

**BASEBALL PLAYING AND USE AGREEMENT**

**BY AND BETWEEN**

**MINNESOTA BALLPARK AUTHORITY**

**AND**

**MINNESOTA TWINS, LLC**

**DATED AS OF APRIL 26, 2007**

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## BASEBALL PLAYING AND USE AGREEMENT

THIS BASEBALL PLAYING AND USE AGREEMENT (this "Agreement") is made and entered into as of the 26th day of April, 2007 (the "Effective Date"), by and between the MINNESOTA BALLPARK AUTHORITY, a public body and political subdivision of the State of Minnesota (the "Authority"), and MINNESOTA TWINS, LLC, a Delaware limited liability company (the "Team").

### RECITALS:

A. The Team is the owner of a professional baseball franchise that is a member of Major League Baseball and has spent many years building support among state and local governments for a publicly/privately-funded baseball facility in which to house its operations.

B. In 2006, the Minnesota Legislature, finding that the expenditure of public money for the construction, financing, ownership and long-term use of a ballpark primarily as a venue for Major League Baseball served a public purpose, enacted legislation (the "Act," as hereinafter defined), creating the Authority and authorizing the construction of a baseball facility in the City of Minneapolis, Minnesota (the "City").

C. The Minnesota Legislature provided for the public financing of the Ballpark (as defined below), with certain required private contributions by the Team, and for tax-exempt ownership of the Ballpark by the Authority.

D. In furtherance of the purposes of the Act, the Authority, the Team and Hennepin County have entered into that certain Development Agreement described below pursuant to which a baseball facility, to be owned by the Authority, is to be constructed in the City.

E. Pursuant to the terms of the Act, the Authority is to enter into certain agreements with the Team, including this Agreement and a Ballpark Lease Agreement of even date herewith.

F. Substantial public support in the form of constructing and financing the Team's two previous stadium venues, and in the form of governing terms of use, have redounded to the benefit of the Team over the past five decades. It is contemplated that the public will now commit for the Team's benefit public funds in excess of \$350,000,000 to create the new Ballpark venue for the Team. Such public support serves the important public interests recognized by the Minnesota appellate courts in *Lifteau v. Metropolitan Sports Facilities Commission*, 270 N.W.2d 749 (Minn. 1978); and *Metropolitan Sports Facilities Commission v. Minnesota Twins Partnership*, 638 N.W.2d 214 (Minn. App. 2002), *review denied* (Feb. 4, 2002).

G. The Team will likewise make a significant financial contribution toward creating the new Ballpark venue, and contemplates expending funds in excess of \$130,000,000.

H. The Authority, the County, and the Minnesota public, on the one hand; and the Team, on the other, wish to provide for the use of their respective facilities, resources, and substantial financial commitments consistent with their expectations and with the terms and conditions set by the Minnesota Legislature in the Act.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises, undertakings and covenants hereinafter set forth, and intending to be legally bound hereby, the Authority and the Team covenant and agree as follows:

## **ARTICLE 1 DEFINED TERMS**

### **Section 1.1    Defined Terms.**

In addition to other terms defined herein, the following terms as used in this Agreement shall have the meaning set forth below. Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Ballpark Lease Agreement.

“Act” shall mean Minnesota Laws 2006, Chapter 257, providing for, among other things, the financing, construction and operation of a new Major League ballpark in Minneapolis, as codified in part in Chapter 473 of the Minnesota Statutes, as amended or supplemented, and including any successor law.

“Affiliate” of a specified Person shall mean any corporation, partnership, limited liability company, sole proprietorship or other Person that directly or indirectly, through one or more intermediaries Controls, is Controlled by or is under common Control with the Person specified.

“Authority” shall mean the Minnesota Ballpark Authority, a public body and political subdivision of the State of Minnesota.

“Ballpark” shall mean that MLB facility to be constructed pursuant to the Development Agreement, together with the real property upon which the MLB facility sits, as identified on Exhibit 1 and Exhibit 2 of the Ballpark Lease Agreement, and all fixtures and equipment therein, other than the Team Personal Property and the space comprising the Authority Office.

“Ballpark Lease Agreement” shall mean that certain Ballpark Lease Agreement between the Authority and the Tenant, dated April 26, 2007.

“CapEx Reserve Fund” shall have the meaning given such term in the Ballpark Lease Agreement.

“CapEx Work” shall have the meaning given such term in the Ballpark Lease Agreement.

“City” shall mean the City of Minneapolis.

“Commencement Date” shall mean the date established as such pursuant to Section 2.2 of the Ballpark Lease Agreement.

“Contraction” shall mean the elimination or substantial impairment by MLB of the right of the Franchise to play MLB games in the Ballpark as required by this Agreement, whether proposed or to be accomplished by a purchase of the Team, the Franchise, or the assets of the Team by MLB or an Affiliate of MLB, the merger of the Team into another entity or the merger of another entity into the Team, the voluntary or involuntary dissolution of the Team, the

voluntary or involuntary surrender of the Franchise by the Team, the cancellation or termination of the Franchise by MLB, or by any other means, or any other agreement by and between the Team and MLB or any Affiliate of MLB or by and between MLB or an Affiliate of MLB and any other Person.

"County" shall mean the County of Hennepin, State of Minnesota.

"Controls," "Controlled by," or "under common Control" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person without regard, in the case of the Team, to the designation of a Person as the "control person" (or similar designation) for purposes of MLB Rules and Regulations.

"Development Agreement" shall mean that certain Development Agreement among the Authority, the Team and the County, dated as of April 26, 2007.

"Exempt Transfer" shall mean any direct or indirect transfer or assignment of any ownership interest in the Team or the Franchise (including transfers pursuant to testamentary transfer or the applicable laws of descent and distribution) to any of the following: (a) solely to or among any Person or Persons within the Family Group, (b) to employees of the Team or employees of Affiliates of the Family Group, so long as such transfers do not in the aggregate exceed ten percent (10%) of the then outstanding ownership interests in the Team or the Franchise, respectively; or (c) to any entity in connection with an entity reorganization (e.g., conversion of a partnership to a limited liability company or corporation), so long as the ownership interests in the transferee are substantially the same as the ownership interests in the transferor. The following sales shall also be deemed to be Exempt Transfers: sales of equity interests in the Team or its successors, the proceeds of which are not distributed, directly or indirectly, to the owners of the Team (including members of their Family Group or their Affiliates), the owners' Affiliates or the owners' successors and that are (i) used for baseball operating purposes, or (ii) used for repayment of loans made to the Team, the proceeds of which loans were not distributed to the owners of the Team or its successors. The Authority shall be given written notice within thirty (30) days of any Exempt Transfer, which notice shall include sufficient information so that the Authority can determine the validity of the proposed Exempt Transfer. Any subsequent transfers or assignments that would not qualify as an Exempt Transfer shall be subject to any provisions relating to sales, transfers or assignments that are not considered to be Exempt Transfers.

"Expiration Date" shall mean the date that is the last day of the Term.

"Family Group" shall mean the following: (a) with respect to any individual who owns an equity interest, direct or indirect, in the Team on May 27, 2006 (1) the spouse of such individual or (2) any lineal descendants of such individual; (b) Carl R. Pohlad or any of the lineal descendants of Carl R. Pohlad and Eloise O. Pohlad and spouses of any of these individuals; (c) any foundation created by Carl R. Pohlad, Eloise O. Pohlad or any of their lineal descendants or spouses of these individuals which is exempt from federal taxation pursuant to Section 501(c)(3) or similar provision of the Internal Revenue Code; (d) any trust, whose beneficiaries have or are to receive a beneficial interest in the ownership interests in the Team or Franchise under the terms of such trust are Persons described in clauses (a), (b), (c) or (d) of this

paragraph; or (e) a Person in which one or more of the Persons described in (a) (b), (c), (d) or (e) of this paragraph, in the aggregate, directly or indirectly hold or are beneficiaries of at least a majority of the voting and equity interests.

"Franchise" shall mean the rights granted to the Team by Major League Baseball to own and operate a Major League Baseball team and to play Major League Baseball games within a defined geographic area that includes the City.

"Gross Proceeds" shall mean the gross proceeds of all payments by MLB or any other Person to the Team as compensation to the Team for or in connection with any Contraction.

"Initial Term" shall mean the time period commencing on the Commencement Date and ending on the later of (a) the date of the thirtieth (30th) anniversary of the Commencement Date, or (b) December 1 of the year in which the thirtieth (30th) full Season following the Commencement Date is concluded.

"Major League Baseball" or "MLB" shall mean, collectively, the Office of the Commissioner of Baseball, the Commissioner of Baseball, the Major League Baseball clubs, the Ownership Committee of Baseball, and/or any other Person appointed by any of the foregoing, or any successor substitute association or entity of which the Team is a member or joint owner and which engages in professional baseball in a manner comparable to Major League Baseball.

"Permitted Encumbrances" shall have the meaning set forth in the Ballpark Lease Agreement.

"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.

"Right of First Refusal" shall have the meaning set forth in Section 2.5 of this Agreement.

"Related Agreements" shall mean the Ballpark Lease Agreement, the Reciprocal Easement Agreement, the Parking Lease and the BNSF Agreement, as amended, supplemented, renewed or replaced from time to time.

"Sale" shall mean (a) for the purposes of the exercise of the Right of First Refusal pursuant to Section 2.5 hereof, any direct or indirect sale, transfer, conveyance, assignment, merger, consolidation or other disposition of (i) any controlling ownership interests in the Team or the Franchise, as the case may be, by the owners thereof or (ii) all or substantially all of the Team's property and assets used in the operation of the Franchise; or (b) for the purposes of Section 2.4 hereof, the direct or indirect sale, transfer, conveyance or assignment of any ownership interests in the Team or the Franchise. An Exempt Transfer shall be deemed not to be a Sale for any purposes of this Agreement.

"Team" shall mean Minnesota Twins, LLC, a Delaware limited liability company, which is, as of the date of this Agreement, the owner of the Franchise.

"Tenant's Ballpark Property" shall have the meaning set forth in Section 4.3 of the Ballpark Lease Agreement.

"Tenant" shall have the meaning set forth in the Ballpark Lease Agreement.

"Term" shall have the meaning set forth in Section 9.1 hereof.

## **ARTICLE 2**

### **BASEBALL PLAYING AND NON-RELOCATION COVENANTS**

#### **Section 2.1 Maintenance of Franchise/Corporate Existence; Covenant to Operate.**

(a) At all times during the Term, the Team shall, subject to the provisions of this Article 2, (i) maintain its membership and Franchise in the MLB in good standing, (ii) own, hold, maintain and defend its rights and Franchise to play baseball as a member of MLB in the City, (iii) play all home MLB events at the Ballpark as more fully set forth in clause (e) below, and otherwise operate the MLB Franchise, and (iv) not vote in favor of and shall oppose, and not enter into or accept any agreement or requirement, with or from MLB or any other Person that is inconsistent with the Team's commitments and agreements under this Agreement or the Team's or the Tenant's commitments and agreements under the Ballpark Lease Agreement, or that would, in any manner, dilute, interfere with, or negate the provisions for which specific performance or injunctive relief is provided as a remedy in this Agreement, the Ballpark Lease Agreement, or any grant agreement under Minnesota Statutes Section 473.757.

(b) At all times during the Term, the Team shall maintain its existence as an entity organized under the laws of Delaware and will not dissolve or liquidate, or change its form of existence, without the prior written consent of the Authority.

(c) At all times during the Term, the Team shall maintain its headquarters and its principal place of business within the County.

(d) At all times during the Term, the Team shall own 100% of the ownership interests in the Tenant and shall Control the Tenant and all Affiliates of the Tenant.

(e) At all times during the Term, the Team shall play all regular and post season home games at the Ballpark unless otherwise required by any Untenantability Period and subject to Section 11.4(d) of the Ballpark Lease Agreement; provided that on a non-regular basis, the Team may, if required by MLB, play no more than 5 home games per year in a foreign country. Preseason games and MLB All-Star Games scheduled to be played in the Twin Cities metropolitan area shall be played at the Ballpark unless otherwise required by MLB Rules and Regulations, or any Untenantability Period and subject to Section 11.4(c) of the Ballpark Lease Agreement.

(f) At all times during the Term, the Team shall be a party, and shall cause the Tenant to be party, to a sublease of the Ballpark Lease Agreement (the "Sublease"), such that the Team shall have the ability to fully and completely comply with and perform this Agreement and all of the Team's obligations hereunder. Prior to entering into or amending the Sublease, the Tenant shall provide the Authority with a copy of the Sublease and all documents related thereto

for purposes of determining whether the Sublease complies with the terms and conditions of this Section 2.1 and the information contained in the documents and agreements provided to the Authority with respect thereto shall be treated as Confidential Data, subject to the Data Practices Act and the provisions of Section 3.2(d) shall apply to the Confidential Data. The Team shall not amend, surrender or terminate the Sublease, or accept or permit a surrender, or cause, permit or suffer the Tenant to amend, surrender or terminate, or accept or permit a surrender, of the Sublease (other than to replace the then current Sublease with a new Sublease that comports with the requirements of this Section 2.1(f)).

(g) The Team shall not vacate or abandon the Ballpark, or cause, permit or suffer the Tenant to vacate or abandon the Ballpark, at any time during the Term.

(h) The Team shall, while the Ballpark is being constructed and prepared for the Team pursuant to this Agreement and the Related Agreements, play all of their MLB home games at the Hubert H. Humphrey Metrodome in Minneapolis, Minnesota, so long as same is tenantable and remains fit for the Team's intended use as established by past practice; provided that on a non-regular basis, the Team may, if required by MLB, play no more than 5 home games per year in a foreign country.

## **Section 2.2 Related Agreements.**

The Team will perform, and will cause the Tenant to perform, those Related Agreements to which the Team and the Tenant, respectively, are parties.

## **Section 2.3 Covenants Not to Relocate and to Oppose Contraction.**

(a) The Team shall not relocate or attempt to relocate the Franchise outside the City during the Initial Term.

(b) The Team shall, during the Initial Term, oppose Contraction of the Franchise by MLB. In the unlikely event that there is a Contraction of the Franchise prior to the end of the Initial Term, then this Agreement shall terminate upon the completion of the final Season of the Team, in which event neither Party shall have any further obligations hereunder, except that the Authority shall be entitled to the lesser of (i) fifty percent (50%) of the Gross Proceeds paid to the Team by MLB from such Contraction, less the amount of Team Additional Funds contributed by the Team for Public Infrastructure as described in Section 5.1(a)(vi) of the Development Agreement, or (ii) any losses suffered by the County for unamortized public development costs calculated as the unamortized public share of the Ballpark, Public Infrastructure and other public costs based on a thirty (30)-year amortization period reduced by any recovery of such amounts by the County. For purposes of this Section 2.3(b)(ii), the phrase (a) "unamortized public share of the Ballpark, Public Infrastructure and other public costs" means the public funds expended by the County, the Authority and the City for planning, design, construction and operation of the Ballpark and Public Infrastructure, including funds expended for acquisition of the land, Appurtenant Property Rights, and Development Site, the County's CapEx contributions, the County's grants to the Authority for infrastructure repair and replacement, and the Authority's operating costs, plus capitalized interest, which as of the date of calculation remain unamortized based on a thirty (30)-year amortization schedule; (b) "any

recovery of such amounts by the County” means the highest public bid received by the Authority for the Ballpark land, Appurtenant Property Rights, and Development Site net of any estimated demolition or other seller costs; and (c) “unamortized public development costs” means the amount remaining after deducting the amount calculated under subsection (b) above from the amount calculated under subsection (a) above. The Authority shall not be required to actually dispose of the Ballpark land, Appurtenant Property Rights, and Development Site in order to determine the losses suffered by the County pursuant to this Section 2.3(b)(ii).

(c) In the event of any dissolution or relocation of the Franchise during the Term, the Team shall transfer (and shall use best efforts to cause the MLB to cooperate in the transfer of) the Franchise's heritage and records to the State of Minnesota, including the name, logo, colors, history, playing records, trophies and memorabilia. Notwithstanding anything to the contrary set forth in this Section 2.3, during any Renewal Term the covenants of this section will be subject to MLB approval and the Authority's right to challenge pursuant to the Act.

#### **Section 2.4    Sale of Team.**

(a) In the event there is a Sale during the period beginning on May 27, 2006 and ending on the tenth anniversary of the Construction Start Date, the Team shall be obligated to pay to the Authority an amount equal to a certain percentage, as specified below, of the gross sales price resulting from the Sale (the “Team's Sale Percentage”), which amount shall be deposited in the CapEx Reserve Fund and credited against any future funding obligations of either the Authority or the County to such CapEx Reserve Fund. During the twelve (12)-month period immediately following the Construction Start Date, the Team's Sale Percentage shall be equal to eighteen percent (18%), reduced by one and eight-tenths (1.8) upon each anniversary of the Construction Start Date, until the amount of the Team's Sale Percentage is reduced to zero. After the tenth anniversary of Construction Start Date the Team shall no longer have any payment obligation to the Authority under this Section following any Sale; provided, however, that this sentence shall not release the Team from any other obligation arising prior to or upon any Sale.

(b) Except as otherwise required herein (e.g., in the event a Sale is subject to the Right of First Refusal set forth in Section 2.5 hereof), the Team shall use commercially reasonable efforts to give the Authority written notice of any Sale within thirty (30) days prior to the Sale and shall, in all events, give the Authority written notice of any Sale within ten (10) days thereafter.

(c) In the event of any Sale or Exempt Transfer, the successor in interest shall become bound to the terms and conditions of this Agreement, the Ballpark Lease Agreement, and any other Related Agreements pursuant to the provisions of Article 3, below.

#### **Section 2.5    Right of First Refusal.**

(a) Grant of Right of First Refusal. If, during the Initial Term, the Team or the Team's owners (as used in this Section, the “Selling Party”) receives a bona fide written offer for a Sale from a Person who is credit-worthy and has been approved by MLB as an MLB franchise holder or who, though not then approved, meets all of the criteria established by MLB for its

franchise holders, that the Selling Party desires to accept, the Selling Party shall furnish to the Authority, the Metropolitan Sports Facilities Commission and the then Governor of the State (collectively, the "Other Party") a written notice (an "Offer Notice") setting forth (i) the identity of the offeror, (ii) the material terms and conditions of the proposed Sale, including the purchase price therefor and the terms of payment of such price, and (iii) such other material terms as are applicable to such proposed Sale. The Other Party, acting on behalf of a to-be-formed Acquisition Corp. (defined below), or Acquisition Corp. (when formed) shall have the exclusive right and option, but not the obligation, during the period ending sixty (60) days following the date of the Offer Notice (the "Option Exercise Period"), to elect that Acquisition Corp. purchase the Team or the Franchise, as the case may be, upon the terms and conditions set forth in the Offer Notice (the "Right of First Refusal"). To the fullest extent permitted by any applicable Laws or MLB Rules and Regulations, the Other Party and Acquisition Corp. shall keep confidential the Offer Notice and the terms set forth therein and shall not disclose the same to any Persons other than its officers, attorneys or other consultants of the Other Party or Acquisition Corp. assisting with the evaluation of the Offer Notice, who shall also agree to abide by the foregoing confidentiality provisions.

(b) Exercise of Right of First Refusal. To exercise the Right of First Refusal, the Other Party, acting on behalf of Acquisition Corp., or Acquisition Corp. (when formed), shall (i) deliver a written notice of exercise of the Right of First Refusal to the Selling Party during the Option Exercise Period (the "Exercise Notice") and (ii) deliver, during the period ending ninety (90) days following the date of the Offer Notice, evidence in form and substance reasonably acceptable to the Selling Party that a corporation, the capital structure of which is in compliance with the provisions of Section 473.763 of the Minnesota Statutes ("Acquisition Corp.") has been formed and that Acquisition Corp. has available to it fully committed financing in an amount necessary to consummate the proposed purchase. The Right of First Refusal shall immediately terminate, without any further action by the Parties, on the earliest to occur of the following: (A) the Other Party, on behalf of Acquisition Corp., or Acquisition Corp. fails to exercise the Right of First Refusal during the Option Exercise Period, (B) the Other Party, on behalf of Acquisition Corp., or Acquisition Corp. fails to provide, within ninety (90) days of the Offer Notice, evidence of fully committed financing in an amount necessary to consummate the proposed Sale or evidence of formation of Acquisition Corp., (C) the Other Party, on behalf of Acquisition Corp., or Acquisition Corp. exercises the Right of First Refusal and the proposed Sale to Acquisition Corp. is not consummated during the period ending one hundred eighty (180) days following the date of the Offer Notice (the "Outside Date"), (D) if the agreement resulting from the exercise of the Right of First Refusal is terminated other than due to the default of the Selling Party, or (E) MLB provides the Team and Acquisition Corp., prior to the Outside Date, with written notice that the sale to Acquisition Corp. is not approved by MLB. If the Right of First Refusal is terminated pursuant to (A)-(E) above, then, subject to Article 3, the Selling Party shall have the right, during the period ending one (1) year following the expiration of the Option Period, if the Right of First Refusal is not exercised, or one (1) year following the Outside Date (the "Unrestricted Sale Period") if the Right of First Refusal is exercised, to consummate a Sale on substantially the same financial terms and conditions set forth in the Offer Notice. If any material financial terms of the Sale are modified or revised from the terms set forth in the Offer Notice, such modified or revised material financial terms shall be subject to the right of first refusal provisions set forth above as if the Selling Party had not yet given an Offer Notice. If the Sale is not consummated prior to the expiration of the Unrestricted Sale Period on the terms and

conditions set forth in the Offer Notice, then the Sale shall again become subject to the restrictions set forth in this Section. If the Sale is consummated prior to the expiration of the Unrestricted Sale Period on the terms and conditions set forth in the Offer Notice, then the Right of First Refusal shall be deemed null and void and shall not apply to any subsequent Sale.

### **ARTICLE 3 ASSIGNMENT**

#### **Section 3.1    Assignment by the Team.**

Except as specifically permitted by this Article 3, the Team shall not sell, assign, transfer, mortgage, pledge, hypothecate, encumber, or grant a security interest in or upon this Agreement, any ownership interest in the Team, the Team's rights or obligations hereunder or any part thereof or interest therein, or the Franchise or the Team's right, title or interest in the Franchise, or any part thereof, which effectively results (or, if a collateral or other assignment for security, could, upon foreclosure or realization by the assignee, result) in a change in Control of the Team or a change in Control of the Franchise (treating the Franchise for this purpose as a Person) (collectively, "Assign" or an "Assignment") other than Assignments that are within the Family Group that result in Control of the Team and Control of the Franchise remaining within the Family Group. Any Assignment or attempted or purported Assignment, not specifically permitted by this Article 3, shall be void.

#### **Section 3.2    Permitted Assignments.**

An Assignment shall be permitted if in accordance with the following:

(a) prior to execution of the proposed Assignment or any related agreements, the Team shall have provided to the Authority copies of all documents to be executed and such other information as the Authority reasonably requests to confirm that, should the proposed Assignment be effected, the Team will have complied with the requirements of this Article 3.

(b) Any Assignment shall be, and each assignee of such Assignment shall take subject to, and be bound by this Agreement.

(c) Any Assignment shall have been approved by MLB to the extent required by MLB.

(d) It shall be a condition precedent of any Assignment that the assignee thereof shall own or possess the Tenant's leasehold estate in the Ballpark or the Team's interest under the Sublease and have the right to possession of the Ballpark, or the ability to control the leasehold estate and possession of the Ballpark.

(e) In the case of a collateral or other Assignment for security, failure of the assignee to satisfy any of the above conditions shall preclude such assignee from foreclosing, realizing on, taking possession of or otherwise exercising control over any of the collateral. However, for the purpose of satisfying the condition precedent of clause (d) above, it shall be sufficient if the assignee shall own or possess such other right, interest, power or control, contractual or otherwise, sufficient to provide it with the ability and power to cause compliance (itself or

through another Person such as MLB) with the obligations of the Team under this Agreement and the Ballpark Lease Agreement, or another Person, such as MLB, is causing such compliance and such compliance is continuing.

(f) Notwithstanding anything contained in this Agreement to the contrary (unless as otherwise provided in the Ballpark Lease Agreement with respect to a Permitted Franchise Transfer Related Assignment), any Assignment hereunder (whether with or without the consent of the Authority) shall not (i) operate to relieve the Team from any covenant or obligation hereunder, or (ii) be deemed to be a consent to or relieve the Team or any assignee permitted pursuant hereto from obtaining, to the extent required under this Article 3, the Authority's prior written consent to any subsequent Assignment (pursuant to the terms of this Agreement) and the Team shall, notwithstanding any rights the Authority may have against third parties, continue to remain primarily liable and obligated to the Authority for any and all covenants and obligations of the Team hereunder.

(g) Contemporaneously with the consummation of each Assignment permitted by this Section, the Team shall provide a written certification to the Authority that such Assignment complies with this Article 3. The Team shall pay reasonable attorneys fees incurred by the Authority in connection with the Authority's review and/or verification of the terms of any Assignment under this Section.

### **Section 3.3 Assignment by the Authority.**

The Authority may assign or transfer this Agreement or any of its interests or obligations hereunder to any Governmental Authority as may be authorized by applicable Laws. The Authority shall not assign or transfer this Agreement or any of its interests or obligations hereunder to any other Person without the prior written consent of the Team, which consent shall not be unreasonably withheld, conditioned or delayed. Any permitted assignee of the Authority shall assume all of the obligations of the Authority hereunder pursuant to an Assignment and Assumption Agreement in form and substance reasonably acceptable to the Team. The Authority shall deliver to the Team a copy of the fully executed Assignment and Assumption Agreement which shall be in the same form and substance as approved by the Team.

## **ARTICLE 4 ACCESS TO BOOKS AND RECORDS**

### **Section 4.1 Financial Reporting; Authority's Right of Access.**

(a) Materials to be Provided During Term. During the Term, the Team shall provide the Authority with the following materials:

(i) On or before March 15 of each year, commencing on the March 15 first following the Commencement Date:

(A) A list of the actual Maintenance expenses for the Ballpark incurred for the preceding Year;

(B) A report identifying (w) a list of the CapEx Work expenses incurred for the preceding Year, (x) all funds deposited into the CapEx Reserve Fund since the date of the prior report (or in the case of the first report, since the inception of the CapEx Reserve Fund), (y) all interest and investment earnings on amounts in the CapEx Reserve Fund, and (z) all disbursements from the CapEx Reserve Fund to the date of the report, referencing the Disbursement Request pursuant to which each disbursement was made;

(C) Projections of Maintenance costs for the Ballpark for the current Year;

(D) A Tenant's Ballpark Property Schedule, including a list of any Tenant's Ballpark Property used or installed in the Ballpark pursuant to Section 4.3 of the Ballpark Lease Agreement, and any items of Ballpark Personalty (as defined in the Ballpark Lease Agreement) replaced in the last Year;

(E) A copy of the affordable seating plan contemplated by Section 3.2(a) and Section 6.1(g) of the Ballpark Lease Agreement and Section 5.1 of this Agreement and made by the Team during the last Season (or in the case of the Team's first Year, the immediately preceding Season, adjusted for the change in venue), which shall be in the form of Exhibit 13 attached to the Ballpark Lease Agreement; and

(F) A summary of the amounts and recipients of the charitable and in-kind contributions the Team (or an Affiliate of the Team) has provided or has caused to be provided during the preceding Year pursuant to Section 6.1(k) of the Ballpark Lease Agreement and Section 5.1 of this Agreement.

(ii) On or before September 15 of each year, commencing on the September 15 first following the Commencement Date:

(A) Projections of CapEx Work costs for the Ballpark for the upcoming Year and the succeeding four (4) Years, which shall contain the reports identified in 4(ii)(B) below, and for Years 3, 4 and 5, identify expected items of work to be performed and the estimated cost of each;

(B) A report identifying the CapEx Work to be performed during the upcoming Year and the next succeeding Year that, for each such Year, (i) identifies the items of work proposed to be performed, (ii) cost estimates for each item of work proposed, (iii) a timetable for completion of each item of proposed work, and (iv) a certification by an officer of the Tenant or the Team with respect to each item of proposed work certifying that it falls within the definition of CapEx Work set forth in this Agreement;

(b) Materials Provided Upon Termination. Upon any expiration or termination of this Agreement, regardless of whether such termination is based upon or constitutes a default or not, and regardless of whether such termination is by the Authority or the Team, the Team shall provide:

(i) Existing operating and financial projections with respect to the reports set forth in Section 4(a); and

(ii) A copy of all contracts and agreements entered into by the Team with respect to the operation of the Ballpark or any portion thereof.

(c) Financial Statements.

Notwithstanding the provisions of this Section 4, nothing in this Agreement shall be construed to require the Team to provide the Authority with any financial or operating information that relates solely to the operations of the Team; provided, however, that the Authority may (i) annually review (but not copy or otherwise reproduce) the Team's most recent annual audited financial statements and (ii) review (but not copy or otherwise reproduce) the Team's most recent unaudited financial statements for the first six month period of each fiscal year, all in the presence of a Team representative and subject to a standard confidentiality or non-disclosure agreement. The Authority shall be entitled to such access at the same time or times as such information is available to be provided to MLB.

(d) Nonpublic Data. Any financial statements provided pursuant to Section 4.1(c) shall, as provided in Section 473.759, Subdivision 10 of Minnesota Statutes, be treated confidentially (the "Confidential Data") and shall be treated as nonpublic data pursuant to the Act and as defined in the Minnesota Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.* (the "Data Practices Act"). The provisions of this Section 4.1(d) shall apply to the Confidential Data.

(i) The Authority Assurances. The Authority shall keep confidential the Confidential Data delivered to the Authority pursuant to this Agreement and marked "Confidential" and shall not duplicate, distribute or disclose such Confidential Data except as provided in this Section 4(d). All Confidential Data shall be delivered to legal counsel designated by the Authority and reasonably acceptable to the Team and shall be held by such counsel pursuant to this Agreement. Counsel may permit an officer (including Executive Director) or member of the Authority to inspect the Confidential Data, to make notes based on his or her inspection (which notes shall be Confidential Data) and to discuss the substance thereof with board members of the Authority and officers of the Authority who must be acquainted with the Confidential Data to conduct their official duties, but only upon execution of an acknowledgment that the Authority is bound by Section 4(d) of this Agreement and that the Data Practices Act imposes penalties and damages on the public distribution of nonpublic data. There shall be no general distribution of the Confidential Data to other Authority personnel. The Authority counsel holding such Confidential Data shall have no financial or pecuniary liability to the Team under this Section 4(d) and shall be responsible solely to the Authority for the treatment of the Confidential Data as provided herein. Counsel to the Authority shall be acquitted of any future responsibility hereunder by the delivery of the Confidential Data to a person employed by the Authority approved by the Team and if the Team refuses to approve any such person within thirty (30) days of counsel's request, to such person employed by the Authority as counsel may select.

(ii) Treatment of Requests for Data. Except as provided in Section 4.1(d)(iv), if any Person asks to inspect or copy any document which contains the Confidential Data subject to this Section 4(d), the Authority shall advise the requesting person that the Confidential Data is classified nonpublic data under the Act or the Data Practices Act and decline to reveal the Confidential Data. If any action is initiated against the Authority seeking to require the release of the Confidential Data or if any motion is made by any other Person in any legal proceeding to require release of the Confidential Data, the Authority shall promptly give notice thereof to the Team and the Authority shall resist the action or proceeding unless and until an order of a court having jurisdiction thereof requires the release thereof. If the order of a court requires disclosure of the Confidential Data, the Authority shall appeal the order to the highest court of appeal in the State of Minnesota which may hear such appeal if the Team requires that the appeal be made. In the event the Authority is ordered by the court (after all required appeals) to disclose the Confidential Data, the Authority shall comply with that order.

(iii) Other Release of Data. If the Authority determines, acting in good faith and after consultation with the Team, that Confidential Data has been publicly disclosed by the Team or is otherwise readily ascertainable by other Persons by lawful means, the Authority shall give written notice to the Team and advise it that the Confidential Data shall not thereafter be treated as nonpublic data. However, the Authority shall not thereafter release the Confidential Data to another Person until ten (10) Business Days from the date of the notice. If the Team does not agree with the Authority and gives written notice of that determination to the Authority, the Authority shall initiate an action in Hennepin County District Court for a determination of the issue by the court. In this action, each Party shall bear its own costs and expenses. Pursuant to the Act and Data Practices Act (Minn. Stat. § 13.03, subd. 9), the Confidential Data shall be treated as nonpublic as provided herein. If at the time a request is made for the Confidential Data, the Authority may not classify the Confidential Data as nonpublic by reason of a change in the Data Practices Act, then the procedures provided in the foregoing provisions of this Section 4(d) shall apply except the Authority shall not be bound to initiate an action in the Hennepin County District Court and the Team may do so if it so elects. If the Confidential Data is material and relevant to any legal proceeding in which the Authority and the Team are asserting adverse claims, the Confidential Data may be introduced as evidence upon a ruling of the court, applying the standards and procedures provided for in Minnesota Statutes § 13.03, subd. 6, including the issuance of appropriate protective orders.

(iv) Expiration of Obligation. Counsel to the Authority may return all or any portion of the Confidential Data to the Team, together with a certificate of such counsel that no copies thereof were distributed or retained. In that event, the Team shall receive and retain the Confidential Data at the Ballpark until the fifth (5th) annual anniversary of the date of delivery and an officer (including Executive Director) or member of the Authority and legal counsel may inspect such data at the Ballpark and make notes therefrom (which notes shall be Confidential Data). As to all or any portion of the Confidential Data so returned to the Team, the Authority shall thereafter have no obligation to the Team under this Section 4.1(d).

(v) Enforcement. The provisions of this Section 4.1(d) may be enforced by the Team against the Authority by such equitable remedies as the Team may elect and by such additional remedies as may be afforded to it under the Data Practices Act.

(e) Rights Upon Default. If (i) there is an Event of Default on the part of the Team that continues after the expiration of any cure period afforded to the Team under this Agreement or (ii) if in the Authority's reasonable determination there has been a material deterioration in the financial position of the Team or the Tenant or a material adverse financial event has occurred, then the Authority shall have access to all records to the extent provided in Section 473.759, Subdivision 10 of the Minnesota Statutes.

## **ARTICLE 5 PROMOTION OF OTHER PUBLIC PURPOSES**

### **Section 5.1    Affordable Seating.**

The Team shall provide affordable access to MLB Events in a manner materially consistent with the affordable seating plan provided pursuant to Section 4.1(a), taking into account, however, the change in venue to the Ballpark.

### **Section 5.2    Youth and Amateur Sports.**

The Team (or an Affiliate of the Team) shall provide or cause to be provided to one or more community organizations designated by the Team, the sum of Two Hundred Fifty Thousand Dollars (\$250,000) per Year throughout the Term, which sums shall be used only for youth activities and youth and amateur sports within Hennepin County. The Team's obligation to fund such youth and amateur activities in any Year is subject to the concurrent contribution by the County or the Authority of like amount grants described in the preceding sentence for similar purposes. The sums payable hereunder by the Team are in addition to the amounts otherwise normally provided for and on behalf of the Team for those purposes and the County and the Authority shall not be required to match any such normally-provided amounts. Commencing after the first Year, such amount shall increase at the beginning of the second Year and each subsequent Year based on CPI Increases, not to exceed two and one-half percent (2.5%) per annum.

## **ARTICLE 6 DEFAULT AND REMEDIES**

### **Section 6.1    Events of Default.**

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

#### **(a)    Team Event of Default.**

(i) The Team's violation or failure to perform or observe any covenant or condition of this Agreement, or any violation or failure to perform or observe any covenant or condition on the part of the Team or the Tenant under the Ballpark Lease Agreement or any other Related Agreement, which failure or violation shall continue for

thirty (30) days after receipt of written notice to the Team by the Authority 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 but is not reasonably capable of being cured within such thirty (30)-day period, there shall exist no Event of Default if the Team promptly advises the Authority of the Team's intention to duly institute all steps necessary to cure such default and the Team promptly commences cure of such failure or violation within such 30-day period, and diligently pursues such cure to completion;

(ii) (A) The Team shall institute voluntary proceedings in bankruptcy, (B) involuntary proceedings in bankruptcy shall be instituted against the Team that are not discharged within ninety (90) days thereafter, (C) any proceedings shall be instituted by or against the Team 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 Team by any court of competent jurisdiction, or (E) the Team shall make a general assignment for the benefit of its creditors; and

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

In the event there is an uncured default by the Team under this Agreement and the Authority terminates this Agreement, the Authority shall also be permitted to terminate all of the Related Agreements, even if there is no then-current default under such Related Agreements.

(b) Authority Event of Default.

(i) The Authority's violation or failure to perform or observe any other covenant or condition of this Agreement, which failure or violation shall continue for thirty (30) days after receipt of written notice to the Authority by the Team 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 but is not reasonably capable of being cured within such thirty (30)-day period, there shall exist no Event of Default if the Authority promptly advises the Team of the Authority's intention to duly institute all steps necessary to cure such default and the Authority promptly commences cure of such failure or violation within such 30-day period, and diligently pursues such cure to completion; and

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

**Section 6.2 Injunctive Relief; Specific Performance.**

The Parties acknowledge that the rights conveyed by this Agreement and the covenants of the Parties are of a unique and special nature, and that any violation of this Agreement shall result in immediate and irreparable harm to the Team, the Authority or the County, as the case may be, and that in the event of any actual or threatened breach or violation of any of the

provisions of this Agreement, the affected Party shall be entitled as a matter of right to an injunction or a decree of specific performance from any equity court of competent jurisdiction. Each Party acknowledges, approves and adopts the conclusive determination of the Minnesota Legislature set out in Minnesota Statutes Section 473.759, subdivision 4, that specific performance of this Agreement or the Ballpark Lease Agreement by the Authority is based on adequate consideration and upon terms which are otherwise fair and reasonable, is not provided for through sharp practice, misrepresentation or mistake, will not cause unreasonable or disproportionate hardship or loss to the Team or to third parties, and involves performance in such a manner and the rendering of services of such a nature and under such circumstances that the Authority, the County and the Minnesota public cannot be adequately compensated in damages. Each Party waives the right to assert the defense that such breach or violation can be compensated adequately in damages in an action at law, and neither the Team's grants and conveyances, nor the Authority's right to enforce or the Authority's enforcement of, the security interests described in Section 6.6 give rise to a defense of adequate compensation which is hereby completely waived. The Parties further agree and stipulate that the nature of this Agreement as a use agreement shall not be a defense or otherwise a factor for the Team and the Team hereby waives the right to assert such in any dispute over the use of specific performance or injunctive relief as a remedy under this Agreement. In addition, the Team agrees and stipulates that where specific performance or injunctive relief is sought against the Team any such dispute shall be conclusively resolved in accordance with the legislative findings, declarations and determinations in favor of the Authority and the County regarding the inadequacy of compensation in damages and otherwise regarding and requiring specific performance, including but not limited to Minnesota Statutes Sections 473.75 and 473.759, subdivision 4, of the Act. The Team hereby specifically agrees that, in the event of a breach or violation referred to in Section 2.1 or Section 2.3, in addition to the Authority, the County or the State shall, upon a proper showing, be entitled to the relief specified in this Section against the Team and/or MLB. The Parties hereby agree and stipulate that the rights of the Authority, the County and the State to injunctive relief in the event of a breach of Section 2.1 or Section 2.3 shall not constitute a "claim" pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving the Team.

### **Section 6.3    Remedies Cumulative; 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. 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.

#### **Section 6.4    No Termination of Agreement.**

The Team hereby agrees that, upon the occurrence of an Authority Event of Default, it shall only be entitled to the relief specified in Section 6.2 or to damages that it might recover in an action at law, but in no event shall it be entitled to terminate this Agreement on account of such Authority Event of Default. In no event shall the Team be entitled to damages or attorney's fees or court costs by reason of any failure, refusal or delay on the part of the Authority to consent or approve any matter requested by the Team, except to the extent caused by the Authority's willful misconduct or bad faith, as finally determined by a court of competent jurisdiction.

#### **Section 6.5    Notice of Adverse Actions.**

Until the Expiration Date, the Team shall provide written notice to the Authority not less than ninety (90) days prior to any action, including any action imposed upon the Team by MLB, that would result in a breach or default of the provisions of this Agreement. If the Team violates this notice provision and the Team is in default under Section 6.1(a) hereof, then the Authority, the County, or the State is authorized to specifically enforce this Agreement pursuant to Section 6.2 hereof, and the Minnesota courts are authorized and directed to fashion equitable remedies so that the Team may fulfill the conditions of this Agreement, including available remedies against MLB.

#### **Section 6.6    Pledge of Ballpark Personalty and CapEx Reserve Fund.**

The Team hereby grants and conveys to the Authority a security interest in and to the Team's right, title and interest in the Ballpark Personalty, including the Tenant's Ballpark Property, and the CapEx Reserve Fund, to secure the payment and performance of any and all of the Team's obligations under this Agreement. The Authority shall not be entitled to enforce such security interest or exercise any remedies in connection therewith or otherwise offset against the Team's right, title and interest in the Ballpark Personalty, including the Tenant's Ballpark Property, or the CapEx Reserve Fund, unless and until an Event of Default on the part of the Team occurs or an Event of Default on the part of the Tenant under the Ballpark Lease Agreement, and continues after the lapse of any cure period. The Team shall execute and deliver any security agreements, financing statements, continuation statements, collateral assignments, or other documents as may be reasonably requested by the Authority for the purpose of perfecting, continuing, and confirming the foregoing security interest in and to the Team's right, title and interest in the Ballpark Personalty, including the Tenant's Ballpark Property and the CapEx Reserve Fund. The security interest granted herein shall at all times be superior to any Leasehold Mortgage or security interest granted by the Team, from time to time, pursuant to Article 3 hereof.

#### **Section 6.7    Independent Consideration.**

The Parties hereby acknowledge and agree that the rights and obligations contained in this Agreement are independent obligations for which separate consideration was received. The Team acknowledges that notwithstanding the cross default provisions of Section 6.1 hereof, the obligations of the Team pursuant to this Agreement are independent of its rights and obligations

pursuant to the Development Agreement, the Ballpark Lease Agreement, or other Related Agreements.

**Section 6.8    Termination Prior to Commencement of Term.**

Prior to the Commencement Date, this Agreement shall automatically terminate concurrently and in connection with the termination of the Development Agreement.

**Section 6.9    Team Subject to MLB.**

The Parties hereby acknowledge that the Team is a constituent member of MLB, and as such, is, or may be, subject to: (a) certain present or future agreements or arrangements entered into with third-parties by, or on behalf of, Major League Baseball, Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., Major League Baseball Properties Canada, Inc. and/or Baseball Television, Inc. or such other entities as may be created from time to time for all teams comprising MLB to regulate or conduct MLB business (collectively, the "MLB Entities"), either on its own behalf or on behalf of the Major League Baseball clubs; (b) certain present or future agreements or arrangements entered into between the Team and any of the MLB Entities; and (c) the applicable rules, regulations, guidelines, policies, agreements, bulletins or directives issued by any of the MLB Entities. The Team represents that, as of the date of this Agreement and to its knowledge, neither this Agreement nor the Ballpark Lease Agreement is inconsistent with any of the foregoing or the terms thereof. Further, the Team agrees that no current or future requirements, arrangements or agreements that are imposed or purported to be imposed by any of the entities mentioned in (a), (b), or (c) above relieve the Team in whole or in part from any of its obligations and agreements in this Agreement or the Ballpark Lease Agreement. In addition to (and not in limitation of) the Team's obligations and agreements in Article 2 hereof, the Team shall oppose any future agreement or arrangement or MLB Rules and Regulations that would be inconsistent with any of the foregoing or contrary to or impede or interfere with, the Team's performance of any of its obligations under this Agreement or the Ballpark Lease Agreement. For the avoidance of doubt, in the event of any conflict or inconsistency between this Section 6.9 and Article 2, the terms and provisions of Article 2 shall control. The Parties acknowledge that any Assignment of the Franchise or the intellectual property or other rights associated therewith is subject to the prior approval of the MLB and MLB Rules and Regulations.

**ARTICLE 7  
NON-DISCRIMINATION**

**Section 7.1    Non-Discrimination.**

There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, creed, religion, national origin, disability or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Ballpark. Neither the Team nor its Affiliates nor any Person claiming under or through it shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of licensees, sub-licensees or vendors (if any), using or operating at the Ballpark or any portion thereof.

## ARTICLE 8 REPRESENTATIONS AND WARRANTIES

### Section 8.1 Representations and Warranties of Authority.

The Authority hereby represents and warrants to the Team the following as of the date of execution of this Agreement:

(a) Organization. The Authority is a political subdivision, duly organized, validly existing, and in good standing under the Laws of the State of Minnesota.

(b) Authorization, Validity and Enforceability. The Authority has 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 Authority under this Agreement and the Related Agreements have been duly authorized and approved by all necessary Authority action. This Agreement and the Related Agreements, when executed, shall constitute the valid and legally binding obligations of the Authority, enforceable against it in accordance with their respective terms.

(c) No Conflicts. The execution, delivery and performance of this Agreement and the Related Agreements 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 Authority is a party, or by which the Authority or its assets may be bound or affected.

(d) No Violation of Laws. The Authority has complied in all material respects with all Legal Requirements, has not received written notice as of the date of execution of this Agreement asserting any noncompliance in any material respect by the Authority with 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.

(e) Litigation. There is no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Authority now pending or, to the actual knowledge of the Authority, threatened against or that affects the Authority 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 that might materially and adversely affect the use and operation of the Ballpark as contemplated in and by this Agreement or the performance of the Authority hereunder or under the Related Agreements.

(f) Site Possession and Title. The Authority holds or will hold by not later than the Commencement Date (i) good and marketable fee title to the portions of the Development Site identified on Exhibit 2 of the Ballpark Lease Agreement as "Areas to be Owned in Fee" except to the extent that, prior to the Commencement Date, the Team shall have agreed in writing to accept fee title subject to a Title Defect, as contemplated by Section 3.1(b) of the Development Agreement or an independent writing, and (ii) valid and enforceable easements, licenses, and leases, as the case may be, over the portions of the Development Site identified on Exhibit 2 of the Ballpark Lease Agreement as "Support and Air Rights Easement Areas" and "Access Areas",

in each case, free and clear of all encumbrances other than Permitted Encumbrances, provided that with respect to Title Defects that impair the marketability of title or the validity or enforceability of easements identified by the Team, the Authority (or the County on behalf of the Authority) shall have such time as is reasonably necessary following acquisition of title or easements, as the case may be, to the relevant portions of the Development Site to cure such Title Defects and the Authority hereby agrees to diligently undertake to effect such cure. Notwithstanding the foregoing, the Team acknowledges that the property rights acquired from BNSF by the County and the Authority will be acquired without warranty or representation of title by BNSF, and that the Team, any parties claiming through the Team, and any assignees or transferees of the Team, shall lease, occupy and possess the Development Site without warranty or representation from the Authority regarding title to any property rights acquired from BNSF. The Team acknowledges that a Permitted Encumbrance shall not constitute a Title Defect. Except as expressly permitted under this Agreement and except for Permitted Encumbrances, the Authority shall not create any lien, encumbrance, easement, license, right-of-way, covenant, condition or restriction that would encumber the Ballpark and materially diminish, impair or disturb the rights of the Team under this Agreement.

(g) Legal Opinion of Authority's Counsel. The Authority agrees to deliver to the Team, upon the execution and delivery of this Agreement, a legal opinion from the law firm of McGrann Shea Anderson Carnival Straughn & Lamb, Chartered, stating that:

(i) The Authority had been duly formed and is validly existing under the laws of the State of Minnesota;

(ii) The Authority has all requisite power and authority to enter into, execute and deliver this Agreement, and the execution, delivery and performance by the Authority has been duly authorized by all necessary action of the Authority;

(iii) This Agreement constitutes the legal, valid and binding obligation of the Authority enforceable against the Authority in accordance with its terms; and

(iv) Neither the authorization and execution of this Agreement by the Authority, nor the performance by the Authority of all of its obligations hereunder, (a) contravene or violate (i) any present law or regulation of any Governmental Authority which is applicable to the Authority, (ii) any agreement, instrument, judgment or decree which is binding upon the Authority, or (iii) the organizational documents of the Authority; or (b) require any filing or registration by the Authority with, or approval or consent of, any Governmental Authority which has not been made or obtained.

## **Section 8.2 Representations and Warranties of Team.**

The Team hereby represents and warrants to the Authority the following as of the date of execution of this Agreement:

(a) Organization. Each of the Tenant and the Team is a limited liability company duly organized, validly existing and in good standing under the Laws of State of Delaware. The Team is the owner of the Franchise. The Tenant is a wholly owned subsidiary of the Team.

(b) Authorization, Validity and Enforceability. The Team has 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 Team under this Agreement and the Related Agreements have been duly authorized and approved by all necessary Team action. All corporate action necessary for the authorization, execution, delivery and performance of all obligations of the Team under this Agreement and the Related Agreements has been taken. All consents and approvals of any Person required in connection with the execution of this Agreement and the Related Agreements have been obtained. This Agreement and the Related Agreements, when executed, shall constitute the valid and legally binding obligations of the Team, enforceable against it in accordance with their respective terms.

(c) No Conflicts. The execution, delivery and performance of this Agreement and the Related Agreements 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 Tenant or the Team is a party or by which the Tenant or the Team or their respective assets may be bound or affected, including MLB Rules and Regulations, nor shall the execution, delivery and performance of this Agreement or the Related Agreements result in the breach of or constitute a default under any agreement or instrument to which the Team is a party or by which the Team or its assets may be bound or affected, including MLB Rules and Regulations.

(d) No Violations of Laws. The Team has complied in all material respects with all Legal Requirements, has not received written notice as of the date of execution of this Agreement asserting any noncompliance in any material respect by the Team with 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.

(e) Litigation. There is no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Authority now pending or, to the actual knowledge of the Team, threatened against or which affects the Team 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 that might materially and adversely affect the Franchise, the use and operation of the Ballpark as contemplated in and by the Ballpark Lease Agreement or this Agreement or the performance of the Team hereunder or under the Related Agreements, except as may be set forth on Exhibit 8 of the Ballpark Lease Agreement.

(f) MLB Good Standing. The Team and the Franchise are, and will remain, in good standing with MLB and under MLB Rules and Regulations. The Team represents that it has obtained all necessary consents and approvals of the MLB to the execution and delivery of this Agreement.

(g) Title. Except as expressly permitted under this Agreement and except for Permitted Encumbrances, the Team shall not create any lien, encumbrance, easement, license, right-of-way, covenant, condition or restriction that would encumber the Ballpark.

(h) Legal Opinion of Team's Counsel. The Team agrees to deliver to the Authority, upon the execution and delivery of this Agreement, a legal opinion from the law firm of Kaplan, Strangis and Kaplan, P.A., stating that:

(i) The Team has been duly formed and is validly existing under the laws of the State of Delaware;

(ii) The Team has all requisite power and authority to enter into, execute and deliver this Agreement, and the execution, delivery and performance by the Team has been duly authorized by all necessary action of the Tenant;

(iii) This Agreement constitutes the legal, valid and binding obligation of the Team enforceable against the Team in accordance with its terms; and

(iv) Neither the authorization and execution of this Agreement by the Team, nor the performance by the Team of its obligations hereunder, (a) contravene or violate (i) any present law or regulation of any Governmental Authority which is applicable to the Team, (ii) any agreement, instrument, judgment or decree which is binding upon the Team, or (iii) the organizational documents of the Team; (b) require any filing or registration by the Team with, or approval or consent of, any Governmental Authority which has not been made or obtained; or (c) violate any MLB Rules or Regulations.

## **ARTICLE 9 TERM**

### **Section 9.1 Term.**

The Term of this Agreement shall commence on the date hereof and continue through the Expiration Date, unless otherwise terminated in accordance with the provisions of this Agreement.

## **ARTICLE 10 CONFORMITY WITH THE ACT; GOVERNING LAW; VENUE**

The Authority and the Team intend that this Agreement and all provisions in the Agreement conform to the Act and its requirements. 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. Any litigation arising from or relating to this Agreement or the subject matter hereof shall be venued in a court of competent jurisdiction in the State of Minnesota.

*[The remainder of this page has been intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TEAM:

MINNESOTA TWINS, LLC, a Delaware  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AUTHORITY:

MINNESOTA BALLPARK AUTHORITY,  
a public body and political subdivision of the  
State of Minnesota

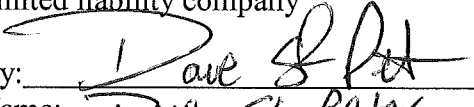
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TEAM:

MINNESOTA TWINS, LLC, a Delaware  
limited liability company

By:   
Name: Dave St. Peter  
Title: President

AUTHORITY:

MINNESOTA BALLPARK AUTHORITY,  
a public body and political subdivision of the  
State of Minnesota

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO BASEBALL USE AND PLAYING AGREEMENT]