relating to deposit, disbursement, certification and application of funds, including payment procedures through a disbursing agent. The Project Funds held in the Project Accounts under the Trust Agreement shall not be commingled with any other City, State, or Saints funds. The Trust Agreement shall be administered and controlled by the Trustee in accordance with the terms of the Trust Agreement. The Trustee shall provide a copy of all monthly statements received in connection with the Trust Agreement to the Parties within a period of five (5) Business Days after receipt of such statements.

(b) Upon certification by the City in writing to the Trustee that any one of the following has occurred: (i) all Project construction has been completed in accordance with this Agreement; (ii) either Party has exercised its termination right under Section 7.2(b) hereof; (iii) for any reason whatsoever Site acquisition or Project construction has not and will not be commenced, or has been permanently terminated before completion; or (iv) the State, the City or the Saints are a party or parties to litigation regarding disputes resulting in an indefinite suspension of Site acquisition or Project construction; and in all cases, all legally owing Project Costs have been fully paid or separately provided for, then the Project Accounts will be terminated.

(c) The Project Accounts shall be terminated by the Trustee in the following manner:

(i) All remaining amounts in the Project Accounts shall be promptly liquidated.

(ii) If construction of the Project has been completed, then Project Account funds shall be distributed and released as follows:

(A) all remaining City Contribution then held in any Project Account and any remaining funds earned from investment of the City Contribution shall be paid from the Project Accounts to the City, which shall use such funds (i) to make a refund to the State if and to the extent required by the State Grant Agreement, and (ii) to the extent any such amounts remain after application of clause (i), 8/9^{ths} to repay the City Loan and 1/9th to fund the Capital Expenditure Reserve Fund (as defined in the Use Agreement) for the Project;

(B) all remaining Saints Contribution then held in any Project Account and any remaining funds earned from investment of such Saints Contribution shall be paid from the Project Accounts to the City with 8/9^{ths} of such funds used to repay the City Loan and 1/9th to fund the Building Enhancement Fund for the Project (or for application consistent with the Use Agreement); and

(C) after the City Loan has been paid in full, the amounts in subsections (A)(ii) and (B) shall be paid entirely to the Capital Expenditure Reserve Fund or the Building Enhancement Fund, as applicable.

(iii) If construction of the Project has not been completed, then:

(A) all remaining City Contribution then held in any Project Account and any remaining funds earned from investment of City Contribution shall be paid from the Project Accounts to the City, which shall use such funds to make a refund to the State, if and to the extent required by the State Grant Agreement, or retained by the City; and

(B) if the failure to complete construction of the Project occurs as a result of actions for which the Saints were not responsible, after all Project Costs incurred prior to the date of cessation of work on the Project have been paid or accounted for, with the Saints \$1.5M Contribution, any cash portion of the Saints Additional Contribution, the City Contribution and the State Grant being spent proportionally in this regard, subject, however, to the City's control and discretion to determine the appropriate matching of sources and uses of funds as contemplated by Section 4.4(d) of this Agreement and the terms and conditions of the State Grant Agreement, all remaining Saints Contribution then held in any Project Account and any remaining funds earned from investment of such Saints Contribution shall be paid from the Project Accounts to the Saints.

(d) Upon the termination of the Project Accounts following the occurrence of one or more of the events described in (b)(ii), (iii) or (iv), the Use Agreement shall be terminated and proceeds of the Ballpark Bonds shall be distributed as provided in the Indenture of Trust (the "Indenture") executed in connection with the Ballpark Bonds.

(e) Disposition of amounts in the Project Accounts and interest as provided under this Agreement shall not satisfy, affect or resolve any claims or rights held or asserted by any Party related to or arising in connection with duties, disputes or performance unrelated to such disposition, arising under this Agreement, the State Grant Agreement or any other agreement.

Section 4.4 Payment Procedures; Audit Rights.

(a) The City shall establish the payment procedures that shall be implemented in connection with payments to be made from the Project Accounts under the Trust Agreement, and in connection with the disbursement of the proceeds of the Ballpark Bonds under the Indenture, and the form of disbursement request to be used in requesting payments.

(b) The City may enter into an agreement with a disbursing agent (the “Disbursing Agent”) for the purpose of receiving funds from the Trust Agreement as remitted by the Trustee and from the Indenture as remitted by the Trustee, to pay for or reimburse for the payment of Project Costs (the “Disbursing Agreement”).

(c) The City shall have the sole right to withdraw, receive, expend or direct the expenditure of Project Funds (and investment earnings thereon) from any Project Account, and from the proceeds of the Ballpark Bonds under the Indenture. All disbursement requests submitted by the City to the Disbursing Agent requesting that the Trustee distribute funds in the Project Accounts under the Trust Agreement, or proceeds of the Ballpark Bonds under the Indenture, to the Disbursing Agent to pay Project Costs incurred or due and payable in connection with the development of the Project (each, a “Disbursement Request”) shall be in the form to be agreed upon in the Trust Agreement, Indenture or Disbursing Agreement and a copy of each shall be contemporaneously delivered to the Disbursing Agent, the Trustee, and the Saints. Each Disbursement Request shall be accompanied by copies of invoices, cancelled checks, or such other backup documentation substantiating such Project Costs incurred or due and payable as may be required by the Trust Agreement or Indenture, and shall certify that, after the payment of the amounts to be paid pursuant to such Disbursement Request, the amounts remaining in the Project Accounts or otherwise available funds are sufficient to pay all costs remaining to be paid in connection with the Project. Upon receipt of a Disbursement Request from the City, the Trustee shall (i) review such requisition for compliance with the preceding requirements and with the Trust Agreement or Indenture, as applicable, and (ii) promptly (and in any event, within ten (10) Business Days) pay any undisputed amounts requested in the Disbursement Request.

(d) The Saints acknowledge and agree that (i) proceeds of the Ballpark Bonds, as well as a substantial portion of the other Project Funds, including the State Grant and other sources of funds constituting the City Contribution, are public funds which are subject to applicable Laws as to, among other things, permitted custody and investment arrangements, and permitted purposes and eligible expenditures, for each such source of funds, and (ii) strict compliance with Laws in the application of Project Funds and proceeds of the Ballpark Bonds to proper Project Costs is necessary, failing which the Project Budget may become out of balance and completion of the Project as contemplated may become impossible by reason of insufficient funds for permitted application to the particular Project Costs remaining to be paid. Accordingly, while it is the intention of the Parties that funds be spent proportionally, the Parties understand that, in order to comply with legal or other restrictions on the use of funds, the City shall have sole control and discretion to determine the appropriate matching of particular sources of available funds, including without limitation the City Contribution, the Saints Contribution, the proceeds of the Ballpark Bonds and the State Grant, and any investment earnings thereon, to the particular uses thereof for Project Costs, and including, by way of illustration and not limitation, which specific source or sources of funds shall be used to pay which particular Project Costs, in what amounts and in which combinations, in what order and at what times.

(e) Each Party shall have the right to inspect or audit, upon reasonable notice and at its own expense, the Project Accounts, the Trust Agreement and the Indenture, and all records pertaining to expenditures paid therefrom and pursuant to the Disbursing Agreement. Audits under this Section shall not occur more frequently than once every six (6) months. The Parties

shall reasonably cooperate with the assigned auditors (internal or external) in this regard, including by providing access to such auditors to all records in each of their possession and control directly relating to the Trust Agreement, the Indenture and the Disbursing Agreement. The Party conducting the audit shall provide a complete copy of the audit report to the other Party promptly following receipt of such report. For the avoidance of doubt, each Party shall bear the costs incurred by it in connection with the rights granted in this Section, and such costs shall not be deemed to be Project Costs. Notwithstanding the foregoing, if the State or any agency or department thereof or the Legislative Auditor of the State undertakes an audit or review of the Project or any Project Costs by reason of the State Grant Agreement or the State Grant, or otherwise, the costs related thereto shall be deemed Project Costs.

Section 4.5 Cost Overruns.

In the event of the occurrence or anticipated occurrence of any Cost Overrun, neither the City nor the Saints shall have any responsibility under this Agreement for payment thereof, except to the extent set forth in this Section or in Section 2.3(c) hereof. The City will consult with the Saints regarding any Cost Overrun, but the City shall determine in its sole and unreviewable discretion, after good faith consultation with the Saints consistent with the provisions of this Agreement, including specifically Section 2.8 hereof, the manner in which any Cost Overrun shall be addressed, which City determination may include, without limitation, modification, deferral or elimination of any Project element or other method of reduction of the cost attributable to, one or more Project elements (whether or not the cost of any such Project element appears to be the cause of, or a contributing factor to, the Cost Overrun in question), undertaking value engineering of one or more Project elements, reallocating Project Budget line item amounts, seeking additional funds from other potential sources, including the Saints, or increasing the City Contribution; provided, however, that the City must agree, in its sole discretion, to any increase in the amount of the City Contribution, and the Saints must agree, in the Saints' sole discretion, to any increase in the amount of the Saints Contribution.

Section 4.6 Sales Tax Exemption.

As necessary, the Parties shall cooperate to utilize the sales tax exemptions for materials and equipment under Minnesota Statutes section 297A.71, subdivision 44, or otherwise available. The Parties shall execute and deliver all documents and certificates as necessary to assure that the Project takes full advantage of sales tax exemptions for materials and equipment available under Minnesota Statutes section 297A.71, subdivision 44, or otherwise. The management of the delivery and installation of such materials and equipment shall be the responsibility of the Design/Builder.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE CITY

The City hereby represents and warrants to the Saints that, as of the date of execution of this Agreement:

Section 5.1 Organization.

The City is a municipal corporation, duly organized, validly existing, and in good standing under the Laws of the State of Minnesota.

Section 5.2 Authorization, Validity, and Enforceability.

The City has all requisite power and authority to enter into this Agreement and to carry out the actions contemplated hereby. The execution, delivery, and performance by the City of this Agreement have been duly authorized and approved by all necessary City action. This Agreement, when executed, shall constitute the valid and legally binding obligations of the City, enforceable against it in accordance with its terms.

Section 5.3 No Conflicts.

The execution, delivery, and performance of this Agreement shall not result in a violation of, in any material respect, any provision of any other agreements, charters, instruments, contracts, judgments, or decrees to which the City is a party or by which the City or its assets may be bound or affected.

Section 5.4 No Violation of Laws.

The City has complied in all material respects with all Legal Requirements and is not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement.

Section 5.5 Litigation.

To the actual knowledge of the City, there is no action, suit, proceeding, or investigation at law or in equity or by or before any Governmental Authority now pending or threatened against the City seeking to restrain or prohibit, or seeking Damages or other relief in connection with, the execution of this Agreement and the performance of the transactions contemplated herein or the performance of the City hereunder.

**ARTICLE 6
REPRESENTATIONS AND WARRANTIES OF SAINTS**

The Saints hereby represent and warrant to the City that, as of the date of execution of this Agreement:

Section 6.1 Organization.

The Saints are a corporation duly organized, validly existing, and in good standing under the Laws of the State of Minnesota.

Section 6.2 Authorization, Validity and Enforceability.

The Saints have all requisite power and authority to enter into this Agreement and to carry out the actions contemplated hereby. The execution, delivery, and performance of all obligations of the Saints under this Agreement have been duly authorized and approved by all necessary Saints action. All corporate action necessary for the authorization, execution, delivery, and performance of all obligations of the Saints under this Agreement has been taken. All consents and approvals of any Person required in connection with the execution of this Agreement have been obtained. This Agreement, when executed, shall constitute the valid and legally binding obligations of the Saints, enforceable against it in accordance with its terms.

Section 6.3 Financial Position.

The Saints are able to pay their debts as they mature and possesses sufficient working capital to meet their financial obligations, as they become due, under this Agreement.

Section 6.4 No Conflicts.

The execution, delivery, and performance of this Agreement shall not result in a violation of, in any material respect, any provision of any other agreements, charters, instruments, contracts, judgments, or decrees to which the Saints are a party or by which the Saints or their assets may be bound or affected, including any by-laws, rules, regulations or other agreements of the League, nor shall the execution, delivery, and performance of this Agreement result in the breach of or constitute a default under any loan or credit agreement, or other agreement or instrument to which the Saints are a party or by which the Saints or its assets may be bound or affected.

Section 6.5 No Violations of Laws.

The Saints have complied in all material respects with all Legal Requirements and are not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement.

Section 6.6 Litigation.

To the actual knowledge of the Saints, there is no action, suit, proceeding, or investigation at law or in equity or by or before any Governmental Authority now pending or threatened against the Saints seeking to restrain or prohibit, or seeking Damages or other relief in connection with, the execution of this Agreement and the performance of the transactions contemplated herein or the performance of the Saints hereunder.

ARTICLE 7
ADDITIONAL COVENANTS AND CONDITIONS

Section 7.1 Additional Covenants and Agreements of the Parties.

(a) Liquor Licenses. The Saints, with the cooperation of the City, shall obtain all intoxicating liquor licenses that are reasonably required for the Ballpark and the City shall support any reasonable legislative changes required in order for the Saints to do so. In the event applicable Laws do not allow the Saints to obtain such licenses, the City shall obtain all intoxicating liquor licenses that are reasonably required for the Ballpark and permit their use for the benefit of the Saints.

(b) Use of References and Logos in Offering Documents. The City and the Saints shall permit references to their respective entities and organizations and the use of their respective logos, if any, in all offering documents of the State and the City related to the issuance of any bonds; provided, however, that all information on the Saints to be so used shall be submitted to the Saints for their approval prior to such use.

(c) Parking. The City will use commercially reasonable efforts to provide a minimum of 1,000 captive parking spaces in the vicinity of the Ballpark for use by the Saints for Saints Home Games and Saints Other Events, as such terms are defined in the Use Agreement.

(d) Naming Rights and Advertising. The Use Agreement between the Parties contains provisions on Naming Rights and Advertising in Sections 6.5 and 6.6, respectively, which provisions are in effect upon execution of the Use Agreement and prior to commencement of the term of the Use Agreement. Pursuant to such provisions, the Parties may agree to apply certain amounts received from Naming Rights and Advertising towards the Project Budget under this Agreement. Sections 6.5 and 6.6 of the Use Agreement are hereby incorporated into this Agreement as if fully set forth herein.

(e) Participation in Sale Proceeds. The Use Agreement between the Parties contains provisions on Participation in Sale Proceeds in Section 7.2, which are in effect upon execution of the Use Agreement and prior to commencement of the term of the Use Agreement. Section 7.2 of the Use Agreement is hereby incorporated into this Agreement as if fully set forth herein. If any of the events described in Section 4.3(b)(ii), (iii), or (iv) of this Agreement occur, any funds placed into escrow pursuant to such provisions shall be released from escrow to the Saints.

Section 7.2 Execution of Documents.

(a) Contemporaneously with the execution of this Agreement, the Parties have also entered into the Use Agreement and a mutually acceptable extension of the agreement for the continuing use by the Saints of Midway Stadium, and the Saints have deposited the Saints \$1.5M Contribution, and any cash portion of the Saints Additional Contribution, as provided in Section 4.2(a). In addition, the City and the State have entered into the State Grant Agreement. The Parties shall now use their respective commercially reasonable efforts, as applicable, to cause the following to occur on or before the respective dates set forth below:

(i) the Saints shall cause the execution and delivery of the Guaranty on or before the date of the first closing of the Ballpark Bonds;

(ii) the City shall have determined that the proceeds of the Ballpark Bonds and the Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013, together with all public and private funding sources for the design and construction of the Project will be available by no later than December 31, 2013; and

(iii) the City has determined that all public and private funding sources for operating expenses, and capital improvements and repairs, including funds adequate to pay projected operating expenses and the costs of capital improvements and repairs during the term of the Use Agreement, are included in written agreements, and have been made available (if legally required by the date in question) or are reasonably expected to be made timely available (when legally required), on or before December 31, 2013.

(b) If the conditions described in Section 7.2(a) have not occurred on or before the respective dates set forth herein, then any Party may terminate this Agreement by written notice to the other Party, unless the Parties have agreed, in their respective sole discretion, to extend any of the above dates. A notice to terminate is not subject to the cure periods set forth in Section 8.1 hereof. A notice to terminate or notice providing an extension of the termination date must be given on or before fifteen (15) days after the applicable date set forth above (as such date may be extended by agreement of the Parties) or the termination right granted under this Section 7.2 relating to the particular event shall expire.

(c) In the event this Agreement is terminated by a Party pursuant to Section 7.2(b), no Party shall be entitled to reimbursement of expended funds except (if at all) as provided in this Agreement, provided that the Saints \$1.5M Contribution and the Saints Additional Contribution, to the extent it is cash, shall not be deemed expended funds and shall be promptly returned to the Saints.

Section 7.3 City's Conditions.

The obligations of the City to perform this Agreement are subject to the satisfaction of each of the following conditions (any of which may be waived by the City, in whole or in part):

(a) Accuracy of Representations. All of the Saints' representations and warranties in this Agreement must have been accurate in all material respects as of the date hereof.

(b) Performance. All of the covenants and obligations that the Saints are required to perform or to comply with pursuant to this Agreement prior to the date of the City's performance, as applicable, including the delivery of all documents and notices provided for herein, must have been performed and complied with in all material respects.

(c) No Injunction. There shall not be in effect any Legal Requirements or any injunction or other order that prohibits the consummation of this Agreement.

(d) Delivery of Other Documents. The Saints shall have delivered all documents and notices required by this Agreement.

Section 7.4 Saints' Conditions.

The obligations of the Saints to perform this Agreement are subject to the satisfaction of each of the following conditions (any of which may be waived by the Saints, in whole or in part):

(a) Accuracy of Representations. All of the City's representations and warranties in this Agreement must have been accurate in all material respects as of the date hereof.

(b) Performance. All of the covenants and obligations that the City is required to perform or to comply with pursuant to this Agreement prior to the date of the Saints' performance, as applicable, including the delivery of all documents and notices provided for herein, must have been performed and complied with in all material respects.

(c) No Injunction. There shall not be in effect any Legal Requirements or any injunction or other order that prohibits the consummation of this Agreement.

(d) Delivery of Other Documents. The City shall have delivered all documents and notices required by this Agreement.

**ARTICLE 8
DEFAULT AND REMEDIES**

Section 8.1 Events of Default.

Each of the following shall constitute an Event of Default under this Agreement:

(a) Saints' Events of Default.

(i) the Saints' failure to make any payment of any sums payable by the Saints under this Agreement, which failure shall continue for ten (10) days after receipt of written notice to the Saints by the City;

(ii) the Saints' violation or failure to perform or observe any covenant or condition of this Agreement, which failure or violation shall continue for thirty (30) days after receipt of written notice to the Saints by the City identifying with particularity the failure or violation; provided, however, that so long as such failure or violation is of a non-monetary nature susceptible to cure within a period of time that does not unreasonably cause risk to achieving the Completion Date, but is not reasonably capable of being cured within such thirty (30) day period, there shall exist no Event of Default if the Saints promptly advise the City of the Saints' intention to duly institute all steps necessary to cure such default and the Saints promptly commence cure of such failure or violation within such thirty (30) day period and diligently pursue such cure to completion, but such additional time for cure shall not exceed one hundred eighty (180) days after receipt of the initial written notice to the Saints by the City;

(iii) (A) the Saints shall institute voluntary proceedings in bankruptcy, (B) involuntary proceedings in bankruptcy shall be instituted against the Saints that are not discharged within ninety (90) days thereafter, (C) any proceedings shall be instituted

by or against the Saints under any Law relating to insolvency or bankruptcy reorganization, and in the case of an involuntary proceeding, that is not discharged within ninety (90) days after filing, (D) a trustee or receiver shall be appointed for the Saints by any court of competent jurisdiction, or (E) the Saints shall make a general assignment for the benefit of its creditors; and

(iv) any representation or warranty made by the Saints herein shall prove to have been incorrect when made, in any material respect.

(b) City's Events of Default.

(i) the City's failure to make any payment of any sums payable by the City, under this Agreement, which failure shall continue for ten (10) days after receipt of written notice to the City by the Saints;

(ii) the City's violation or failure to perform or observe any covenant or condition of this Agreement, which failure or violation shall continue for thirty (30) days after receipt of written notice to the City by the Saints identifying with particularity the failure or violation; provided, however, that so long as such failure or violation is of a non-monetary nature susceptible to cure within a period of time that does not unreasonably cause risk to achieving the Completion Date, but is not reasonably capable of being cured within such thirty (30) day period, there shall exist no Event of Default if the City promptly advises the Saints of the City's intention to duly institute all steps necessary to cure such default and the City promptly commences cure of such failure or violation within such thirty (30) day period and diligently pursues such cure to completion; and

(iii) any representation or warranty made by the City herein shall prove to have been incorrect when made, in any material respect.

Section 8.2 City's Remedies Upon Saints Default.

Upon the occurrence of a Saints Event of Default, the City will have the right to exercise any of the following remedies:

(a) terminate the Use Agreement or exercise any other remedy afforded the City under the Use Agreement;

(b) seek specific performance or other equitable relief provided in Section 8.4; or

(c) sue for money damages.

Section 8.3 Saints' Remedies Upon City Default.

Upon the occurrence of a City Event of Default, the Saints will have the right to exercise any of the following remedies:

- (a) terminate the Use Agreement or exercise any other remedy afforded the Saints under the Use Agreement;
- (b) seek specific performance or other equitable relief provided in Section 8.4; or
- (c) sue for money damages.

Section 8.4 Injunctive Relief; Specific Performance.

The Parties acknowledge that the rights conveyed by this Agreement, and the covenants of the Parties, as they relate to the Saints occupation and use of the Ballpark to play professional baseball, are of a unique and special nature, and that a violation of this Agreement caused by the Saints not occupying and using (or not being allowed to occupy and use) the Ballpark as provided herein and in the Use Agreement, shall result in immediate and irreparable harm: (a) to the City, if the Saints refuse to occupy and use the Ballpark; and (b) to the Saints, if they are denied the ability to occupy and use the Ballpark by the City acting in its capacity as the owner of the Ballpark under this Agreement (as opposed to the City acting in its regulatory capacity, i.e. regulation of health, fire, safety, etc.). In the event of any such actual or threatened breach or violation of this Agreement caused by such actions, the Party so harmed shall be entitled as a matter of right to an injunction or a decree of specific performance from any equity court of competent jurisdiction without the posting of any bond. The Parties waive the right to assert the defense that a breach of this Agreement which results in the failure or inability of the Saints to occupy or use the Ballpark can be compensated adequately in damages in an action at law.

Section 8.5 Remedies Cumulative; Limitation on Saints' Remedies; Waiver.

All rights and remedies set forth in this Agreement are cumulative and in addition to the Parties' rights and remedies at law or in equity, subject, however, to any limitation on damages, fees and costs against the City as provided for in this Agreement. A Party's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies, or obligations. No Party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such Party. If a Party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement, except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other Party may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy. In no event shall either Party be entitled to consequential or incidental damages against the other Party and in no event shall either Party have any liability or responsibility for consequential or incidental damages to any Person.

Section 8.6 Risk of Certain Losses; Force Majeure.

The non-occurrence of any condition under this Agreement shall not give rise to any right otherwise provided in this Agreement when such failure or non-occurrence is due to the occurrence of a Force Majeure condition and without the fault of the Party claiming an extension

of time to perform. An extension of time for any such cause, if any, shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause; provided, however, that if notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. Times of performance under this Agreement also may be extended as mutually agreed upon in writing by the City and the Saints. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default under this Agreement.

Section 8.7 Limited Recourse Obligations; Members and Officers Not Liable; Rights of Saints.

(a) Notwithstanding and prevailing over any contrary provision or implication of this Agreement, any and all duties, liabilities, and obligations of the City under this Agreement relating to the Project shall be required to be paid or performed by the City only to the extent of the Saints \$1.5M Contribution, any cash portion of the Saints Additional Contribution, any cash portion of the City Contribution, proceeds of the Ballpark Bonds, any funds relating to monetary recovery of third parties, insurance proceeds, or other funds in the Project Accounts, and no duties, liabilities, or obligations of the City with respect to this Agreement relating to the Project shall be required to be satisfied from any other funds, revenues, or reserves of the City.

(b) Notwithstanding and prevailing over any contrary provision or implication of this Agreement, any and all duties, liabilities, and obligations of the Saints under this Agreement relating to the Project shall be required to be paid or performed by the Saints only to the extent of the Saints \$1.5M Contribution, any cash portion of the Saints Additional Contribution, any cash portion of the City Contribution, proceeds of the Ballpark Bonds, any funds relating to monetary recovery of third parties, insurance proceeds, or other funds in the Project Accounts, and no duties, liabilities, or obligations of the Saints with respect to this Agreement relating to the Project shall be required to be satisfied from any other funds, revenues, or reserves of the Saints.

(c) All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the City and not of any member, director, officer, employee, or agent of the City in his or her individual capacity or any other Governmental Authority, and no recourse shall be had for any Claim hereunder against any member, director, officer, employee, or agent of the City or any other Governmental Authority in such capacity.

(d) Except to the extent set forth in the Guaranty, all covenants, stipulations, promises, agreements, and obligations of the Saints contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the Saints and not of any member, partner, owner, manager, officer, employee, or agent of the Saints in his or her individual capacity, and no recourse shall be had for any Claim hereunder against any member, partner, owner, manager, officer, employee, or agent of the Saints in such capacity.

(e) Notwithstanding and prevailing over any contrary provision or implication of this Agreement, in addition to the Saints Contribution, if the Project Costs exceed the Saints

Contribution, the City Contribution, and the State Grant (plus any other funds or grants available for payment of the Project Costs), the Saints shall have the right (but not the obligation), in their sole discretion, to pay into the applicable Project Accounts any additional funds needed to pay the Project Costs; provided, however, that it is the intention of the Parties that in no event shall the Project Costs exceed the Project Budget without the prior written consent of the City, to be granted or withheld by the City in its sole discretion after consultation with the Saints.

ARTICLE 9 INDEMNIFICATION

The Saints shall indemnify, defend, and hold harmless the City Indemnified Persons for, and shall pay to the City Indemnified Persons, the amount of any Damages, whether or not involving a third-party claim arising, directly or indirectly, from or in connection with:

(a) any breach of any representation or warranty made by the Saints in this Agreement or in any schedule or exhibit attached hereto or any other certificate or document delivered by the Saints to the City pursuant to this Agreement; and

(b) any breach by the Saints of any covenant or obligation of the Saints in this Agreement.

If the Saints fail to make any payment of any sums payable by the Saints to the City Indemnified Persons on the date due, which failure shall continue for thirty (30) days, then such payment shall bear interest at a rate of interest equal to the lesser of four percent (4%) above the Prime Rate or the highest rate permitted by Law, payable from the date such payment was due to the date of payment thereof.

ARTICLE 10 MISCELLANEOUS

Section 10.1 Compliance as to Bonds.

(a) If interest on any bonds issued by the City or the State for the Project is intended to be excludable from gross income for federal income tax purposes ("Tax-Exempt Bonds"), and if the City determines, based upon the written notice of nationally recognized bond counsel, that any action under this Agreement creates a significant risk that interest on any Tax-Exempt Bonds will not be excludable from gross income for federal income tax purposes, the Parties shall negotiate in good faith to agree on alternative action to avoid such a result. In no event shall the foregoing agreement require any Party to amend or modify any material term of this Agreement.

(b) The Saints shall comply with and provide any information required by the City in connection with the Ballpark Bonds and State bonds.

Section 10.2 Survival of Covenants, Agreements, Representations, and Warranties.

No action taken pursuant to or related to this Agreement, including any investigation by or on behalf of a Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, or agreement in this Agreement.

Section 10.3 Additional Documents and Approval.

The Parties, whenever and as often as each shall be reasonably requested to do so, shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient and within their lawful obligation in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement. Furthermore, the City shall take all ministerial actions and proceedings reasonably necessary or appropriate to remedy any apparent invalidity, lack, or defect in authorization, or illegality, or to cure any other defect that has been asserted or threatened.

Section 10.4 Good Faith.

In exercising its rights and fulfilling its obligations under this Agreement, each of the Parties acknowledges that the other Party has acted to date in good faith and each Party agrees to continue to act in good faith. Each Party acknowledges that in each instance under this Agreement where a Party is obligated to exercise good faith or to use good faith, diligent, or other similar efforts, such Party shall not be required to expend any funds or grant any other consideration of any kind in the performance of such undertaking, and each Party further acknowledges that the obligation of any Party to act in good faith or undertake good faith, diligent, or other similar efforts does not constitute a warranty, representation, or other guaranty that the result that the Parties are attempting to achieve shall be successfully achieved and no Party shall be liable for any failure to achieve the result or results intended so long as the Party has complied with its obligation to act in good faith.

Section 10.5 Notice of Matters.

In the event that any Party receives knowledge about any matter that may constitute a breach of any of its warranties or covenants set forth in this Agreement that arises after the date of this Agreement, it shall promptly notify the other Party of the same in writing.

Section 10.6 Form of Notices; Addresses.

All notices, requests, consents, or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the Parties as follows (or at such other address as a Party may from time to time designate by notice given pursuant to this Section):

To the Saints: St. Paul Saints Baseball Club, Inc.
 1771 Energy Park Drive
 St. Paul, MN 55108
 Attn.: Executive Vice President

with a copy to: Leonard, Street and Deinard
 150 South Fifth Street, Suite 2300
 Minneapolis, MN 55402
 Attn.: Robyn Hansen

To the City: Saint Paul Parks and Recreation
25 West 4th Street
400 City Hall Annex
Saint Paul, MN 55102
Attn.: Parks Director

with a copy to: Saint Paul City Attorney
400 City Hall and Courthouse
15 Kellogg Boulevard West
Saint Paul, MN 55102
Attn.: Saint Paul City Attorney

and a copy to: City of Saint Paul
700 City Hall and Courthouse
15 Kellogg Boulevard West
Saint Paul, MN 55012
Attn.: Finance Director

and a copy to: McGrann Shea Carnival
Straughn & Lamb, Chartered
800 Nicollet Mall, Suite 2600
Minneapolis, MN 55402
Attn.: Kathleen M. Lamb

Each notice shall be deemed given and received on the date delivered if served personally or by overnight delivery service or, if sent by United States registered or certified mail, then one (1) Business Day after its delivery to the address of the respective Party, as provided in this Article, except that with respect to the notices pertaining to matters that are to be accomplished within less than three (3) Business Days (e.g., requests for consent when the Person whose consent is sought has one (1) Business Day to respond in the granting or denying of such consent), notice shall be deemed given simultaneously with its delivery. Notices sent by a Party's counsel shall be deemed notices sent by such Party.

Section 10.7 Calculation of Time.

Unless otherwise stated, all references to "day" or "days" shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

Section 10.8 Time is of the Essence.

Time is of the essence of this Agreement. The Parties shall cause the work contemplated by this Agreement to meet the Master Project Schedule, which shall not be altered except by a Change Order.

Section 10.9 Incorporation by Reference.

All exhibits, schedules, or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and are deemed to be an integral part of this Agreement.

Section 10.10 Entire Agreement.

Except as otherwise provided in this Agreement, this Agreement contains the sole and entire agreement between the Parties with respect to its subject matter and supersedes any and all other prior written or oral agreements between them with respect to such subject matter.

Section 10.11 Amendment.

No amendment, modification, or termination of this Agreement shall be valid unless in writing and duly executed by the Parties.

Section 10.12 Assignment.

(a) The Saints shall not assign, convey, or transfer in any mode or manner this Agreement or any of its interests under this Agreement without the prior written consent of the City, to be granted or withheld in its sole discretion. The City shall be entitled to require, as conditions to approval of any assignment, conveyance or transfer of this Agreement or any interest hereunder by the Saints, that:

(i) any proposed assignee shall have the qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Saints;

(ii) any proposed assignee, by instrument in writing satisfactory to the City, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Saints under this Agreement and agreed to be subject to all the conditions and restrictions to which the Saints are subject;

(iii) there shall be submitted to the City for review all instruments and other legal documents involved in effecting the assignment, conveyance or transfer, and if approved by the City, its approval shall be indicated to the Saints in writing;

(iv) the Saints and its assignee shall comply with such other conditions as the City reasonably may find desirable in order to achieve and safeguard the purposes of the Act and the State Grant Program; and

(v) in the absence of specific written agreement by the City to the contrary, no such assignment or approval by the City thereof shall be deemed to relieve the Saints or any other party bound in any way by this Agreement or otherwise with respect to the Project, from any of its obligations with respect thereto.

(b) The City may assign, convey or transfer in any mode or manner this Agreement or any of its interests under this Agreement to any governmental unit or successor agency, without the prior consent of the Saints.

Section 10.13 Binding Effect.

This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the Parties.

Section 10.14 Headings.

The headings contained in this Agreement are for convenience of reference only and shall not limit, extend, or otherwise affect the meaning hereof.

Section 10.15 No Presumption Against Drafter.

This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

Section 10.16 Severability.

If any term or provision of this Agreement or the application thereof to any Person or circumstance shall, to any extent, be inconsistent with, invalid, or unenforceable under the Act, State Grant Program, or any Laws or Legal Requirements, the remainder of this Agreement or the application of such term or provision to Persons or circumstances, other than those as to which it was held invalid or unenforceable, shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by the Act, State Grant Program, or any Laws or Legal Requirements.

Section 10.17 Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to (a) confer upon any Person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a Party to this Agreement to maintain an action pursuant to or based upon this Agreement.

Section 10.18 Governing Law; Venue.

This Agreement shall be governed by and construed in accordance with the Laws of the State of Minnesota, notwithstanding its conflicts of law or choice of law provisions. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and determined in accordance with the laws of the State of Minnesota, and the Saints agree that all legal actions initiated by the Saints with respect to or arising from any provision contained in this Agreement shall be initiated, filed

and venued exclusively in the State of Minnesota, Ramsey County, District Court and shall not be removed therefrom to any other federal or state court.

Section 10.19 Counterparts.

This Agreement may be executed and delivered in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement.

Section 10.20 Relationship of Parties.

It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture among the Parties.

Section 10.21 No Waiver of City Immunity or Liability.

Nothing contained in this Agreement, including provisions regarding the City obtaining insurance or otherwise being insured, shall in any way affect or impair the City's immunity or the immunity of the City's employees, consultants, or independent contractors, whether on account of official immunity, legislative immunity, statutory immunity, discretionary immunity, or otherwise. Nothing contained in this Agreement, including provisions regarding the City obtaining insurance or otherwise being insured, shall in any way affect or impair the limitations on the City's liability or the liability of the City's employees, consultants, or independent contractors set forth in Minnesota Statutes Chapter 466. By entering into this Agreement, the City does not waive any rights, protections, or limitations provided for the City or its employees, consultants, or independent contractors under the various rules of governmental immunity or under Minnesota Statutes Chapter 466.

Section 10.22 Conformity with the Act and State Grant Program.

The Parties acknowledge and agree that the State Grant and the use of the proceeds thereof with respect to the Project are subject in all respects to the State Grant Agreement and the terms and provisions thereof, the laws, rules and regulations applicable to the State Grant Program, and other applicable Laws (herein, the "State Grant Legal Requirements"), all of which are by this reference incorporated in this Agreement as though set forth in full. The Parties intend that this Agreement, the Use Agreement, and any other agreements, instruments or arrangements relating to the Project or the Project Funds (herein, the "Project Agreements"), shall be subject to, conform to and be consistent with the State Grant Legal Requirements. In the event of any conflict or apparent conflict between any term, provision or condition required or applicable by reason of the State Grant Legal Requirements, on the one hand, and the Project Agreements on the other hand, the State Grant Legal Requirements shall control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date stated in the first paragraph of this Agreement.

SAINTS:

ST. PAUL SAINTS BASEBALL CLUB, INC.,
a Minnesota corporation

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

CITY:

CITY OF SAINT PAUL,
a municipal corporation of the State of Minnesota

Mayor

Director of Parks and Recreation

Director of Financial Services

City Clerk

Approved as to form:

City Attorney

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

EXHIBIT A

Description of Site

The Site currently consists of eleven (11) parcels, identified by parcel identification numbers and current owners as follows:

1. PID: 32-29-22-33-0364
Current Owner: City of Saint Paul
2. PID: 32-29-22-33-0363
Current Owner: City of Saint Paul
3. PID: 32-29-22-33-0365
Current Owner: City of Saint Paul
4. PID: 32-29-22-33-0117
Current Owner: City of Saint Paul
5. PID: 32-29-22-33-0005
Current Owner: City of Saint Paul
6. PID: 32-29-22-33-0004
Current Owner: City of Saint Paul
7. PID: 32-29-22-33-0121
Current Owner: City of Saint Paul
8. PID: 32-29-22-33-0122
Current Owner: City of Saint Paul
9. PID: 32-29-22-33-0001
Current Owner: City of Saint Paul
10. PID: 32-29-22-33-0252
Current Owner: City of Saint Paul
11. PID: 32-29-22-31-0045
Current Owner: City of Saint Paul

The Site is legally described as follows:

Former Diamond Products Property

Lots 7 and 8, Block 44, Kittson's Addition to St. Paul, according to the recorded plat thereof, and the vacated streets and alleys accruing thereto, Ramsey County, Minnesota; except those parts of the Southeasterly half of the vacated alleys abutting Lots 7 and 8, Block 44 and abutting Lot 5 and the Westerly 20 feet of Lot 6, Block 43, all in Kittson's Addition to

St. Paul, according to the recorded plat thereof, which accrued thereto by virtue of the vacation of said alleys; and except that part of vacated Pine Street lying between said Blocks 43 and 44, which lies Southeasterly of a line connecting the center lines of the vacated alleys in said Blocks 43 and 44 and Northwesterly of a line connecting the Southeasterly lines of the vacated alleys in said Blocks 43 and 44.

(Parcel ID No: 32-29-22-33-0005)

AND

Lots 5 and the Westerly 20 feet of Lot 6, Block 43, Kittson's Addition to St. Paul, according to the recorded plat thereof, and the vacated streets and alleys accruing thereto, Ramsey County, Minnesota; except those parts of the Southeasterly half of the vacated alleys abutting Lots 7 and 8, Block 44 and abutting Lot 5 and the Westerly 20 feet of Lot 6, Block 43, all in Kittson's Addition to St. Paul, according to the recorded plat thereof, which accrued thereto by virtue of the vacation of said alleys; and except that part of vacated Pine Street lying between said Blocks 43 and 44, which lies Southeasterly of a line connecting the center lines of the vacated alleys in said Blocks 43 and 44 and Northwesterly of a line connecting the Southeasterly lines of the vacated alleys in said Blocks 43 and 44.

(Parcel ID No: 32-29-22-33-0004)

AND

Lots 5, 6, 7 and 8, Block 42, Kittson's Addition to St. Paul, according to the recorded plat thereof, and the Easterly $\frac{1}{2}$ of vacated Olive Street accruing thereto, Ramsey County, Minnesota.

(Parcel ID No: 32-29-22-33-0001)

AND

Lots 1, 2, 5, 6, 7 and 8, Block 45, Kittson's Addition to St. Paul, according to the recorded plat thereof, and that part of vacated Pine Street, East 4th Street and vacated alley that accrues thereto.

AND

Lots 3 and 4, Block 45, Kittson's Addition to St. Paul, according to the recorded plat thereof, and that part of vacated alley that accrues thereto, Ramsey County, Minnesota.

(Torrens Property, Certificate of Title No. 515728)

AND

Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 46, Kittson's Addition to St. Paul, according to the recorded plat thereof, and that part of vacated Pine Street, East 4th Street, Olive Street and alley that accrues thereto, Ramsey County, Minnesota.

AND

Lot 1, except that triangular portion of Lot 1, Block 47, Kittson's Addition to St. Paul, according to the recorded plat thereof, described as follows: Beginning at the most Northerly corner of said Lot 1; thence Southeasterly along the Northeasterly line of said Lot 1, a distance of 15 feet; thence Westerly to a point on the Northwesterly line of said Lot 1 which is 15 feet Southwesterly of the point of beginning; thence Northeasterly along the Northwesterly line of said Lot 1, a distance of 15 feet to the point of beginning; and Lots 2, 3, 4, 5, 6, 7 and 8, Block 47, Kittson's Addition to St. Paul, according to the recorded plat thereof, and that part of vacated Olive Street, East 4th Street and alley that accrues thereto.

AND

That part of the Southerly Thirty-Three feet (S'ly 33') of East Fourth Street in Saint Paul, Minnesota, situated between the Easterly side of Broadway Street and the Westerly side of John Street in said city hereby intending to convey all of Grantor's right, title and interest in and to that part of vacated East Fourth Street that was vacated by the City Council of the City of St. Paul pursuant to the resolution of said Council adopted on December 29, 1965, as Council File No. 226489.

(Parcel ID No: 32-29-22-33-0252)

Former M Rasoir, Ltd Property

That part of Lot 5, Block 44, Kittson's Addition to St. Paul, according to the plat thereof on file and of record in the Office of the County Recorder in and for Ramsey County, Minnesota, lying easterly of the following described line: Beginning at the most southerly corner of said Lot 5; thence run northerly to a point on the northwesterly line of said Lot 5, distant .30 feet northeasterly of the most westerly corner thereof, and there terminating; and Lot 6, Block 44, Kittson's Addition to St. Paul, Ramsey County, Minnesota.

(Parcel ID No: 32-29-22-33-0117)

AND

Lots 7 and 8 and northeasterly 30 feet of Lot 6, Block 43, Kittson's Addition to the City of St. Paul, Ramsey County, Minnesota, and westerly 18 feet of vacated Olive Street adjacent to said Lot 8.

(Parcel ID No: 32-29-22-33-0121)

AND

All those parts of Block 48 through 51, inclusive, Kittson's Addition to the City of St. Paul, Ramsey County, Minnesota, and the vacated streets and alleyways adjacent thereto, described as follows: Beginning at the most Westerly corner of Lot 4 in said Block 48; thence Northeasterly along the Northwesterly lines of said Blocks 48, 49 and 50, and the Northeasterly extensions thereof to the most Westerly corner of Lot 4 in said Block 51; thence Northeasterly along the Northwesterly line of said Block 51 to the most Northerly corner of Lot 2 in said Block 51; thence Southeasterly along the Northeasterly line of said Lot 2 and its Southeasterly extension to the Southeasterly line of the alley in said Block 51 and the most Northerly corner of Lot 7 in said Block 51; thence Southwesterly along the Southeasterly alley line and the Southeasterly lines of the alleys in said Blocks 50 and 49 and the Southwesterly extensions thereof to the most Northerly corner of Lot 8 in said Block 48; thence Southwesterly along the Southeasterly alley line in said Block 48 to the Southwesterly line of said Block 48; thence Northwesterly along said Southwesterly line to the point of beginning.

(Parcel ID No: 32-29-22-31-0045)

Former BNSF Railway Company Property

That portion of vacated Olive Street, in the City of Saint Paul, Ramsey County, Minnesota, bounded as follows:

Northwesterly by the southwesterly prolongation of the Northwesterly line of Lot 5, Block 42, Kittson's Addition to Saint Paul; Northeasterly by the centerline of said vacated Olive Street; Southeasterly by the Northwesterly line of East Fifth Street, and Southwesterly by the Northeasterly line of the Southwesterly 18.0 feet of said vacated Olive Street.

(Parcel ID No: 32-29-22-33-0122)

Former Market House Condominium Association Parking Lot Property

Parcel 1:

Tract A, Registered Land Survey No. 594, Ramsey County, Minnesota.

(Torrens Property, Certificate of Title No. 563141)

Parcel 2:

Lots 2, 3 and 4, Block 43 and Lots 1, 3 and 4, Block 44, Kittson's Addition to the City of St. Paul, according to the plat thereof on file and of record in Ramsey County, Minnesota, including those parts of vacated Pine, Olive and 6th Streets and the alley accruing thereto by reason of the vacation thereof:

Which lies within the following described line:

Commencing at the Northwest corner of Lot 5, said Block 44; thence run Northeasterly on an azimuth of 55 degrees 02 minutes 47 seconds, along the Northerly line of said Lot 5, for 36.68 feet to the point of beginning of the line to be described; thence on an azimuth of 353 degrees 47 minutes 58 seconds for 37.40 feet; thence on an azimuth of 37 degrees 00 minutes 48 seconds for 19.17 feet; thence on an azimuth of 08 degrees 22 minutes 34 seconds for 18.59 feet; thence on an azimuth of 47 degrees 16 minutes 51 seconds for 26.76 feet; thence on an azimuth of 15 degrees 39 minutes 58 seconds for 46.06 feet; thence on an azimuth of 64 degrees 51 minutes 09 seconds for 17.49 feet; thence on an azimuth of 16 degrees 10 minutes 41 seconds for 43.24 feet; thence on an azimuth of 81 degrees 19 minutes 37 seconds for 118.66 feet; thence on an azimuth of 66 degrees 22 minutes 39 seconds for 15.13 feet; thence on an azimuth of 84 degrees 01 minutes 48 seconds for 79.54 feet; thence on an azimuth of 144 degrees 59 minutes 55 seconds for 15.19 feet; thence on an azimuth of 235 degrees 02 minutes 47 seconds for 352.82 feet to the point of beginning.

Together with the following described Parcel 4 and excepting therefrom the following described Parcel 1 and Parcel 2A:

Parcel 4:

Those parts of Lots 2, 3 and 4, Block 43, the Northwest half of the adjoining vacated alley and part of adjoining vacated Pine Street, Kittson's Addition to the City of St. Paul, according to the recorded plat thereof, Ramsey County, Minnesota, lying within the following described Line A, lying Southeast of the following described Line B and lying Southwesterly of the following described Line C:

Line A:

Commencing at the Northwest corner of Lot 5, Block 44 said Kittson's Addition to the City of St. Paul; thence run Northeasterly on an assumed azimuth of 55 degrees 02 minutes 47 seconds, along the Northerly line of said Lot 5, for 30.00 feet to the point of beginning of Line A to be described; thence on an azimuth of 344 degrees 55 minutes 45 seconds for 11.10 feet; thence Northerly 71.37 feet on a non-tangential curve concave to the East, having a radius of 206.50 feet, a delta angle of 19 degrees 48 minutes 11 seconds and a chord azimuth of 358 degrees 10 minutes 38 seconds; thence on an azimuth of 15 degrees 21 minutes 11 seconds for 26.29 feet; thence on an azimuth of 17 degrees 46 minutes 11 seconds for 104.62 feet; thence on an azimuth of 83 degrees 33 minutes 43 seconds for 171.05 feet; thence on an azimuth of 73 degrees 42 minutes 40 seconds for 213.73 feet; thence on an azimuth of 235 degrees 02 minutes 47 seconds for 139.36 feet to a point hereinafter described as Point A; thence on an azimuth of 324 degrees 59 minutes 55 seconds for 15.19 feet to a point hereinafter described as Point B; thence on an azimuth of 264 degrees 01 minutes 48 seconds for 79.54 feet; thence on an azimuth of 246 degrees 22 minutes 39 seconds for 15.13 feet; thence on an azimuth of 261 degrees 19 minutes 37 seconds for 118.66 feet; thence on an azimuth of 196 degrees 10 minutes 41 seconds for 43.24 feet; thence on an azimuth of 244 degrees 51 minutes 9 seconds for 17.49 feet; thence on an azimuth of 195 degrees 39 minutes 58 seconds for 46.06 feet; thence on an azimuth of

227 degrees 16 minutes 51 seconds for 26.76 feet; thence on an azimuth of 188 degrees 22 minutes 34 seconds for 18.59 feet; thence on an azimuth of 217 degrees 00 minutes 48 seconds for 19.17 feet; thence on an azimuth of 173 degrees 47 minutes 58 seconds for 37.40 feet; thence on an azimuth of 235 degrees 02 minutes 47 seconds for 6.68 feet to the point of beginning and there terminating.

Line B:

Commencing at the Northwest corner of Lot 5, said Block 44; thence run Northeasterly on an assumed azimuth of 55 degrees 02 minutes 47 seconds, along the Northwesterly line of Lots 5, 6, 7 and 8, said Block 44, a distance of 155.65 feet, to the point of beginning of Line B to be described; thence on an azimuth of North 126.27 feet; thence on an azimuth of East 15.21 feet; thence Easterly and Northerly along a 2.50 foot tangential curve, concave to the Northwest, central angle 96 degrees 27 minutes 34 seconds, a distance of 4.21 feet; thence on an azimuth of 353 degrees 32 minutes 26 seconds, tangent to said curve, 15.35 feet to the intersection with the aforescribed Line A and there terminating.

Line C:

Beginning at the aforescribed Point A on said Line A; thence on an assumed azimuth of 324 degrees 59 minutes 55 seconds, along the aforescribed Line A, 15.19 feet to the aforescribed Point B; thence on an azimuth of 321 degrees 45 minutes 35 seconds a distance of 31.50 feet; thence on an azimuth of 13 degrees 18 minutes 49 seconds a distance of 1.15 feet to the intersection with the aforescribed Line A and there terminating.

Parcel 1:

That part of Lots 3 and 4, Block 44 and the Northwesterly 5.00 feet of the adjoining vacated alley accruing thereto, Kittson's Addition to the City of St. Paul, according to the recorded plat thereof, Ramsey County, Minnesota, lying Southeasterly of the following described line:

Commencing at the Northwest corner of Lot 5, said Block 44; thence run Northeasterly on an assumed azimuth of 55 degrees 02 minutes 47 seconds, along the Northerly line of said Lot 5, for 36.68 feet to the point of beginning of the line to be described; thence on an azimuth of 353 degrees 47 minutes 58 seconds for 37.40 feet; thence on an azimuth of 37 degrees 00 minutes 48 seconds for 19.17 feet thence on an azimuth of 08 degrees 22 minutes 34 seconds for 18.59 feet; thence on an azimuth of 47 degrees 16 minutes 51 seconds for 26.76 feet and there terminating.

Parcel 2A:

That part of Lot 1, Block 44, and adjoining vacated Pine Street, Kittson's Addition to the City of St. Paul, according to the recorded plat thereof, Ramsey County, Minnesota, lying Southeasterly and Southerly of the following described Line 1 and lying Northwesterly of the following described Line 2:

Line 1:

Commencing at the Northwest corner of Lot 5, said Block 44; thence run Northeasterly on an assumed azimuth of 55 degrees 02 minutes 47 seconds, along the Northerly line of said Lot 5, for 36.68 feet to the point of beginning of Line 1 to be described; thence on an azimuth of 353 degrees 47 minutes 58 seconds for 37.40 feet; thence on an azimuth of 37 degrees 00 minutes 48 seconds for 19.17 feet; thence on an azimuth of 08 degrees 22 minutes 34 seconds for 18.59 feet; thence on an azimuth of 47 degrees 16 minutes 51 seconds for 26.76 feet; thence on an azimuth of 15 degrees 39 minutes 58 seconds for 46.06 feet; thence on an azimuth of 64 degrees 51 minutes 09 seconds for 17.49 feet; thence on an azimuth of 16 degrees 10 minutes 41 seconds for 43.24 feet; thence on an azimuth of 81 degrees 19 minutes 37 seconds for 118.66 feet and there terminating.

Line 2:

Commencing at the Northwest corner of Lot 5, said Block 44; thence run Northeasterly on an assumed azimuth of 55 degrees 02 minutes 47 seconds, along the Northwesterly line of Lots 5, 6, 7 and 8, said Block 44, a distance of 155.65 feet; thence on an azimuth of North, 126.27 feet, to the point of beginning of Line 2 to be described; thence on an azimuth of South, 48.78 feet, to the intersection with a line that is parallel with and 43.49 feet, Northwesterly of, measured at a right angle to, the Southeast line of said Lot 1, and its extension; thence on an azimuth of 235 degrees 02 minutes 47 seconds, along said parallel line, 50.24 feet, to the Southwesterly line of said Lot 1 and there terminating.

Subject to easements in favor of the City of St. Paul, Minnesota.

(Parcel ID No: 32-29-22-33-0363)

Other City Property

Pet Exercise (Dog Park) Parcel

All of Tract B, RLS No. 594 and part of Blocks 43 and 44 in Kittson's Addition to the City of St. Paul, and part of vacated Pine, 6th St and the alley in said Section 32 Township 29 Range 22 lying northerly and westerly of said Tract B and of the following described line;

Commencing at the Southeast corner of Tract A, RLS No. 594; thence northwesterly along the Northeasterly line of said Tract A to the Northeast corner of said Tract A; thence North 52 degrees 02 minutes 47 seconds East 50.24 feet; thence North 48.78 feet; thence East 15.21 feet; thence easterly and northerly along a curve concave to the Northwest 4.21 feet; thence on an azimuth of 353 degrees 32 minutes 26 seconds tangent to said curve 15.35 feet to intersect Line A (Line A described below) and there terminating and lying southerly and easterly of the following described Line A;

Commencing at the Northwest corner of Lot 5, Block 44, Kittson's Addition; thence northeasterly along the Northerly line of said Lot 5 for 30 feet to the point of beginning of said Line A; thence on an azimuth of 344 degrees 55 minutes 45 seconds 11.10 feet; thence northerly 17.37 feet on a non-tangent curve concave to the East; thence on an

azimuth of 15 degrees 21 minutes 11 seconds for 26.29 feet; thence on an azimuth of 17 degrees 46 minutes 11 seconds for 104.62 feet; thence on an azimuth of 83 degrees 33 minutes 43 seconds for 85.74 feet and there terminating.

(Parcel ID No: 32-29-22-33-0364)

Easterly Remnant Parcel

Part of Lots 1 and 2, Block 43, Kittson's Addition to the City of St. Paul and part of vacated alley and Olive Street in said Section 32 Township 29 Range 22 described as commencing at the Southeast corner of Tract A, RLS No. 594; thence North 55 degrees 02 minutes 47 seconds East 239.78 feet to the point of beginning; thence on an azimuth of 324 degrees 59 minutes 55 seconds 5.19 feet; thence on an azimuth of 321 degrees 45 minutes 35 seconds 31.50 feet; thence on an azimuth of 13 degrees 18 minutes 49 seconds 1.15 feet; thence on an azimuth of 73 degrees 42 minutes 40 seconds 116.88 feet; thence South 55 degrees 02 minutes 47 seconds West 109.77 feet to the point of beginning.

(Parcel ID No: 32-29-22-33-0365)

All in Ramsey County, Minnesota.

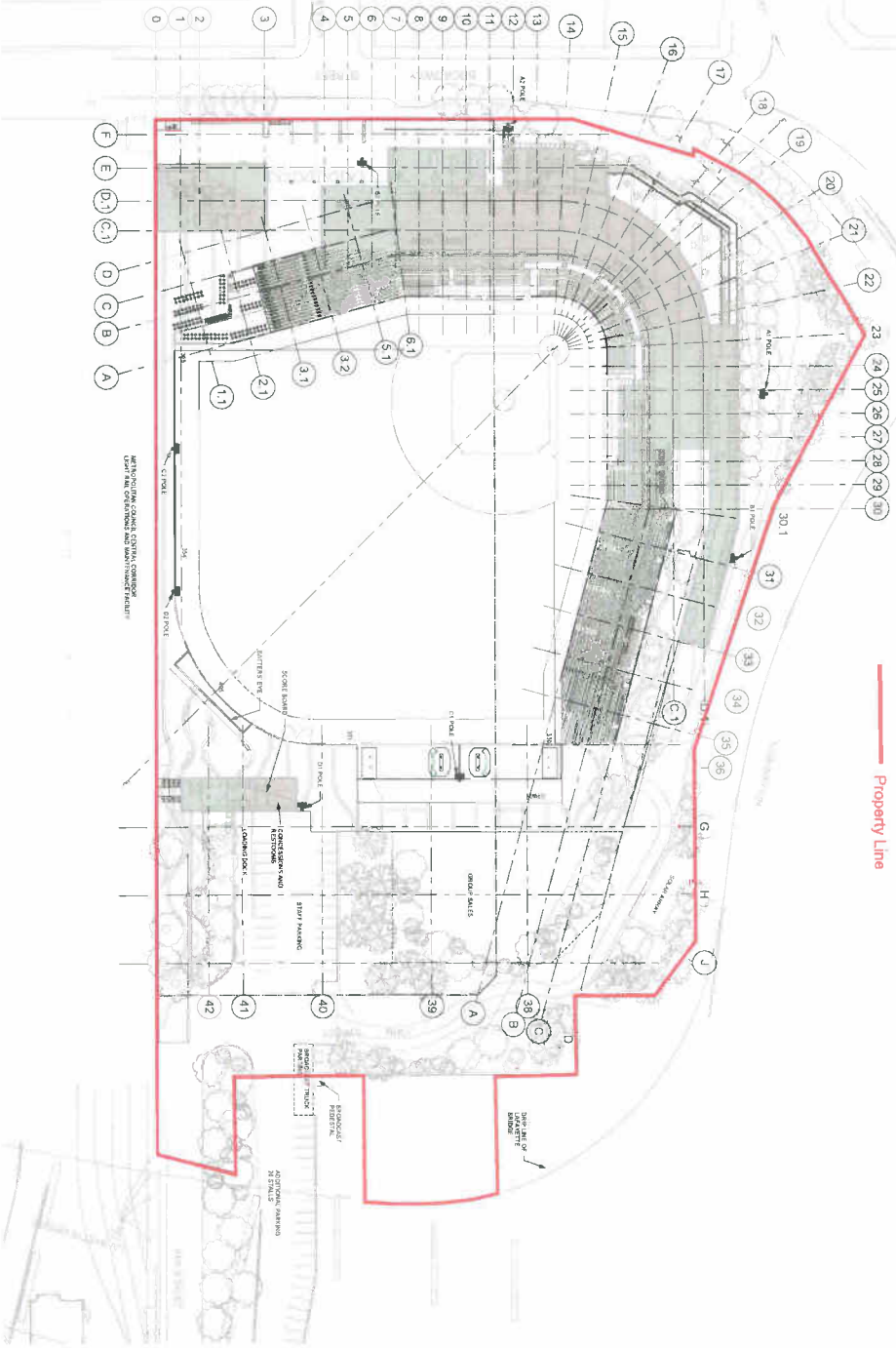
EXHIBIT B

Depiction of Site

[See attached]

EXTENT OF EDP BUILDING

Property Line



RYAN
 BUILDING JAZZING FIELD PROJECTS
 RYAN & HILL, INC.
 61 South Tenth Street, Suite 200
 Minneapolis, MN 55402
 612-339-8000
 www.ryanhill.com

PROJECT NAME:
Lowertown Ballpark
 LOCATION:
 310 East Fifth Street
 Saint Paul, Minnesota
 55101

ARCHITECT:
THE SNOW ARCHITECTS, INC.
 2600 Hennepin Avenue, Suite 100
 Minneapolis, MN 55402
 612-339-8000
 www.thesnowarchitects.com

GENERAL CONTRACTOR:
RYAN & HILL, INC.
 61 South Tenth Street, Suite 200
 Minneapolis, MN 55402
 612-339-8000

CONSULTANTS:
HERNDENSON ENGINEERS, INC.
 1400 Hennepin Avenue, Suite 100
 Minneapolis, MN 55402
 612-339-8000
LANDMARK CONSULTING
 1500 Hennepin Avenue, Suite 100
 Minneapolis, MN 55402
 612-339-8000

ARCHITECTURAL CONSULTANT:
RYAN & HILL, INC.
 61 South Tenth Street, Suite 200
 Minneapolis, MN 55402
 612-339-8000

NOT FOR CONSTRUCTION
 PRELIMINARY

DATE:
 DATE:
 DATE:
 DATE:

A050

ARCHITECTURAL SITE PLAN

DRAWN BY: [Name]
 CHECKED BY: [Name]
 DATE: [Date]

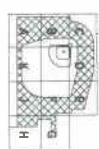
EXHIBIT C

Project Concept Design Documents

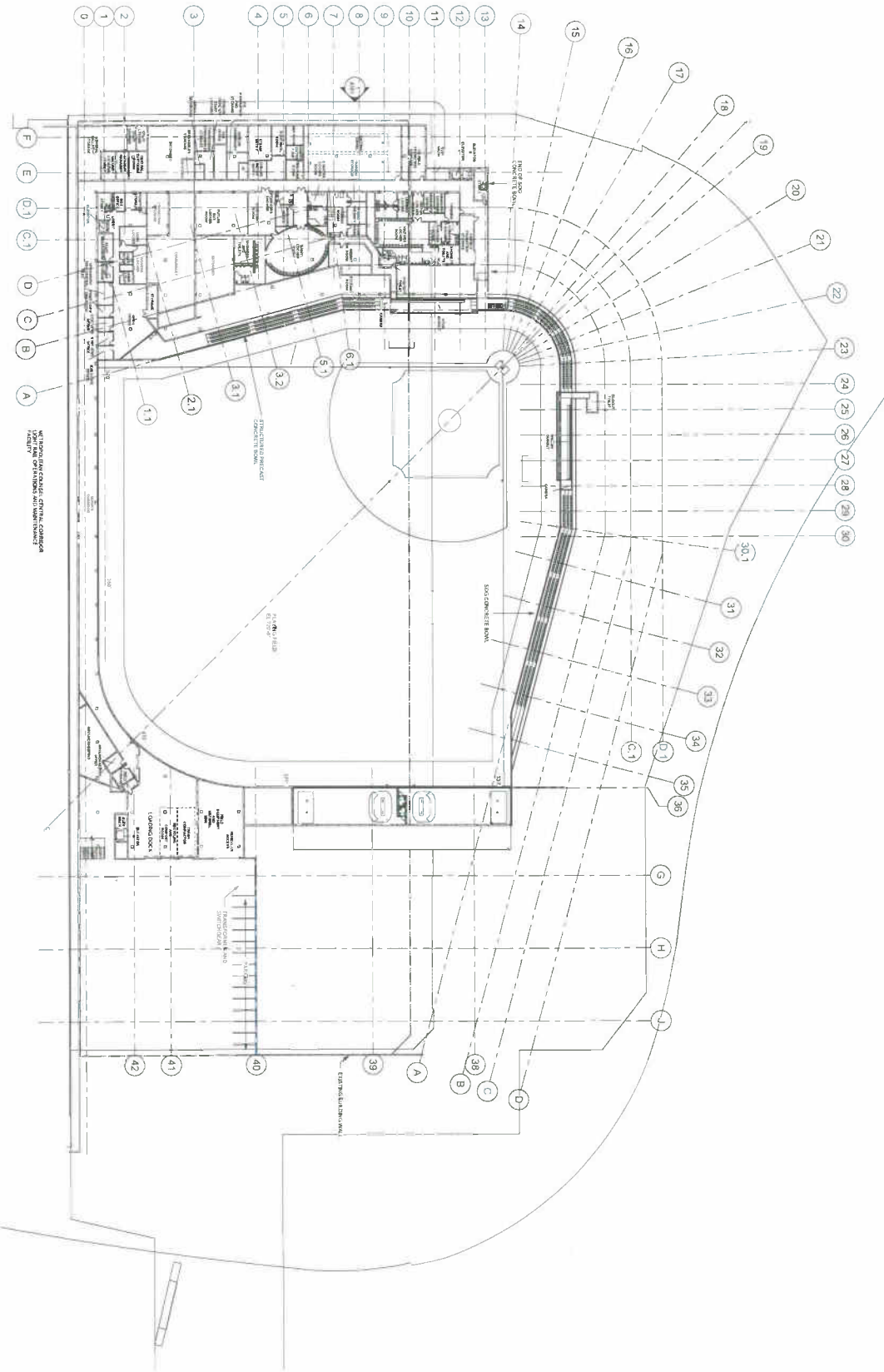
[See attached]

SCALE	RECORD
ISSUE #1 DATE	DESCRIPTION
01	PROVISIONS CONTRACT AGREEMENT

**PRELIMINARY
NOT FOR CONSTRUCTION**



LEVEL PLAN
LIMITED TO THE AREA SHOWN ON THIS PLAN. ANY OTHER AREAS SHOWN ON THIS PLAN ARE FOR INFORMATION ONLY AND ARE NOT TO BE CONSIDERED PART OF THE CONTRACT DOCUMENTS.



DATE	DATE
REVISION	REVISION
DESCRIPTION	DATE
NO. 1	02/27/13

SHEET NO.
A101

DESIGNED BY
ESM

DRAWN BY
LD

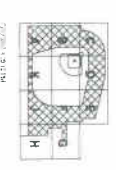
DATE
02/27/13



EXTENT OF FDP BUILDING

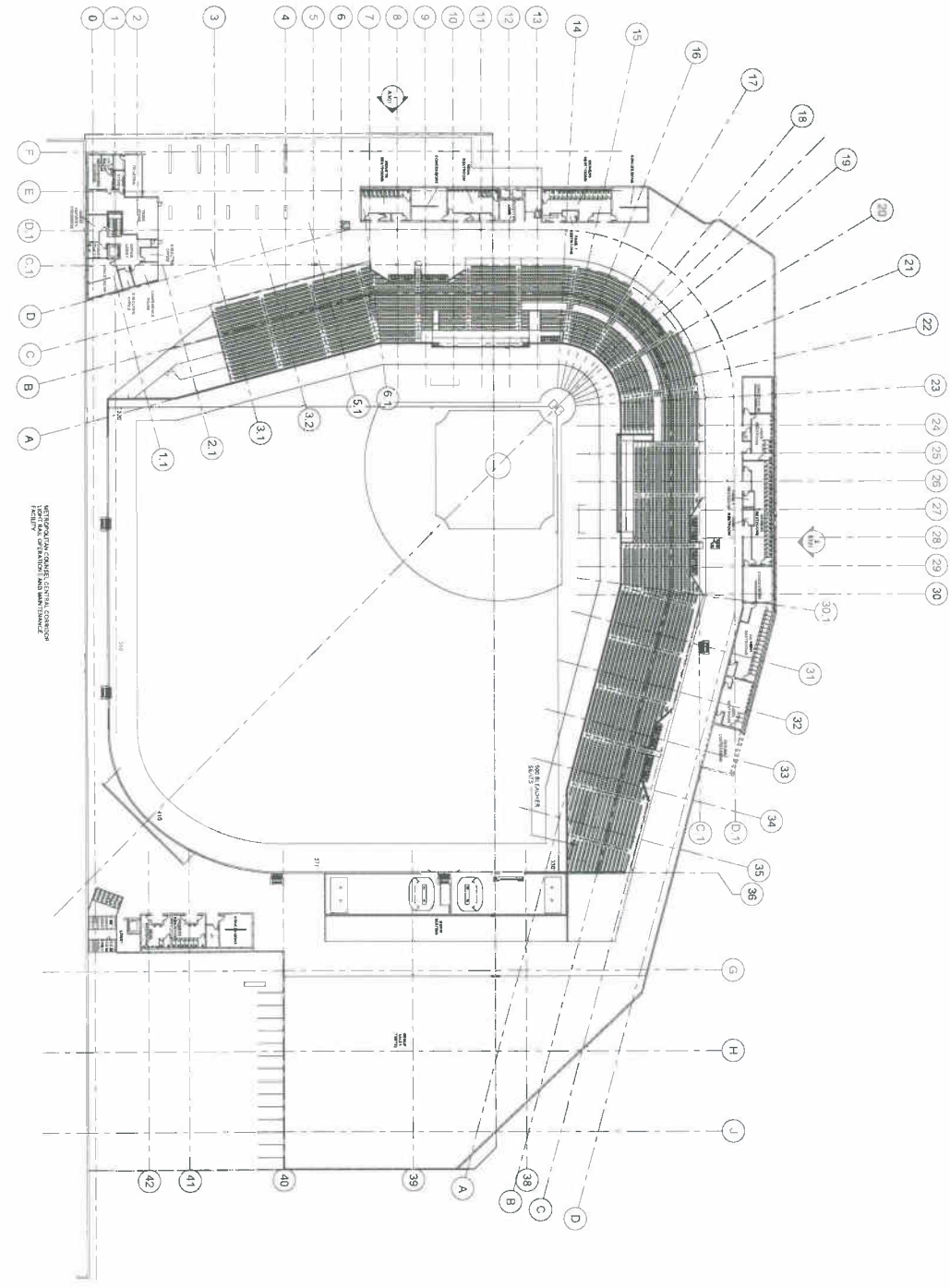
DATE REVISION	DESCRIPTION
12/10/11	ISSUE FOR PERMIT
01/17/12	ISSUE FOR PERMIT

NOT FOR CONSTRUCTION
PRELIMINARY



DATE: 02/20/13
PROJECT: A102
DRAWN BY: J. HANSEN
CHECKED BY: J. HANSEN
DATE: 02/20/13

CONCOURSE LEVEL PLAN



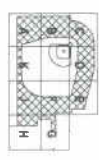
CONCOURSE LEVEL VALUE OPTIONS

EXTENT OF FDP BUILDING



ISSUE NO.	DATE	DESCRIPTION
1	06/27/2011	ISSUE FOR PERMITS

PRELIMINARY
NOT FOR CONSTRUCTION



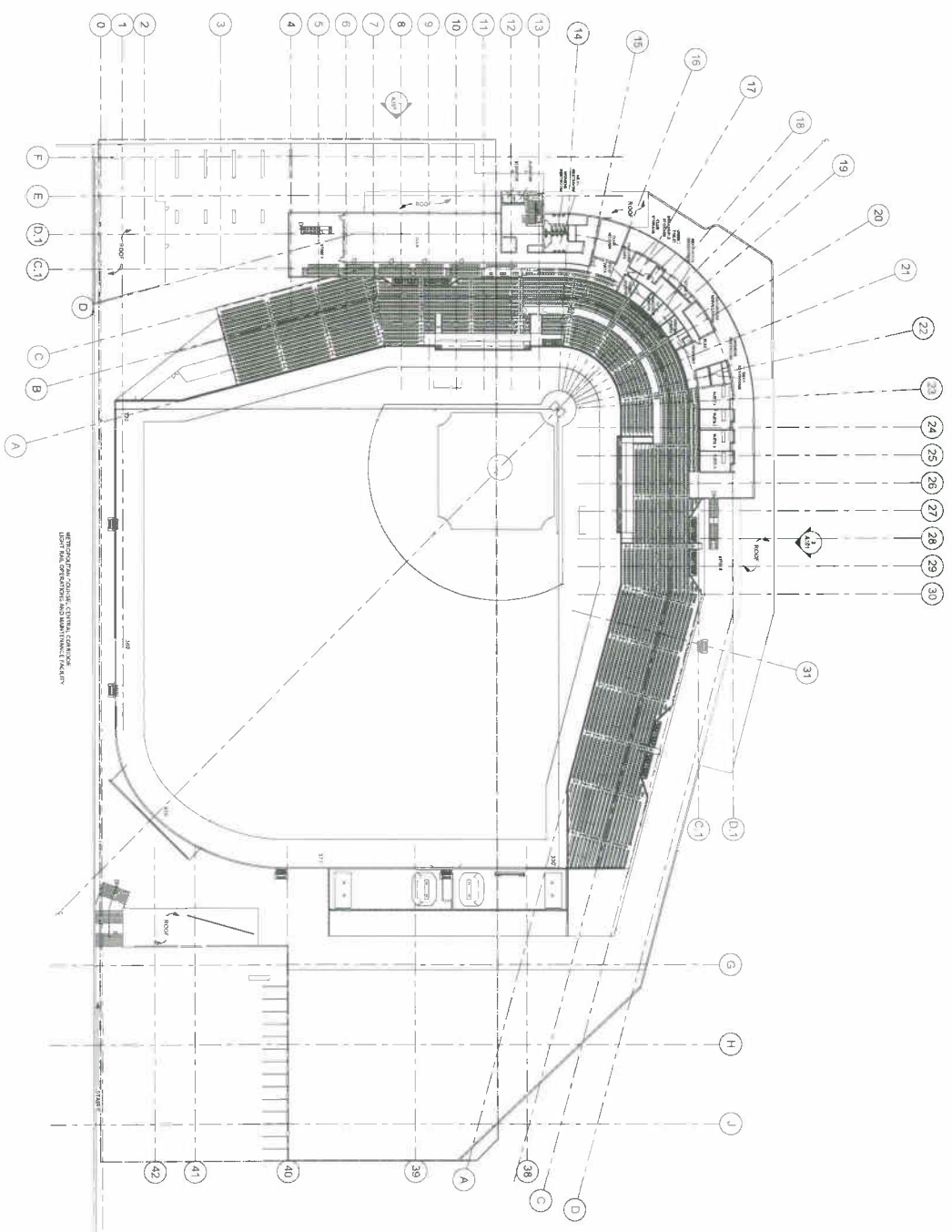
Notes:
1. All dimensions are in feet and inches.
2. All dimensions are to the centerline of the structure unless otherwise noted.
3. All dimensions are to the exterior of the structure unless otherwise noted.
4. All dimensions are to the finished floor level unless otherwise noted.

REGISTRATION	DATE
Professional Engineer	06/27/2011

SHORT TITLE
SLURS LEVEL
PLAN

SHEET NO.
A103

DESIGNED BY
CHECKED BY
DATE
06/27/2011



EXTENT OF FDP BUILDING

SCALE
1/8" = 1'-0"



EXHIBIT D

Schedule of Project Costs

[See attached]

Item #	Description	Budget Cost	Budget Cost w/ Executed Change Orders	Budget Cost w/ Pending Change Orders	Comments
Schematic Design Ballpark Estimated Cost					
	Design Fees	\$ 3,983,864	same	same	
	EAM Traffic Study/ Environmental Investigation	\$ 405,000	same	same	
	Development/Coordination Services	\$ 100,000	same	same	
	Building Permit/Fee Reimbursables	\$ 430,000	same	same	
	Building Demolition/Remediation/Site Prep (Extraordinary Costs)	\$ 9,204,219	same	same	
	Site Circulation & Parking	\$ 600,000	same	same	
	Ballpark Structure and Finishes (Includes Alternative #1)	\$ 33,632,003	same	same	
	FF&E	\$ 3,500,000	same	same	
	B3 Allowance	\$ 320,000	same	same	
	Total Schematic Design 3.0	\$ 52,075,086	\$ 52,075,086	\$ 52,075,086	
	Executed Change Orders	\$ -	\$ 246,172	\$ 246,172	
	SD Budget w/ Executed Change Orders	\$ 52,075,086	\$ 52,321,258	\$ 52,321,258	
	Pending Cost and Scope Changes	\$ -	\$ -	\$ (319,634)	
	SD Budget w/ Pending Change Orders	\$ 52,075,086	\$ 52,321,258	\$ 52,001,627	
	Design Contingency - \$100,000				
	Construction Contingency - \$1,830,529	\$ 1,830,529	\$ 1,584,357	\$ 1,303,988	
	SD Budget w/ Executed Change Orders and Contingency	\$ 53,905,615	\$ 53,905,615	\$ 53,905,615	
	City Contracted Costs	\$ 9,094,385	\$ 9,094,385	\$ 9,094,385	
	Total Project Budget	\$ 63,000,000	\$ 63,000,000	\$ 63,000,000	
	Sales Tax @ 6.875% Estimate (Construction Materials Only)	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	
	Basis for \$63M Budget - Subtotal w/ Sales Tax	\$ 64,000,000	\$ 64,000,000	\$ 64,000,000	

EXHIBIT E

Project Inclusion Goals

1. Workforce Inclusion Goals:
 - a. Minority – 32% (combined skilled and unskilled labor).
 - b. Women – 6%.

2. Business Inclusion Goals:
 - a. Small Business Enterprise (SBE) – 10%.
 - b. Woman-owned Business Enterprise (WBE) – 10%.
 - c. Minority-owned Business Enterprise (MBE) – 5%.

EXHIBIT F

Form of Guaranty

[See attached]

GUARANTY OF PAYMENT AND PERFORMANCE

[Marvin S. Goldklang, William James Murray and Michael Veeck]

DATE: _____, 2013

The following definitions apply to this Guaranty:

“Ballpark Use Agreement” means that certain Ballpark Use Agreement, dated _____, 2013, by and between the City and Borrower in connection with the Project.

“Bond Trustee” means U.S. Bank National Association who is the trustee named in the Indenture issued in connection with the Bonds.

“Bonds” means those Taxable Limited Tax-Supported Ballpark Revenue Bonds, Series 2013-6 issued by the Issuer.

“Borrower” means the St. Paul Saints Baseball Club, Inc., a Minnesota corporation.

“City” means the City of Saint Paul, a home rule city and political subdivision of the State of Minnesota.

“Debt Service Account” means that account established in the Indenture and referred to in the Ballpark Use Agreement and Escrow Agreement.

“Development Agreement” means that certain Development Agreement, dated _____, 2013, executed by the City and Borrower in connection with the Project.

“Escrow Agreement” means that certain Escrow Agreement, dated _____, 2013, executed by and among the Borrower, the HRA, City, Issuer, the Guarantors, and the Bond Trustee, acting as escrow agent in connection with the Project and the proceeds of the Loan.

“Guarantor(s)” means, individually and collectively, as applicable, Marvin S. Goldklang, William James Murray, and Michael Veeck.

“HRA” means the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, a public body corporate and politic.

“Indenture” means that certain Indenture of Trust, dated _____, 2013, between the Issuer and the Trustee, executed and delivered in connection with the Bonds.

“Issuer” means the Port Authority of the City of Saint Paul, a public body corporate and politic of the State of Minnesota.

“Loan” means the loan in the sum of _____ (\$ _____) dollars made by the HRA to Borrower to fund the Rent Guaranty Account.

“Note” means that certain Promissory Note, dated _____, 2013, executed by Borrower in favor of the HRA to evidence repayment of the Loan.

“Project” means the construction, financing and operation of a new municipal regional ballpark in the City under the Development Agreement and Ballpark Use Agreement.

“Rent Guaranty Account” means that certain account established with the Bond Trustee from the proceeds of the Loan, as more fully described in and governed by the Escrow Agreement.

“Security Agreement” means that certain Security Agreement, dated _____, 2013, executed by Borrower and HRA whereby Borrower grants to the HRA a security interest in the Rent Guaranty Account.

“Termination Date” means the earlier of (a) the date on which the Guaranteed Amount (as defined herein) has been paid in full by the Guarantors (or any of them) or (b) the date on which the Indebtedness has been fully repaid and satisfied.

In order to induce the HRA to make the Loan to Borrower, and being owners of the Borrower, and in consideration thereof, the Guarantors hereby jointly and severally, irrevocably and unconditionally guarantee to the HRA:

- I. The performance of the Borrower’s obligations under the Note and Escrow Agreement including without limitation the Borrower’s obligation to replenish the Rent Guaranty Account; and
- II. The due and prompt payment of all principal, interest and late charges due by Borrower to the HRA under the Note; and
- III. The performance of the Borrower’s obligations under the Security Agreement.

(collectively items I, II and III are referred to as the “Indebtedness”).

This Guaranty is a guarantee of payment and performance. This Guaranty is an absolute, irrevocable, present, and continuing obligation, and shall be in full force and effect until the Termination Date. Prior action against the Borrower or any other guarantor shall not be a prerequisite to the HRA’s right to proceed hereunder against the Guarantors. Whenever the HRA shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Borrower or the Guarantors contained herein or in the Note, Escrow Agreement, or

Security Agreement, the Guarantors agree that they shall, on demand therefor, pay to the HRA the reasonable fees of such attorneys and such other expenses so incurred by the HRA.

Notwithstanding anything to the contrary in this Guaranty or the other documents evidencing or securing the Loan, the HRA may proceed to enforce this Guaranty against any one or more or all of the Guarantors from time to time, but the total recovery under this Guaranty from the Guarantors shall not exceed the original principal amount of the Note (the "Guaranteed Amount"). This Guaranty shall terminate on the Termination Date.

Each of the Guarantors agree that possession of this Guaranty by the HRA shall be conclusive evidence of due delivery of this Guaranty by him, and further agree that this Guaranty shall continue in full force and effect notwithstanding the death or release of any other guarantor of the Indebtedness. So long as any portion of the Indebtedness is owing by the Borrower to the HRA, the Guarantors, without the HRA's written consent, will not collect from the Borrower the claim, if any (by subrogation or otherwise), acquired through payment of a part of the Indebtedness evidenced by the Note. By execution of this Guaranty, the Guarantors represent to the HRA that they have received a full, fair, and equivalent consideration for the execution of this Guaranty.

Notwithstanding any modification, discharge, or extension of the Indebtedness or any amendment, modification, stay, or cure of the HRA's rights under the Indebtedness or any mortgage or other collateral securing repayment of the Indebtedness which may occur in any case or proceeding under Title 11 or 7 of United States Code concerning the Borrower, whether permanent or temporary, and whether assented to by the HRA, the Guarantors hereby agree that they are obligated hereunder to pay the Indebtedness, and discharge its other obligations in accordance with the terms of the Indebtedness and the terms of this Guaranty.

The Guarantors understand and acknowledge that by virtue of this Guaranty, they have specifically assumed any and all risks of a bankruptcy, reorganization case, or related proceeding of the Borrower. As an example, but not by way of limitation, a subsequent modification of the Note or Indebtedness in any reorganization case concerning the Borrower shall not affect the obligation of the Guarantors to pay the Note or the Indebtedness in accordance with their original terms.

Any and all payments upon such Indebtedness made by the Borrower or by any of the Guarantors, or by any other person, and/or the proceeds of any or all collateral or security for any such Indebtedness may be applied by the HRA upon such of the items of such Indebtedness as it may determine, whether the same shall be due or not.

The HRA may, at any time and from time to time, with the consent of the Borrower, but without the consent of or notice to the Guarantors, and without incurring responsibility or liability to the Guarantors, or impairing or releasing the obligations of the Guarantors hereunder, change the manner, place, or terms of performance or payment or renew, replace, extend, or otherwise modify the Note or the Security Agreement.

This Guaranty shall be binding upon the Guarantors and upon their heirs, legal representatives, successors, and assigns, and shall inure to the benefit of HRA and its successors and assigns. This Guaranty may be assigned by the HRA to any holder of the Note.

This Guaranty is secured by a confession of judgment of the Guarantors in the form attached hereto.

The acceptance of this Guaranty by the HRA is not intended to and does not release any liability previously existing of any guarantor or surety of any Indebtedness or liability of the Borrower to the HRA.

This Guaranty shall be construed in accordance with the laws of the State of Minnesota.

Marvin S. Goldklang

Address:

William James Murray

Address:

Michael Veeck

Address:

