

1 **BOARD BILL NO. 290 CS INTRODUCED BY ALDERWOMAN CHRISTINE INGRASSIA**

2 An ordinance recommended by the Board of Estimate and Apportionment and the Board  
3 of Public Service authorizing and directing the execution and delivery of a Stadium Project  
4 Financing, Construction and Lease Agreement (the “Financing Agreement”) by and among The  
5 City of St. Louis, Missouri (the “City), SC STL LLC (“SC STL”), and the Land Clearance for  
6 Redevelopment Authority of the City of St. Louis (the “Authority”), pertaining to the design,  
7 construction, financing and leasing of a new multi-purpose stadium designed to host professional  
8 soccer and amateur sports, concerts, and community events (the “Stadium”) to be located on  
9 property currently owned by the Missouri Highways and Transportation Commission (the  
10 “Commission”) as part of the I-64 at 22<sup>nd</sup> Street Interchange (the “Property”) and issuance of and  
11 provision for repayment of bonds issued by the Authority to finance said facility; authorizing the  
12 planning, design and construction of certain public works or improvements related to said  
13 facility; authorizing and directing the Mayor and the Comptroller to enter into and execute, on  
14 behalf of the City, said Financing Agreement; authorizing and directing the taking of other  
15 actions and approvals and execution of other documents as necessary or desirable to carry out  
16 and comply with the intent hereof; and containing an emergency clause and a severability clause.

17 WHEREAS, the Authority is authorized and empowered under the Land Clearance for  
18 Redevelopment Authority Law, Sections 99.300 to 99.660, inclusive, of the Revised Statutes of  
19 Missouri (the “LCRA Law”), to undertake land clearance and urban renewal projects pursuant to  
20 redevelopment plans for areas of the City and to issue bonds for the purpose of providing funds to  
21 finance the costs of such projects; and

22 WHEREAS, SC STL is currently planning to construct the Stadium on the Property which  
23 will be owned by the Authority and designed to host professional soccer and amateur sports,

1 concerts and community events as further described in the Financing Agreement (“collectively, the  
2 “Project”), and SC STL is expected to enter into a lease, sublease, or other binding commitment  
3 with the Authority and City to play Major League Soccer (“MLS”) games in the Stadium for a term  
4 not shorter than the term of any bonds secured by City payments; and

5 WHEREAS, the Project will significantly benefit the City by: (a) increasing state and local  
6 tax revenues through the creation of new jobs; (b) increasing state and local tax revenues through  
7 increased sales; (c) increasing state and local tax revenues through increased property tax values;  
8 (d) increasing state and local taxes through increased taxes withheld or paid by employers; (e)  
9 increasing sports activity, recreational entertainment, convention and tourism activities within the  
10 City; and (f) causing redevelopment of an areas within the City in need of redevelopment and  
11 creating an environment to stimulate additional private investment in and near the areas in which  
12 the Project will be located;

13 WHEREAS, the City is authorized pursuant to the Constitution and the laws of the State  
14 of Missouri, the City Charter, and other applicable provisions of law, to enter into contracts,  
15 agreements, leases and subleases with governmental entities such as the Authority and other  
16 entities and individuals, to acquire, sell, convey, lease, sublease, own, operate, finance, develop  
17 or improve or any combination thereof property, including, without limitation, the Project, and to  
18 agree to pay funds to accomplish the same, subject to annual appropriations; and

19 WHEREAS, Section 70.221(1) of the Revised Statutes of Missouri further  
20 authorizes the City to cooperate with private parties in support of the development and operation  
21 of public facilities; therefore, in support of the development and operation of the Project, in  
22 conjunction with the funding obligations of the City and the Authority described in the Financing  
23 Agreement, subject to annual appropriations, the City is prepared to provide one or more annual

1 appropriations as described in the Financing Agreement for purposes of pledging certain tax  
2 revenues providing debt service, including paying agent fees, trustee fees and other annual debt  
3 service-related fees over the term of one or more bond issues or other debt financings of the  
4 Authority and/or the City that will provide funds for payment of a portion of the construction  
5 costs for the Project; and

6 WHEREAS, in order for the City, SC STL and the Authority to cooperate in the design,  
7 construction, financing and operation of the Project, it is necessary that the City enter into and  
8 execute the Financing Agreement, a form of which is attached hereto and marked as Exhibit A;  
9 and

10 WHEREAS, the Financing Agreement expressly provides that SC STL shall be solely  
11 responsible for the risk of any cost overruns with regards to the Project and the City shall not be  
12 obligated to make any annual appropriations in excess of the amounts expressly set forth in the  
13 Financing Agreement; and

14 WHEREAS, the Financing Agreement expressly provides that the performance of the  
15 City and the Authority under the Financing Agreement is expressly contingent upon several  
16 matters, including, but not limited to, (i) the irrevocable commitment by SC STL to a  
17 contribution of not less than \$95,000,000 for the Project plus the Reimbursement Amount (as  
18 defined in the Financing Agreement), (ii) the formal awarding of an MLS franchise to SC STL  
19 and SC STL's private financing of the MLS expansion fee, (iii) commitments for all other  
20 sources of revenue for completion of the Project, (iv) the final closing of any financing  
21 transactions necessary to effectuate (i)-(iii) above, (v) the approval by the qualified voters of the  
22 City of (A) the imposition of an Economic Development Sales Tax in the amount of one-half of  
23 one percent as authorized pursuant to Section 67.1305 of the Revised Statutes of Missouri, and

1 (B) a corresponding increase in the local use tax levied by the City to be used, in part, as  
2 described in the Financing Agreement, and (vi) the participation by the State of Missouri through  
3 the Missouri Highways and Transportation Commission in the manner described in the  
4 Financing Agreement; and

5 WHEREAS, in further cooperation and support of the Project, the City, on behalf of the  
6 Authority, desires to make certain public works and improvements as part of the Project, and this  
7 Ordinance, and the public works and improvements specified herein, have been recommended  
8 and approved by the Board of Public Service; and

9 WHEREAS, the Financing Agreement requires that SC STL shall (a) cause the Project to  
10 comply with all applicable federal, state and local laws and executive orders regarding  
11 contracting, hiring and employment, including applicable executive orders setting goals for  
12 minority- and women-owned business participation and minority hiring, including, but not  
13 limited to, the Mayor’s Executive Orders #28, #33, #34, #36, #39, #44, #46, #47, and #51, and  
14 Ordinance No. 69427 establishing apprenticeship training, workforce diversity, and city resident  
15 programs, all as may be amended as of the date of the Financing Agreement, (b) afford the City  
16 (or its designee) access to monitor compliance with such goals, including any oversight  
17 committee formed by the City to ensure compliance with such goals, and (c) in addition to any of  
18 the minimum goals set by the applicable federal, state and local laws, and executive orders,  
19 cause the Project to comply with the specific goals identified in the Workforce and Business  
20 Inclusion Plan attached to the Financing Agreement; and

21 WHEREAS, essential governmental public purposes are being served by entering into the  
22 Financing Agreement, causing the bond issues or other debt financings of the Authority and  
23 providing financial assistance to the Project as described herein, and the City hereby finds and

1 determines that it is desirable and in the best interests of the City and its residents and inhabitants  
2 to execute the Financing Agreement and undertake the Public Infrastructure Work defined herein  
3 in order to cause the completion of the Project in accordance with the Financing Agreement,  
4 which includes, but is not limited to, assistance in the physical, economic, and social  
5 development of the City, encouragement of a sense of community identity, safety and civic  
6 pride, elimination of impediments to land disposition and development in the City, creation of  
7 sustainable jobs, and provision of additional tax revenue to the City.

8 **BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

9 **SECTION ONE.** The Board of Aldermen hereby adopts the foregoing recitals as  
10 findings.

11 **SECTION TWO.** The Financing Agreement is hereby approved by the Board of  
12 Aldermen of the City, and the Mayor and Comptroller of the City are hereby authorized and  
13 directed to enter into and execute the Financing Agreement for and on behalf of the City. The  
14 City Register is hereby authorized and directed to attest to the Financing Agreement and to affix  
15 the seal of the City thereto. The Financing Agreement shall be in substantially the form attached  
16 hereto as Exhibit A, with such changes therein as shall be approved by the Mayor and as may be  
17 consistent with the intent of this Ordinance and necessary, desirable, convenient or proper to  
18 carry out the matters herein authorized; provided, however, that such changes shall not modify  
19 the City Payments to be made pursuant to the Financing Agreement.

20 **SECTION THREE.** The Mayor and Comptroller of the City, or their designated  
21 representatives, are hereby authorized and directed to take any and all actions and to execute and  
22 deliver for and on behalf of the City any and all additional certificates, documents, agreements or  
23 other instruments as may be necessary or appropriate in order to carry out the matters herein

1 authorized or required by the Financing Agreement or any documents related to the Project, with  
2 no such further action of the Board of Aldermen necessary to authorize such action by the Mayor  
3 and the Comptroller or their designated representatives.

4 **SECTION FOUR.** The design, installation, and performance of the public works and  
5 improvements made in furtherance of the Project, to wit: vacation, removal and/or  
6 reconstruction of public rights of way and City-provided utilities necessary for the Project  
7 (collectively, the “Public Infrastructure Work”), are hereby authorized. As required under  
8 Section 3.7 of the Financing Agreement, the full cost of the Public Infrastructure Work,  
9 estimated by the Board of Public Service to be \$250,000.00, shall be paid from funds paid by SC  
10 STL or its designee to the hereinafter-created Stadium Public Works Account. Such Public  
11 Infrastructure Improvements shall be done using materials specified by the Board of Public  
12 Service, and in accordance with detailed plans and specifications finally adopted and approved  
13 by the Board of Public Service before bids are advertised therefor.

14 **SECTION FIVE.** There is hereby created and ordered to be established in the  
15 treasury of the City a Stadium Public Works Account, and the funds paid by SC STL pursuant to  
16 Section Four of this Ordinance shall be deposited therein.

17 **SECTION SIX.** It is hereby declared to be the intention of the Board of Aldermen  
18 that each and every part, section and subsection of this Ordinance shall be separate and severable  
19 from each and every other part, section and subsection hereof and that the Board of Aldermen  
20 intends to adopt each said part, section and subsection separately and independently of any other  
21 part, section and subsection. In the event that any part, section or subsection of this Ordinance  
22 shall be determined to be or to have been unlawful or unconstitutional, the remaining parts,  
23 sections and subsections shall be and remain in full force and effect, unless the court making

1 such finding shall determine that the valid portions standing alone are incomplete and are  
2 incapable of being executed in accord with the legislative intent.

3           **SECTION SEVEN.** The Board of Aldermen hereby finds and determines that this  
4 Ordinance constitutes an “emergency measure” pursuant to Article IV, Section 20 of the City  
5 Charter, because this Ordinance provides in part for public works and improvements, and as  
6 such, this Ordinance shall take effect immediately upon its approval by the Mayor as provided in  
7 Article IV, Section 20 of the City Charter.

**EXHIBIT A**  
**FORM OF FINANCING AGREEMENT**

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**ST. LOUIS MLS STADIUM**  
**PROJECT FINANCING, CONSTRUCTION AND LEASE AGREEMENT**

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**By and Among**  
**THE CITY OF ST. LOUIS, MISSOURI**  
**and**  
**LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY**  
**OF THE CITY OF ST. LOUIS**  
**and**  
**SC STL LLC**

**Dated as of \_\_\_\_\_, 20\_\_**

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**ST. LOUIS MLS STADIUM**  
**PROJECT FINANCING, CONSTRUCTION AND LEASE AGREEMENT**

**THIS ST. LOUIS MLS STADIUM PROJECT FINANCING, CONSTRUCTION AND LEASE AGREEMENT** (this “*Agreement*”), dated as of \_\_\_\_\_, 20\_\_\_\_, is entered into by and among **THE CITY OF ST. LOUIS, MISSOURI**, a municipal corporation duly organized and existing under the laws of the State of Missouri and its charter (the “*City*”), the **LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF THE CITY OF ST. LOUIS**, a public body corporate and politic duly established pursuant to Section 99.300 *et seq.* of the Revised Statutes of Missouri (the “*Authority*”), and **SC STL LLC**, a Delaware limited liability company (the “*MLS Owner Group*”).

RECITALS

1. The Authority is authorized and empowered under the Land Clearance for Redevelopment Authority Law (the “*LCRA Law*”), Sections 99.300 to 99.660, inclusive, of the Revised Statutes of Missouri, to undertake land clearance and urban renewal projects pursuant to redevelopment plans for areas of the City and to issue bonds for the purpose of providing funds to finance the costs of such projects.

2. The City is authorized pursuant to the Constitution and the laws of the State of Missouri, the City Charter, and other applicable provisions of law, to enter into contracts, agreements, leases and subleases with governmental entities such as the Authority and other entities and individuals, to acquire, sell, convey, lease, sublease, own, operate, finance, develop or improve or any combination thereof property, including, without limitation, the Project (defined below), and to agree to pay funds to accomplish the same, subject to annual appropriations.

3. The Authority desires to contract with the MLS Owner Group to construct a new multi-purpose sports stadium (the “*Stadium*”) at the Project Site (defined below) designed to host professional soccer games and other sporting, recreational and entertainment events, and related improvements as further described herein.

4. The Project (defined below) will significantly benefit the City by: (a) increasing sports activity, recreational, entertainment, convention and tourism activities; (b) increasing State and local tax revenues through the creation of new jobs; (c) increasing State and local tax revenues through increased sales; (d) increasing State and local tax revenues through increased property tax revenues for surrounding property; (e) increasing State and local tax revenues through increased taxes withheld or paid by employers; and (f) creating an environment to stimulate additional private investment in the area in which the Project will be located.

5. In addition to the other funding needed for the Project as described herein, the Authority has found and determined pursuant to Resolution No. 16-LCRA-\_\_\_\_\_, duly adopted by the Authority, and the City has found and determined pursuant to Ordinance No. \_\_\_\_\_, duly adopted by the Board of Aldermen of the City, that it is desirable and in the best interests of the Authority and the City that the Authority issue bonds backed by the appropriations of the City for the purpose of providing funds to pay a portion of the costs of the Project and for the City to provide other non-financial support for the Project as described herein.

6. The Authority, the City and the MLS Owner Group are entering into this Agreement to provide for the application of the proceeds of the Project Bonds (defined below) and other sources to pay Project Costs (defined below) and otherwise fund the Project from funds appropriated on an annual basis by the City, and to provide for the MLS Owner Group's planning, construction and operation of the Project to carry out the public purposes of the Authority and the City.

7. The obligations of the City and the Authority under this Agreement are expressly contingent upon the commitment of certain private funds from the MLS Owner Group and certain other funding to finance the Project on terms acceptable to the City as further described in this Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein set forth, the Authority, the City and the MLS Owner Group do hereby covenant and agree as follows:

**ARTICLE I  
DEFINITIONS, CONSTRUCTION AND CERTAIN GENERAL PROVISIONS**

**Section 1.1. Definitions of Words and Terms.** In addition to the words and terms defined elsewhere in this Agreement, the following words and terms as used in this Agreement shall have the following meanings:

***“Additional Bonds”*** shall have the meaning for such term ascribed in Section 3.2 of this Agreement.

***“Additional Payments”*** means the additional payments described in Section 4.5 hereof.

***“Agreement”*** means this St. Louis MLS Stadium Project Financing, Construction and Lease Agreement, dated as of \_\_\_\_\_, 20\_\_\_\_, by and among the Authority, the City, and the MLS Owner Group, as from time to time amended and supplemented in accordance with the provisions hereof and of any Project Indenture.

***“Agreement Term”*** means the period from the effective date of this Agreement until the expiration thereof pursuant to Section 4.11 hereof.

***“Authority”*** means the Land Clearance for Redevelopment Authority of the City of St. Louis, a public body corporate and politic duly established pursuant to Section 99.300 *et seq.* RSMo., and its successors and assigns.

***“Authorized MLS Owner Group Representative”*** means the person or persons at the time designated, by written certificate furnished to the Authority, the City and the Trustee, as the person or persons authorized to act on behalf of the MLS Owner Group. Such certificate shall contain the specimen signature of such person or persons, shall be signed on behalf of the MLS Owner Group, and may designate an alternate or alternates. The Authorized MLS Owner Group Representative may, but need not, be an employee of the MLS Owner Group.

***“Bond Fund”*** means any Bond Fund created under the Project Indenture.

**“Bond Reserve Fund”** means any Bond Reserve Fund created under the Project Indenture.

**“Bond Reserve Requirement”** means any Bond Reserve Requirements for the Project Bonds, as set forth in the Project Indenture.

**“CID”** means a community improvement district under any name formed pursuant to the CID Act within the Project Site for the purpose of levying the CID Sales Tax, created by the City and maintained pursuant to the CID Act.

**“CID Act”** means the Missouri Community Improvement District Act, Sections 67.1401 – 67.1571, RSMo., as amended.

**“CID Sales Tax”** means the sales and use tax levied by the CID on the receipts from the sale at retail of all eligible tangible personal property or taxable services at retail within its boundaries pursuant to the CID Act in the amount not to exceed one percent (1%).

**“City”** means The City of St. Louis, Missouri, a municipal corporation and political subdivision of the State, and its successors and assigns.

**“City Payment Date”** means any date on which the City Payments are due, which are expected to be each February 1 and August 1, with one-half of the City Payment due in each Fiscal Year paid on such dates.

**“City Payments”** means the payments to be made by the City exclusively from New Use Tax Revenues, and not general funds, in each year during the Agreement Term consisting of such amount as is required for actual annual debt service payments on the Project Bonds, as provided in Section 4.6 hereof.

**“Completion Date”** means the date of completion of the acquisition, planning, construction, equipping and improvement of the Project established pursuant to Section 3.9 of this Agreement.

**“Construction Contracts”** shall have the meaning ascribed for such term in Section 3.4 of this Agreement.

**“Construction Fund”** means, collectively, any Construction Fund for Project Bonds created under a Project Indenture.

**“Construction Fund Initial Deposit”** means the amount of the deposit not to exceed \$50,000,000, funded in the discretion of the Authority, with any combination of (i) net proceeds of the sale of the Project Bonds in such amount reasonably determined by the Authority to maximize the contribution to the Project of New Use Tax Revenues under commercially reasonable terms, and/or (ii) New Use Tax Revenues available at the time of issuance of the Project Bonds.

**“Construction Manager”** means an independent person or firm recognized for construction management services selected by the MLS Owner Group to perform construction management services for the Project including scheduling, budgeting, estimating, program evaluation, management and coordination, implementation of procedures, constructability and value engineering reviews and other management services.

**“Construction Period”** means the period from the beginning of acquisition, planning, construction, equipping and improvement of the Project to the Completion Date.

**“Cost of Issuance Fund”** means, collectively, any Cost of Issuance Fund for Project Bonds created under a Project Indenture.

**“District Sales Taxes”** means, collectively, the CID Sales Tax and the TDD Sales Tax.

**“Districts”** means, collectively, the CID and the TDD.

**“Economic Development Sales Tax”** means a one half of one percent sales tax on all retail sales made in the City which are subject to taxation under Chapter 144 RSMo. for economic development purposes, as approved by the qualified voters of the City pursuant to Section 67.1305 RSMo.

**“Event of Default”** means any Event of Default as described in Section 8.1 of this Agreement.

**“Event of Non-Appropriation”** shall have the meaning ascribed for such term in Section 4.10 of this Agreement.

**“Expense Fund”** means any Expense Fund for Project Bonds created under the Project Indenture.

**“Fiscal Year”** means each twelve-month period beginning on July 1 and ending on June 30 or as such Fiscal Year may be changed from time to time by appropriate legislation and notice from the City to the Trustee.

**“Full Insurable Value”** means the actual replacement cost of the Project, less physical depreciation and exclusive of land, excavations, footings, foundations and parking lots, but, to the extent obtainable, in no event shall such value be less than the principal amount of the Project Bonds at the time outstanding.

**“Independent Architect”** means an architect or architectural firm, selected by the MLS Owner Group, which is registered and qualified to practice the profession of architecture under the laws of the State who is not a full-time employee of the MLS Owner Group, the Authority or the City.

**“LCRA Law”** shall have the meaning ascribed for such term in the recitals of this Agreement

**“MLS”** means Major League Soccer and its successors and assigns.

**“MLS Owner Group”** means SC STL LLC, a Delaware limited liability company, its successors and assigns.

**“MLS Team”** means any franchise of the MLS initially owned by the MLS Owner Group that agrees to play professional soccer games in the Stadium constructed as part of the Project, and its successors and assigns.

**“MMD”** shall have the meaning ascribed for such term in Section 3.2 of this Agreement.

**“Net Proceeds”** means, when used with regard to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award less the payment of all expenses (including attorneys’ fees, trustee’s fees and any extraordinary expenses of the Trustee) incurred in the collection of such gross proceeds.

**“New Use Tax”** means that certain one half of one percent increase in the local use tax levied by the City, which increase will take effect upon approval of the Economic Development Sales Tax, to be used for those purposes approved by the qualified voters of the City.

**“New Use Tax Revenues”** means those tax revenues generated from the New Use Tax.

**“New Use Tax Revenues Fund”** shall have the meaning ascribed for such term in Section 3.12 of this Agreement.

**“Outstanding”**, when used with reference to Project Bonds, means as of any particular date, all Project Bonds theretofore authenticated and delivered under the Project Indenture, except:

- (a) Project Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (b) Project Bonds deemed paid in accordance with the provisions of the Project Indenture; and
- (c) Project Bonds in exchange for or in lieu of which other Project Bonds have been authenticated and delivered pursuant to the Project Indenture.

**“Owner”** means the registered owner of any Project Bond or Project Bonds.

**“Paying Agent”** means the Trustee and any other bank or trust company designated pursuant to the Project Indenture as paying agent for any series of Project Bonds and at which the principal of, premium, if any, and interest on any such Project Bonds shall be payable.

**“Plans and Specifications”** means the Plans and Specifications described in Section 3.4 of this Agreement.

**“Pricing Date”** shall have the meaning ascribed for such term in Section 3.2 of this Agreement.

**“Project”** means, collectively, the Project Site, the Project Improvements, and the Project Equipment, as they may at any time exist, and as the same may be described in the Plans and Specifications.

**“Project Bonds”** means any bonds hereafter issued by the Authority pursuant to a Project Indenture and supported by the City’s obligations under this Agreement to make City Payments.

**“Project Construction Contract”** means a contract or series of contracts under which the contractor or contractors agree to complete construction of the Project in accordance with the Plans and Specifications, which contract or series of contracts may be, in the reasonable discretion of the MLS Owner Group, either (i) a design-build contract where design and construction services are furnished together, or (ii) a fixed price contract, where construction of the Project shall be completed for a fixed price; provided, however, that such contract or series of contracts may in no event increase the financial obligation of the City beyond the amount of the City Payments described in Section 4.6 of this Agreement.

**“Project Costs”** means all reasonable costs of acquisition, planning, construction, equipping and improvement of the Project including the following:

(a) all costs and expenses necessary or incident to the acquisition of the Project Site, the Project Improvements, and the Project Equipment;

(b) all costs and expenses of every nature incurred in purchasing the Project Improvements and otherwise improving the Project Site and purchasing and installing the Project Equipment, including the actual cost of labor, materials, machinery, furnishings and equipment as payable to contractors, builders and materialmen in connection with the acquisition, furnishing and equipping of the Project, the costs of insurance and any other costs incurred by the Authority pursuant to this Agreement during the Construction Period and capitalized interest on the Project Bonds during the Construction Period;

(c) the cost of the title insurance policies specified in Article V of this Agreement;

(d) expenses of administration, supervision and inspection properly chargeable to the Project, underwriting expenses, rating agency fees, financial advisory fees, legal fees and expenses, fees and expenses of accountants and other consultants, publication and printing expenses, and initial fees and expenses of the Trustee and the Paying Agent to the extent that said fees and expenses are necessary or incident to the issuance and sale of the Project Bonds or to the acquisition, planning, construction, equipping and improvement of the Project;

(e) all other items of expense not elsewhere specified in this definition as may be necessary or incident to (i) the authorization, issuance and sale of the Project Bonds, (ii) the acquisition, planning, construction, equipping and improvement of the Project, and (iii) the financing thereof; and

(f) reimbursement to the Authority or those acting for it for any of the above-enumerated costs and expenses incurred and paid by them before or after the execution of this Agreement.

**“Project Documents”** shall have the meaning ascribed for such term in Section 3.4 of this Agreement.

**“Project Equipment”** means the items of machinery, equipment or other personal property used in connection with the construction and development of the Project pursuant to the provisions hereof, and all replacements thereof and substitutions therefor made pursuant to this Agreement.

**“Project Improvements”** means all of the improvements including the Stadium and all buildings, structures, improvements and fixtures located on or to be purchased, constructed and otherwise improved on the Project Site pursuant to Article III hereof, and all additions, alterations, modifications and improvements thereof made pursuant to this Agreement.

**“Project Indenture”** means any Trust Indenture between the Authority and the Trustee, pursuant to which Project Bonds will be issued and funds disbursed, as from time to time amended and supplemented in accordance with the provisions thereof.

**“Project Site”** means all of the real estate or interest therein acquired from time to time pursuant to the provisions hereof which may include all or any portion of the real estate identified on Exhibit A attached hereto and by this reference made a part hereof.

**“Public Investment Contingency”** shall have the meaning ascribed for such term in Section 3.1 of this Agreement.

**“Rebate Fund”** means any Rebate Fund created under a Project Indenture.

**“Reimbursement Amount”** means the amount equivalent to \$60,000,000 less the Construction Fund Initial Deposit, which amount must be funded by the MLS Owner Group and applied to Project Costs.

**“Reimbursement Bonds”** means any bonds issued pursuant to Section 3.2 of this Agreement in order to satisfy the City’s obligation to pay the Reimbursement Amount to the MLS Owner Group.

**“Reimbursement Indenture”** means any Trust Indenture between the Authority and the Trustee, pursuant to which Reimbursement Obligations will be issued and funds disbursed, as from time to time amended and supplemented in accordance with the provisions thereof.

**“Reimbursement Note”** means any promissory note issued pursuant to Section 3.2 of this Agreement in order to satisfy the City’s obligation to pay the Reimbursement Amount to the MLS Owner Group.

**“Reimbursement Obligations”** means the Reimbursement Note and/or Reimbursement Bonds, if any.

**“Sales Tax Reimbursement Account”** shall have the meaning ascribed for such term in Section 3.2 of this Agreement.

**“Sales Tax Reimbursement Proceeds”** means an amount equal to the lesser of (i) fifty percent (50%) of the Sales Tax Revenues, or (ii) the amount required for debt service payments on any Reimbursement Obligations issued by the City in the amount of the Reimbursement Amount.

**“Sales Tax Revenues”** means those tax revenues generated from: (a) the general municipal sales tax levied pursuant to Ordinance No. 62884 or any successor thereto, (b) the general municipal sales tax levied pursuant to Ordinance No. 55497, as amended by Ordinance Nos. 57179 and 57979, or any successor thereto, (c) the transportation sales tax levied pursuant to Ordinance No. 56554, or any successor thereto, (d) the capital improvements sales tax levied pursuant to Ordinance No. 62885, or any successor thereto, (e) public safety sales tax levied pursuant to Ordinance No. 67774, or any successor thereto, (f) the parking garage gross receipts license tax levied and collected by the City pursuant to Chapter 8.76 of the Revised Code of the City, or any successor thereto, (g) the earnings tax levied and collected by the City pursuant to Chapter 5.22 of the Revised Code of the City, or any successor thereto, (h) the payroll expense tax levied and collected by the City pursuant to Chapter 5.23 of the Revised Code of the City, or any successor thereto, and (i) the restaurant gross receipts tax levied and collected by the City pursuant to Chapter 11.42 of the Revised Code of the City, or any successor thereto, all such sales taxes limited to the extent generated within the Project Site.

**“Semi-Annual Calculation Period”** means each six (6) month period during the term of this Agreement commencing on November 1 and ending on April 30, and commencing on May 1 and ending on October 31.

**“Site Costs”** means all Project Costs for the acquisition of land, demolition, grading, soil testing, site preparation, architectural and engineering fees, construction management fees, costs of insurance, all costs incurred by the Authority pursuant to this Agreement during the Construction Period, and any other preconstruction Project Costs.

**“Stadium”** shall have the meaning ascribed for such term in the recitals of this Agreement.

**“State”** means the State of Missouri, and its successors and assigns.

**“Taxable Rate”** shall have the meaning ascribed for such term in Section 3.2 of this Agreement.

**“Tax-Exempt Rate”** shall have the meaning ascribed for such term in Section 3.2 of this Agreement.

**“TDD”** means a transportation development district under any name formed pursuant to the TDD Act within the Project Site for the purpose of levying the TDD Sales Tax, created by the Circuit Court of the City of St. Louis and maintained pursuant to the TDD Act.

“*TDD Act*” means the Missouri Transportation Development District Act, Sections 238.200 to 238.275, RSMo., as amended.

“*TDD Sales Tax*” means the sales and use tax levied by the TDD on the receipts from the sale at retail of all eligible tangible personal property or taxable services at retail within its boundaries pursuant to the TDD Act in the amount not to exceed one percent (1%).

“*Trust Estate*” means the Trust Estate described in the Granting Clauses of the Project Indenture.

“*Trustee*” means a trustee to be selected by the Authority and reasonably approved by the City, and any successor or successors and any other corporation or association which at the time may be substituted in its place pursuant to and at the time serving as Trustee under the Project Indenture.

“*Workforce and Business Inclusion Plan*” means any final workforce and business inclusion plan for the Project approved by the City, which plan shall seek to ensure compliance with all applicable federal, State and local laws and executive orders regarding contracting, hiring and employment, including applicable executive orders setting goals for minority- and women-owned business participation and minority hiring, including, but not limited to, the Mayor’s Executive Orders #28, #33, #34, #36, #39, #44, #46, #47, and #51, and Ordinance No. 69427 establishing apprenticeship training, workforce diversity, and City resident programs, all as may be amended, to implement the findings of the “City of St. Louis Disparity Study” and the “City of St. Louis Workforce Study” completed in 2015 by Mason Tillman Associates, Ltd., for the City of St. Louis and the St. Louis Development Corporation.

**Section 1.2. Rules of Construction.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter gender. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa. Words importing persons shall include firms, associations, partnerships and corporations, including public bodies, as well as natural persons.

(b) All references in this instrument to designated “Articles”, “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision unless the context indicates otherwise.

(c) The table of contents hereto and the headings and captions herein are not a part of this document.

(d) Accounting terms used herein and not otherwise defined herein or in the Project Indenture shall have the meaning ascribed to them by generally accepted accounting principles.

## **ARTICLE II REPRESENTATIONS**

### **Section 2.1. Representations by the Authority.**

The Authority represents and warrants as follows:

(a) The Authority is a public body corporate and politic duly organized and validly existing under the LCRA Law.

(b) The Authority has the power and authority to enter into, execute and deliver this Agreement, and to perform its obligations under and consummate the transactions contemplated by this Agreement, and has by proper action duly authorized the execution and delivery of this Agreement and the performance of the Authority's duties and obligations hereunder.

(c) This Agreement is a valid and binding agreement of the Authority, enforceable in accordance with the terms hereof, subject to applicable law.

(d) To the Authority's knowledge, the execution and delivery of this Agreement, the consummation of the transactions contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof will not (with the passage of time or the giving of notice, or both) conflict with or result in or constitute a breach of or default under any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Authority is a party or by which it or any of its property is bound, or violate any provision of its bylaws, or of any constitutional or statutory provision, or of any order, rule or regulation of any court or governmental authority applicable to the Authority or its property.

(e) Except as may have been previously disclosed, there is not now pending or, to the knowledge of the Authority, threatened any suit, action or proceeding against or affecting the Authority by or before any court, arbitrator, administrative agency or other governmental authority which, if decided adversely to the Authority, would materially affect the validity of any of the transactions contemplated by this Agreement, or is reasonably likely to impair the ability of the Authority to perform its obligations under this Agreement.

### **Section 2.2. Representations by the City.**

The City represents and warrants as follows:

(a) The City is a home rule city and political subdivision organized and existing under the laws of the State and its charter.

(b) The City has the power and authority to enter into, execute and deliver this Agreement, and to perform its obligations under and consummate the transactions contemplated by this Agreement, and has by proper action duly authorized the execution and delivery of this Agreement and the performance of the City's duties and obligations hereunder.

(c) This Agreement is a valid and binding agreement of the City, enforceable in accordance with the terms hereof, subject to applicable law.

(d) To the City's knowledge, the execution and delivery of this Agreement, the

consummation of the transactions contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof will not (with the passage of time or the giving of notice, or both) conflict with or result in or constitute a breach of or default under any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the City is a party or by which it or any of its property is bound, or violate any provision of the charter of the City, or of any constitutional or statutory provision, or of any order, rule or regulation of any court or governmental authority applicable to the City or its property.

(e) Except as may have been previously disclosed, there is not now pending or, to the knowledge of the City, threatened any suit, action or proceeding against or affecting the City by or before any court, arbitrator, administrative agency or other governmental authority which, if decided adversely to the City, would materially affect the validity of any of the transactions contemplated by this Agreement, or is reasonably likely to impair the ability of the City to perform its obligations under this Agreement.

### **Section 2.3. Representations by the MLS Owner Group.**

The MLS Owner Group represents and warrants as follows:

(a) The MLS Owner Group is a limited liability company organized and existing under the laws of the state of Delaware.

(b) The MLS Owner Group has the power and authority to enter into, execute and deliver this Agreement, and to perform its obligations under and consummate the transactions contemplated by this Agreement, and has by proper action duly authorized the execution and delivery of this Agreement and the performance of the MLS Owner Group's duties and obligations hereunder.

(c) This Agreement is a valid and binding agreement of the MLS Owner Group, enforceable in accordance with the terms hereof, subject to applicable law.

(d) To the MLS Owner Group's knowledge, the execution and delivery of this Agreement, the consummation of the transactions contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof will not (with the passage of time or the giving of notice, or both) conflict with or result in or constitute a breach of or default under any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the MLS Owner Group is a party or by which it or any of its property is bound, or the operating agreement of the MLS Owner Group, or of any constitutional or statutory provision, or of any order, rule or regulation of any court or governmental authority applicable to the MLS Owner Group or its property.

(e) Except as may have been previously disclosed, there is not now pending or, to the knowledge of the MLS Owner Group, threatened any suit, action or proceeding against or affecting the MLS Owner Group by or before any court, arbitrator, administrative agency or other governmental authority which, if decided adversely to the MLS Owner Group, would materially affect the validity of any of the transactions contemplated by this Agreement, or is reasonably likely to impair the ability of the MLS Owner Group to perform its obligations under this Agreement.

**ARTICLE III**  
**PUBLIC INVESTMENT CONTINGENCY; AGREEMENT TO ISSUE PROJECT**  
**BONDS; USE OF PROCEEDS**

**Section 3.1. Public Investment Contingency.**

The Authority currently estimates that the total Project Costs will be approximately \$155,000,000, as more particularly shown on the Estimated Project Sources and Uses attached hereto as Exhibit C and incorporated herein by reference. It is the express intent of the Authority and the City that their public funding pursuant to this Agreement, including pursuant to Article IV hereof, be committed to the Project only upon the binding commitment of the MLS Owner Group to fund not less than \$95,000,000 of the Project Costs and the Reimbursement Amount as shown on Exhibit C, as well as to pay the MLS expansion fee exclusively from private funds. Notwithstanding anything to the contrary in this Agreement or otherwise, the issuance of the Project Bonds by the Authority and the performance of the City under this Agreement shall be expressly contingent upon the receipt of evidence of the satisfaction of all of the following conditions (the “*Public Investment Contingency*”) by December 31, 2017 to the reasonable satisfaction of the parties hereto:

(a) The MLS Owner Group irrevocably commits to a contribution of not less than \$95,000,000 for the Project plus the Reimbursement Amount.

(b) The MLS formally awards the MLS Team franchise to the MLS Owner Group, and the MLS Owner Group privately finances the MLS expansion fee.

(c) Commitments for all other sources of capital for completion of the Project, including any cost that may be in excess of the initial budget required to complete the Project.

(d) The final closing of any financing transactions necessary to effectuate (a)-(c) above.

(e) Approval of the Economic Development Sales Tax and the New Use Tax by the qualified voters of the City, and the corresponding levy by the City of the same.

(f) Approval by the City of an ordinance amending Section 8.08 of the City Code to provide to provide a reduction in the tax rate applicable to the City’s the Entertainment License Tax for the Project during the Agreement Term to a tax rate of zero percent (0%) upon certain private investment in the Project.

(g) The Missouri Highways and Transportation Commission (“*MHTC*”) leases or otherwise transfers that portion of the Project Site which it owns to the Authority (or the MLS Owner Group) at no cost to the City, and commits to funding certain site clearing and infrastructure work as may be necessary to prepare the Project Site for construction of the Project.

(h) The City has approved the Workforce and Business Inclusion Plan, and the MLS Owner Group has secured an agreement by the Project’s Construction Manager and/or general contractor(s) to be bound by the Workforce and Business Inclusion Plan.

(i) The Authority shall own fee title to the Project, or such interests in the Project as may be required to grant to the MLS Owner Group a leasehold interest in the Project pursuant to Section 4.1 hereof.

(j) The delivery of certifications from the Authority and the City (or their authorized representatives) acknowledging the satisfaction of the Public Investment Contingency in all respects.

**Section 3.2. Authority's Agreement to Issue Project Bonds; City's Agreement to Issue Sales Tax Reimbursement Obligations.**

(a) Subject to the satisfaction of the Public Investment Contingency provided in Section 3.1 hereof, the Authority hereby agrees to issue the Project Bonds as provided in the Project Indenture to provide funds for the payment of Project Costs. The Authority agrees to use its best efforts to issue the Project Bonds within ninety (90) days after the satisfaction of the Public Investment Contingency, but in no case later than June 30, 2018. The Authority may authorize the issuance of additional bonds ("***Additional Bonds***") from time to time as provided in the Project Indenture. The Authority and the City covenant and agree that, notwithstanding anything to the contrary, the Construction Fund Initial Deposit will be made on the date of issuance of the Project Bonds. Notwithstanding any other term or provision of this Agreement to the contrary, the Project Bonds shall be payable solely from City Payments made by the City exclusively from New Use Tax Revenues and monies otherwise held under the Project Indenture, and from no other source of funds, including, but not limited to, general funds of the City. The City has not pledged its full faith and credit relative to the City's obligation to make City Payments nor to cause the Authority to issue the Project Bonds. The Project Bonds shall not constitute debt to the City within any constitutional or statutory meaning of the word 'debt'.

(b) Subject to the satisfaction of the Public Investment Contingency provided in Section 3.1 hereof, the Authority agrees to issue the Reimbursement Obligations and the City hereby agrees, subject to annual appropriation, to reimburse the MLS Owner Group the Reimbursement Amount generated during the term of this Agreement for the payment of Project Costs in accordance with the terms of the Reimbursement Obligations. Accordingly, there is hereby established an account to be held by the City, designated and named the "Sales Tax Reimbursement Account – St. Louis MLS Stadium" (the "***Sales Tax Reimbursement Account***") into which there shall be deposited an amount equal to fifty percent (50%) of the Sales Tax Revenue in accordance with this subsection. The Sales Tax Reimbursement Account shall be under the custody and control of the City, subject however, to the provisions of this Agreement. Subject to annual appropriation, within sixty (60) days after the last day of each Semi-Annual Calculation Period during the term of this Agreement, the City shall cause an amount equal to fifty percent (50%) of the Sales Tax Revenue to be deposited into the Sales Tax Reimbursement Account and applied to the payment of the Reimbursement Obligations.

(c) In lieu of direct disbursements, upon the request of the MLS Owner Group, so long as no Event of Default by the MLS Owner Group has occurred and is continuing hereunder, the City directs the Authority to issue Reimbursement Obligations on the following terms and conditions:

(i) In the event that the MLS Owner Group requests a Reimbursement Note, the Authority will issue the Reimbursement Note in either a taxable and/or a tax exempt series. The Reimbursement Note shall have the following terms:

a. The Reimbursement Note shall be in the principal amount of the Reimbursement Amount plus issuance costs.

b. The Reimbursement Note shall bear interest at a fixed rate per annum determined on the date that is not less than ten (10) business days and not more than sixty (60) business days prior to the scheduled closing date for issuance of the Reimbursement Note (the "**Pricing Date**") based on the municipal yield curve for general obligation bonds (the "**MMD**") compiled by Municipal Market Data Line ® (or its successors) and published by Thomson Financial, an operating unit of The Thomson Corporation (or its successors) using the MMD yield published as of the Pricing Date for general obligation bonds rated "AAA" that mature in the same year as the Reimbursement Note, (i) plus four percent (4%) if the interest on such Reimbursement Note, in the opinion of bond counsel, is not exempt from Federal income taxation (the "**Taxable Rate**"), or (ii) plus two percent (2%) if the interest on such Reimbursement Note, in the opinion of bond counsel, is exempt from Federal income taxation (the "**Tax Exempt Rate**"); provided, in no event shall the interest rate on the Reimbursement Note exceed ten percent (10%) per annum.

c. Interest on the Reimbursement Note shall be compounded semi-annually.

d. The Reimbursement Note shall have a stated maturity equal to the Project Bonds.

(ii) After the completion of construction of the Project, in the event that the MLS Owner Group requests the Authority to issue Reimbursement Bonds, the Authority may issue one or more series of Reimbursement Bonds in an amount sufficient to redeem the Reimbursement Notes.

(d) The MLS Owner Group covenants to cooperate and take all reasonable actions necessary to assist the City and its bond counsel, underwriters and financial advisors in the preparation of offering statements, private placement memorandum or other disclosure documents and all other documents necessary to market and sell the Reimbursement Obligations, if necessary, and so as to enable bond counsel to render its opinion as to the tax exemption of Reimbursement Obligations, including, but not limited to, a continuing disclosure agreement or undertaking, whereby the MLS Owner Group will be required to provide annual updates to certain operating information. The MLS Owner Group will not be required to disclose to the general public or any investor any proprietary or confidential financial information pertaining to the MLS Owner Group, but upon the execution of a confidentiality agreement acceptable to the MLS Owner Group, the MLS Owner Group will provide such information to the City's and

Authority's financial advisors, underwriters and their counsel to enable such parties to satisfy their due diligence obligations. Such compliance obligation shall be a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement.

(e) The Reimbursement Obligations will be issued pursuant to the terms of the Reimbursement Indenture providing payment solely out of available (i) Sales Tax Reimbursement Proceeds deposited into the Sales Tax Reimbursement Account, (ii) New Use Tax Revenues not used for debt service on the Project Bonds or other required payments under the Project Indenture (but in no event in an amount such that the aggregate amount of New Use Tax Revenues applied to pay Reimbursement Obligations and the Construction Fund Initial Deposit shall exceed \$50,000,000), or (iii) available economic activity taxes generated at the Project Site in the special allocation fund for any tax increment financing redevelopment project whose redevelopment area includes the Project Site and not otherwise committed to reimbursement for development within such redevelopment area, subject to annual appropriation as provided herein, and neither the obligations of the City with respect to payments of Sales Tax Reimbursement Proceeds nor the Reimbursement Obligations will constitute a debt or liability of the City or of any agency or political subdivision of the City within the meaning of any State constitutional provision or statutory limitation and shall not, directly, indirectly or contingently, obligate the City to levy any form of taxation therefor or to make any payments from any other sources beyond those appropriated with respect to this Agreement for the City's then-current Fiscal Year. Notwithstanding any other term or provision of this Agreement to the contrary, the issuance of the Reimbursement Obligations shall be expressly contingent upon the submission by the MLS Owner Group to the City of a certificate of reimbursable costs, in a form reasonably acceptable to the City, with supporting documentation reasonably sufficient to establish that the MLS Owner Group has contributed equity or other private sources sufficient to have paid for Project Costs equal to or greater than the Reimbursement Amount using private funds.

**Section 3.3. Use of Proceeds of the Project Bonds.** The net proceeds of the sale of the Project Bonds shall be deposited with the Trustee and applied to finance the Project Costs, pay the expenses of issuance of the Project Bonds or to fund other approved expenditures and reserves, all as provided in the Project Indenture. New Use Tax Revenues may be combined with the net proceeds of the sale of the Project Bonds to make the Construction Fund Initial Deposit, as required under this Agreement.

**Section 3.4. Project Documents.** The MLS Owner Group is authorized to execute and perform the following documents as deemed appropriate in its reasonable judgment, subject to the terms of this Agreement, and the MLS Owner Group will maintain at its principal office copies of the following documents as and when the same are available:

(a) All preliminary and final Plans and Specifications with respect to the Project (the MLS Owner Group agrees to maintain the final versions of such preliminary Plans and Specifications as such final versions become available and in any event by such time as work is commenced on the portion of the Project to which such Plans and Specifications relate) (collectively, the "*Plans and Specifications*");

(b) Appropriate permits for the acquisition, planning, construction, equipping and

improvement of the Project, if required, from any governmental agency as may be necessary for such work;

(c) All Construction Manager's and general contractor's contracts for the Project and all prime subcontractor's contracts and purchase orders for any equipment included in the Project (the "*Construction Contracts*"); and

(d) Performance and payment bonds insuring the Authority, the MLS Owner Group and the Trustee as their respective interests may appear against all delays in completion of all Construction Contracts, against failure timely to complete the Project in accordance with the Plans and Specifications, and against claims for payment to cover labor and material used or reasonably required for use in the performance of the Construction Contracts;

(said documents referred to above in this Section being herein collectively called the "Project Documents").

Project permits and associated construction-related activities requiring City approval shall be processed through the usual City permitting and approval processes.

**Section 3.5. Changes or Amendments to Project Documents.** The MLS Owner Group may make, authorize or permit such changes or amendments to the Project Documents as the MLS Owner Group may reasonably determine necessary or desirable, and provided that no such change or amendment of a material nature shall be made unless there are delivered to the Authority and the MLS Owner Group the following certificates: (a) the Independent Architect shall certify that the proposed changes or amendments will not materially alter the size, scope or character of the Project or impair the structural integrity or utility of the Project, and (b) the Construction Manager shall certify that the proposed changes or amendments will not cause the total estimated cost to complete the Project to exceed the amount on deposit in the Construction Fund (plus a reasonable estimate of investment income thereon and on other funds and accounts established under the Project Indenture, held by the Trustee and to be deposited in the Construction Fund, determined pursuant to Section 1.10 hereof).

**Section 3.6. Enforcement of Contracts and Surety Bonds.** In the event of a material default of any contractor or subcontractor under any Construction Contract or any other third party contract made in connection with the Project, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the MLS Owner Group will promptly proceed, either separately or in conjunction with others, to pursue diligently the remedies of the MLS Owner Group against the contractor or subcontractor in default, against the appropriate vendor in the event of a material breach of warranty, and against any surety on a bond securing the performance of such contract. The failure of any contractor to meet a goal made a part of its contract in order for the Project to comply with the Workforce and Business Inclusion Plan shall be considered a material breach or default, and the MLS Owner Group will promptly proceed to pursue diligently the remedies it has against the contractor or subcontractor in default and against any surety on a bond securing the performance of such contract. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery and after reimbursement to the MLS Owner Group of any amounts theretofore paid by the MLS Owner Group and not

previously reimbursed to the MLS Owner Group for correcting or remedying of the default or breach of warranty which gave rise to the proceedings against the contractor, subcontractor or surety, shall be deposited by the MLS Owner Group into the Construction Fund if received before the Completion Date and otherwise shall be deposited in the Bond Fund pursuant to the Project Indenture.

**Section 3.7. Agreement to Commence and Complete Construction of the Project.**  
Subject to the satisfaction of the Public Investment Contingency provided in Section 3.1 hereof:

(a) The MLS Owner Group agrees to cause the acquisition, construction and equipping of the Project to be: (i) commenced within nine (9) months from the satisfaction of the Public Investment Contingency and thereafter diligently and continuously prosecuted; and (ii) completed with reasonable dispatch but in no event later than four (4) years from satisfaction of the Public Investment Contingency. The MLS Owner Group acknowledges that it has obtained a leasehold interest in the Project pursuant to this Agreement that will enable the MLS Owner Group to operate such Project for the purpose for which it was constructed and to carry out the purposes of the Project under applicable law, and further agrees to provide from moneys in the Construction Fund and from other legally available moneys, if any (including its own funds if required and available) all moneys necessary to complete the Project substantially in accordance with the Plans and Specifications. The MLS Owner Group shall be solely responsible for the risk of any costs overruns with regards to the Project.

(b) The MLS Owner Group, the Authority and the City acknowledge that the funds generated by the Project Bonds are not expected to pay for all costs related to the completion of the Project, and that additional funds will be required from private participants and as otherwise described on Exhibit C hereto. The MLS Owner Group agrees to use its best efforts to obtain moneys directly from other lawfully available sources, in an amount sufficient to pay the amount needed for completion of the Project and transfer the same to the Trustee for deposit in the Construction Fund. The MLS Owner Group covenants that any moneys received from any other source which are properly designated (whether by such source, by the Authority or in some other manner) for the acquisition, construction or equipping portions of the Project shall be deposited to the credit of the Construction Fund.

(c) Notwithstanding anything to the contrary, in the event the moneys on deposit in the Construction Fund (together with other funds legally available to the Authority for the Project, if any) are determined by the MLS Owner Group at any time to be insufficient to pay for the completion of the acquisition, planning, construction, equipping and improvement of the Project, the MLS Owner Group, after consultation with the Authority and the City, agrees to modify the Project to include only those components and be of such design as can be completed with the aforesaid amounts and in keeping with the intent of this Agreement.

(d) The MLS Owner Group agrees to pay or cause to be paid to the City upon request the sum of \$250,000.00 which the City will deposit in the Stadium Public Works Account established in Ordinance \_\_\_\_\_ (Board Bill #\_\_\_\_\_). The City will utilize the amounts on deposit in such account solely for the design, installation and performance of certain public works related to the Project which are contemplated by and/or consistent with the Plans and Specifications, to wit: vacation, removal and/or reconstruction of public rights of way and City

provided utilities necessary for the Project (the “**Public Infrastructure Work**”), which Public Infrastructure Work is hereby authorized and approved. Such Public Infrastructure Work shall be done using materials specified by the City's Board of Public Service, and in accordance with detailed plans and specifications finally adopted and approved by the City's Board of Public Service before bids are advertised therefor. The City's Board of Public Service shall cause the Public Infrastructure Work to be performed in accordance with its customary procedures. In the event that the City does not utilize all or any portion of the amounts paid to the City pursuant to this Section, then the City agrees to return such funds to the MLS Owner Group to be used to pay Project Costs.

(e) The MLS Owner Group shall (a) cause the Project to comply with all applicable federal, State and local laws and executive orders regarding contracting, hiring and employment, including applicable executive orders setting goals for minority- and women-owned business participation and minority hiring, including, but not limited to, the Mayor’s Executive Orders #28, #33, #34, #36, #39, #44, #46, #47, and #51, and Ordinance No. 69427 establishing apprenticeship training, workforce diversity, and City resident programs, all as may be amended as of the date of this Agreement, (b) afford the City (or its designee) access to monitor compliance with such goals, including any oversight committee formed by the City to ensure compliance with such goals, and (c) in addition to any of the minimum goals set by the applicable federal, State and local laws, and executive orders, cause the Project to comply with the specific goals identified in the Workforce and Business Inclusion Plan approved by City staff.

(f) The MLS Owner Group shall enter into a binding community benefits agreement committing to support, participate in, conduct, and/or financially contribute to specific recreational and educational benefits and services that will primarily benefit or serve disadvantaged youth and families in the City.

(g) The MLS Owner Group agrees that, during each year of the Agreement Term, it shall make annual payments to the City equal to two and one half percent (2 1/2 %) of the gross receipts of the MLS Owner Group derived from admission to events at the Project from the preceding year for which the City’s Entertainment License Tax would otherwise have applied.

**Section 3.8. Payment for Project Costs.**

(a) General. Only Project Costs shall be paid by the Trustee from moneys in the Construction Fund. In the Project Indenture, the Authority will direct the Trustee to make disbursements from the Construction Fund upon receipt by the Trustee of requisitions signed by the Authorized MLS Owner Group Representative. Requisitions from the Construction Fund shall be in substantially the form attached hereto as Exhibit B-1. The aggregate amount of such disbursements shall not exceed \$\_\_\_\_\_ until there is delivered to the Trustee a written certificate of the Authorized MLS Owner Group Representative and the Construction Manager that a Project Construction Contract has been awarded for the Project, and thereafter the requisitions shall be in substantially the form attached hereto as Exhibit B-2.

No money shall be disbursed from the Construction Fund for the acquisition of the Project Site until the Trustee receives the title insurance policy required by Section 3.3 hereof.

After the Trustee receives the title insurance policy required by Section 3.3 hereof, no additional money shall be disbursed from the Construction Fund until the Trustee receives an endorsement updating the title insurance policy and insuring the total amount of the Construction Fund then disbursed against filed and unfiled mechanics' and materialmen's liens for all work in place and materials stored to the date of the requisition, together with a continuation report, stating that since the date of the title commitment or policy or since the date of the last preceding continuation report, no liens or encumbrances have been recorded, and no taxes, assessments or other charges of whatever nature have become due and that there are no additional title exceptions or objections.

The MLS Owner Group will maintain at its principal office copies of lien waivers, affidavits, paid invoices and reasonably related back-up data required for such requisitions and the Trustee will maintain at its principal corporate trust office copies of the title insurance policy and endorsements thereto required for such requisitions.

(b) Trustee May Rely. Upon receipt of requisition certificates properly completed as aforesaid, accompanied by appropriate documentation, the Trustee will, at the direction of the MLS Owner Group, disburse moneys from the Construction Fund directly to the appropriate payees or to the MLS Owner Group for the payment of all such costs. The Trustee may rely conclusively on any such documentation and shall not be required to make any independent investigation in connection therewith.

**Section 3.9. Establishment of Completion Date.** The Completion Date shall be evidenced to the Trustee and the Authority by a certificate signed by the Authorized MLS Owner Group Representative and stating (i) that the acquisition, planning, construction, equipping and improvement of the Project has been completed in accordance with the Project Documents, (ii) that all costs and expenses incurred in the acquisition, planning, construction, equipping and improvement of the Project have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the MLS Owner Group, and (iii) amounts to be retained by the Trustee with respect to item (ii) above. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

**Section 3.10. Surplus in the Construction Fund.** Upon receipt of the certificate described in Section 1.8 hereof, the Trustee shall transfer any remaining moneys then in the Construction Fund (other than amounts to be retained pursuant to Section 1.8(ii)) to the Bond Fund pursuant to the Project Indenture to be applied by the Authority solely to (a) the payment of principal and premium, if any, of the Project Bonds through the payment or redemption thereof at the earliest date permissible under the terms of the Project Indenture, or (b) at the option of the Authority, to the purchase of Project Bonds at such earlier date or dates as the Authority may elect.

**Section 3.11. Determining Amounts in the Construction Fund.** The Construction Manager shall provide the Authority and the Trustee with a construction draw schedule and amendments to such schedule as necessary from time to time. Amounts available or reasonably projected to be available in the Construction Fund shall be computed assuming that all construction draws are made on the dates specified in the construction draw schedule and that

investments held in the Construction Fund or in other funds whose earnings are deposited in the Construction Fund are invested at the stated rate of such current investments until maturity or earliest call date and at the contracted rate, if any, for any future reinvestments. No investment earnings shall be assumed on moneys which have not (i) been invested or (ii) been contracted for investment. The Construction Manager may rely on (i) a certificate of the Trustee as to the amounts available or reasonably projected to be available, to the extent determinable, in the Construction Fund, and the Trustee is hereby authorized to release such information to the Construction Manager, or (ii) a certificate of the MLS Owner Group as to the amounts available or reasonably projected to be available in the Construction Fund, provided that the accuracy of the calculation of such projected amounts shall be certified by an independent certified public accountant.

**Section 3.12. New Use Tax Revenues Account; Disbursement of New Use Tax Revenues.** The parties acknowledge and agree that the New Use Tax, if approved by City voters, will likely be levied and collected by the City prior to issuance of the Project Bonds. The City agrees to cause its Comptroller or other financial officer to maintain a fund for all New Use Tax Revenues (the “*New Use Tax Revenues Fund*”), and such further accounts or sub-accounts as the Comptroller may deem appropriate. The City shall deposit and maintain the amount of taxes collected from the New Use Tax into the New Use Tax Revenues Fund, to be held separate and apart from all other City use taxes received by the Comptroller. At the City’s discretion, the amount of taxes collected from the New Use Tax and on deposit in such New Use Tax Revenues Fund may be used to fund a portion of the Construction Fund Initial Deposit on the terms contained in this Agreement. The City agrees not to disburse any New Use Tax Revenues from the New Use Tax Revenues Fund for any other purposes until the Construction Fund Initial Deposit has been made in full.

#### **ARTICLE IV LEASE AND PAYMENT PROVISIONS**

**Section 4.1. Granting of Leasehold Estate.** The Authority hereby rents, leases and lets the Project to the MLS Owner Group, and the MLS Owner Group hereby rents, leases and hires the Project from the Authority, for the rentals and upon and subject to the terms and conditions herein contained. The MLS Owner Group covenants and agrees to plan, construct, operate and maintain the Project as herein provided. The Authority further covenants and agrees to use its best efforts to obtain the maximum use and occupancy of the Project for MLS soccer and for all types of sports, recreation and other legal uses. The MLS Owner Group, the Authority and the City agree that such use and occupancy of the Project will carry out the public purposes of the Authority and the City by promoting sports activity and tourism, increasing and creating jobs, and generating additional taxes for the use and benefit of the City and its citizens.

**Section 4.2. Non-Relocation.** The MLS Owner Group hereby irrevocably and unconditionally commits and guarantees to cause the MLS Team to play all its home pre-season, regular season, and post-season games at the Project for the term of this Agreement (subject to a limited number of MLS-approved neutral site games and other customary exceptions). The MLS Owner Group shall also cause the MLS Team to maintain its membership in the MLS during such term and will be prohibited from (1) relocating from the City, (2) applying to the MLS to transfer to another location outside of the City, and/or (3) entering into or participating in any

negotiations or discussions with, or applying for, or seeking approval from, third parties with respect to any agreement, legislation, or financing that contemplates or would be reasonably likely to result in, any breach of this non-relocation covenant.

**Section 4.3. Term of Agreement.** This Agreement shall be effective on the date hereof but the obligations of the parties hereto are contingent upon satisfaction of the terms of Section 3.1 hereof. Once the terms of Section 3.1 hereof have been met this Agreement shall continue in force and effect until terminated pursuant to Section 2.11 hereof.

**Section 4.4. Bond Payments.** The Authority will duly and punctually pay the principal of, premium, if any, and interest on the Project Bonds at the dates and the places and in the manner mentioned in the Project Bonds and in the Project Indenture, according to the true intent and meaning thereof and hereof, but solely out of the City Payments and other sources of funds specified herein and in the Project Indenture.

**Section 4.5. Additional Payments.** The Authority shall pay, but only out of moneys in the Expense Fund, the following items to the following persons as Additional Payments under this Agreement:

(a) To the Trustee, all rebate payments required pursuant to the Project Bonds, to the extent such amounts are not available to the Trustee in the Rebate Fund or other funds and accounts held under the Project Indenture;

(b) To the Trustee when due, all reasonable fees of the Trustee for services rendered under the Project Indenture and all reasonable fees and reasonable charges of any paying agent, registrar, counsel, accountants, engineers and other persons incurred in performance of services on request of the Trustee and such other persons under the Project Indenture for which the Trustee and other persons are entitled to payment or reimbursement;

(c) All ongoing annual fees and charges and all reasonable expenses incurred by the Authority in relation to the transactions contemplated by this Agreement and the Project Indenture, including all fees and charges of the Authority as provided for under the Act and the operating expenses of the Authority, including the Authority's costs of performing its obligations hereunder and under the Project Indenture; and

(d) An amount which at any time, when added to the balance remaining at any time in the Bond Reserve Fund, is necessary and sufficient to maintain the Bond Reserve Fund at the Bond Reserve Requirement, such moneys to be deposited in the Bond Reserve Fund at the Authority's direction. All deposits to the Bond Reserve Fund shall be used and applied by the Trustee in the manner and for the purposes set forth in the Project Indenture.

**Section 4.6. Covenants to Cooperate on Issuance of Project Bonds and Sales Tax Reimbursement Obligations, Request Appropriations, Form the Districts and Approve District Sales Taxes.**

(a) City Cooperation with Project Bonds. The City agrees to cooperate in connection with the issuance of the Project Bonds and to authorize and direct the Mayor, the Comptroller

and other applicable officials of the City to execute all documentation necessary or appropriate to cause the issuance of the Project Bonds. The City also agrees to cooperate and to execute all reasonably requested documentation in connection with the satisfaction of the Public Investment Contingency.

(b) City Sales Tax Reimbursement Obligations. The City agrees to cooperate in connection with the issuance of Sales Tax Reimbursement Obligations, if any, and to authorize and direct the Mayor, the Comptroller and other applicable officials of the City to execute all documentation necessary or appropriate to cause the issuance of such Sales Tax Reimbursement Obligations.

(c) City Appropriations Covenant. The City covenants and agrees that the City's Budget Director, or any other officer at any time charged with responsibility of formulating budget proposals, is hereby directed to include in the budget proposals submitted to the Board of Estimate and Apportionment, and to the extent permitted by law, to the Board of Aldermen of the City, in any year during the Agreement Term, a request or requests for (1) the City Payments in an annual amount equal to the amount as is required for the actual annual debt service payments on the Project Bonds, and (2) the applicable annual Sales Tax Reimbursement Proceeds. It is the intention of the City that the decision to appropriate the City Payments and the Sales Tax Reimbursement Proceeds to provide financing for the Project pursuant to this Agreement shall be made solely by the Board of Aldermen and not by any other official of the City except subject to the power of the Mayor of the City to approve or disapprove ordinances. The City presently expects to, in each Fiscal Year of the City during the Agreement Term, appropriate funds for the City Payments and the Sales Tax Reimbursement Proceeds so that the City Payments and the Sales Tax Reimbursement Proceeds to be paid during the succeeding Fiscal Year will be available for such purposes. The City shall deliver written notice to the Trustee and the Authority of any Event of Non-Appropriation no later than July 15 of the applicable year. The first such request for the City Payments and the Sales Tax Reimbursement Proceeds will be submitted and appropriated under applicable law for the Fiscal Year of the City necessary for the first payment due on the Project Bonds. Subsequent requests for appropriations shall be made in each Fiscal Year thereafter so that the City Payments and the Sales Tax Reimbursement Proceeds to be paid during the succeeding Fiscal Year will be available for such purposes.

(d) Formation of the Districts; Approval of District Sales Taxes. The City covenants to cooperate with the MLS Owner Group to form the CID pursuant to the CID Act and the TDD pursuant to the TDD Act, to assist in the funding of the design and construction of the Project. The Districts will obtain funding through the imposition of the District Sales Taxes. The City shall reasonably cooperate with the MLS Owner Group and, in its capacity as record owner of the Project Site, shall take any and all reasonable actions as are requested by the MLS Owner Group in all proceedings relating to the Districts, including the execution and filing of all petitions, consents, approvals, votes in favor of the applicable district taxes, authorizations, election of directors or other documents required to maintain and operate the Districts. The City agrees not to file suit or take any other action to set aside the Districts or the respective District Taxes or otherwise question the validity of the Districts or the District Taxes or any proceedings relating thereto unless there is an Event of Default with respect to the MLS Owner Group under

this Agreement.

**Section 4.7. City Payments; Contingency; Refunding; Defeasance.**

(a) Subject to the terms of this Agreement, (i) the City covenants and agrees to make the City Payments to the Trustee at its principal corporate trust office for the account of the Authority during the Agreement Term on or before 11:00 A.M., such Trustee’s local time, in the amount of the then due City Payment and on the City Payment Dates. All City Payments shall be deposited by the Trustee under the Project Indenture in accordance with the provisions of the Project Indenture, and shall be used and applied by such Trustee in the manner and for the purposes set forth in the Project Indenture.

(b) If (i) the Project Bonds are refunded at any time after the Completion Date for the purpose of achieving debt service savings and (ii) all or a portion of the annual debt service payments on such Project Bonds are reduced following such refunding, then the City, pursuant to Section 2.6 hereof, shall reduce the City Payments paid to the Authority on and after the day of such refunding to an amount equal to the actual annual debt service payments on such refunding bonds. If the Project Bonds are defeased and no longer outstanding pursuant to the Project Indenture, then the City shall no longer have any obligation to make City Payments.

**Section 4.8. Limited Obligations.** The obligations of the City under this Agreement are subject to annual appropriation as provided herein. Neither the obligations of the City with respect to such payments nor the Project Bonds or the Reimbursement Obligations will constitute a debt or liability of the City or of any agency or political subdivision of the City within the meaning of any State constitutional provision or statutory limitation and shall not, directly, indirectly or contingently, obligate the City to levy any form of taxation therefor or to make any payments from any other sources beyond those appropriated with respect to this Agreement for the City’s then-current Fiscal Year.

**Section 4.9. Assignment of Authority’s Rights.** Under the Project Indenture, the Authority will, as additional security for the Project Bonds, assign, transfer, pledge and grant a security interest to the Trustee in the City Payments and other moneys received by the Authority hereunder and directed to be deposited by the Authority with the Trustee under the Project Indenture. The Trustee is hereby given the right to enforce either jointly with the Authority or separately, the performance of the City’s obligations under this agreement to make City Payments. The City hereby consents to the same and agrees that the Trustee may enforce such rights as provided in the Project Indenture and the City will cause payments required hereunder to be made directly to the Trustee. This Agreement recognizes that the Trustee is a third party creditor-beneficiary hereof with respect to the City’s obligations under this Agreement to make City Payments.

**Section 4.10. Event of Non-Appropriation.** Failure of the Board of Aldermen of the City to budget and appropriate, specifically with respect to this Agreement, on or before the last day of its Fiscal Year, the City Payments or the Sales Tax Reimbursement Proceeds for the next succeeding Fiscal Year is hereby defined as and declared to be and to constitute an “Event of Non-Appropriation” under this Agreement.

Upon receipt of a certificate pursuant to Section 2.6 hereof from the City which states that the City has not appropriated the funds required to be appropriated by the City under Section 3.2 or Section 2.6 hereof, or upon receipt of other notice of the occurrence of any Event of Non-Appropriation with respect to the City, the Trustee shall immediately notify the Authority and the MLS Owner Group of the occurrence of an Event of Non-Appropriation.

The City covenants and agrees that, to the extent permitted by law, if an Event of Default specified in Section 8.1(a) hereof occurs with respect to the City, then so long as the Project Bonds are outstanding the City will not contribute funds, construct, own or operate within the geographical boundaries of the City any stadium with more than 15,000 seats designed for use by a professional soccer franchise. Notwithstanding any provision hereof to the contrary, the provisions of this paragraph shall survive the termination of this Agreement and shall remain in effect and be binding upon the City.

**Section 4.11. Termination of Agreement Term; Option to Extend.**

(a) The Agreement Term shall terminate with regard to the City upon the earliest of the occurrence of any of the following events with respect to the City:

(i) The last day of the Fiscal Year during which there occurs an Event of Non-Appropriation as provided in Section 2.10 hereof;

(ii) An Event of Default with respect to the City and termination of the Agreement Term under Article VI of this Agreement;

(iii) \_\_\_\_\_ \_\_, 2047, which date constitutes the last day of the Agreement Term, or such later date as all City Payments required hereunder are paid by the City.

(b) The Agreement Term shall again commence notwithstanding termination pursuant to (a)(i) above for the City if the City appropriates all amounts required at the time to be appropriated pursuant to Section 2.6 and pays all City Payments required at the time to have been paid, in each instance without regard to any termination of the Agreement Term with respect to the City, plus any additional amount required sufficient to reimburse the MLS Owner Group and the Trustee for all amounts advanced or incurred by the MLS Owner Group and the Trustee due to such Event of Non-Appropriation as provided in Section 6.5 hereof and to cause the amounts on deposit in each of the funds and accounts created pursuant to the applicable Project Indenture to at least equal the amounts which would have otherwise been on deposit therein at the time of such payment if such Event of Non-Appropriation had not occurred, exclusive of lost investment earnings.

(c) Notwithstanding anything to the contrary, the Agreement Term shall terminate upon an Event of Default with regard to the MLS Owner Group that remains uncured beyond all applicable cure periods.

(d) Notwithstanding anything to the contrary, the Agreement Term shall terminate on the date on which all Project Bonds are paid or deemed to be paid as provided in the Project

Indenture or as set forth herein, unless the Agreement Term has been extended pursuant to subsection (e) below.

(e) The MLS Owner Group shall have the option to extend the Agreement Term for one (1) additional term of fifteen (15) years upon written notice delivered to the City and the Authority not later than two (2) years prior to the later of (i) \_\_\_\_\_, 2047, or (ii) the final date all City Payments required hereunder are to be paid by the City. The exercise of such option to extend the Agreement Term is not intended to extend the term of the Project Bonds or the City Payments.

**Section 4.12. Covenants Regarding Termination of Agreement Term.** Termination of the Agreement Term with respect to the City shall terminate all rights and obligations of the City under this Agreement.

The City and the Authority covenant and agree that termination of the Agreement Term with respect to the City shall not necessarily terminate the Agreement Term with respect to the Authority and the MLS Owner Group and that the rights and obligations of the MLS Owner Group and the Authority pursuant to this Agreement shall continue as provided herein.

**Section 4.13. Obligations of City Absolute and Unconditional.**

(a) From and after the date the Project Bonds are issued, the obligations of the City under this Agreement to make City Payments during the Agreement Term on or before the date the same become due, and to perform all of their its other obligations, covenants and agreements hereunder, shall, subject to the provision of subsection (b) hereof, be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project shall have been started or completed, or whether the Authority has title thereto, or whether the MLS Group or the Authority is in default or has failed to perform any obligations hereunder, and notwithstanding any damage to, loss, theft or destruction of the Project or any part thereof, any failure of consideration, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the City's or the Authority's use thereof, the eviction or constructive eviction of the City or the Authority, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Authority's legal organization or status, or any default of the Authority or the MLS Group hereunder, and regardless of the invalidity of any action of the Authority or the MLS Group, and regardless of the invalidity of any portion of this Agreement.

(b) Notwithstanding any provision or covenant contained in this Agreement, the Project Indenture or the Project Bonds, the Reimbursement Indenture or the Reimbursement Obligations, the MLS Owner Group shall be solely responsible for the risk of any costs overruns with regards to the Project and the City shall not be obligated to appropriate moneys or to pay City Payments or Sales Tax Reimbursement Proceeds in any Fiscal Year in excess of such amounts as required pursuant to (i) the Project Indenture and the Reimbursement Indenture with respect to such Fiscal Year, or (ii) this Agreement. The City shall not be under any obligation to levy any taxes in order to raise revenues to pay such City Payments.

(c) Nothing in this Agreement shall be construed to release the MLS Owner Group from the performance of any agreement on its part herein contained or as a waiver by the City of any rights or claims which the City may have against the MLS Owner Group under this Agreement or otherwise, but any recovery upon such rights and claims shall be had from the MLS Owner Group separately, it being the intent of this Agreement that the City shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Agreement for the benefit of the Owners of the Project Bonds. The Authority may, however, at its own cost and expense and in its own name or in the name of the MLS Owner Group, prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the MLS Owner Group hereby agrees to cooperate fully with the City and to take all action necessary to effect the substitution of the City for the MLS Owner in any such action or proceeding if the City shall so request.

(d) Notwithstanding anything to the contrary in this Agreement, the Authority shall have no obligation to issue the Project Bonds if unexpected and extraordinary market conditions make it impracticable for the Authority to issue the Project Bonds. The City shall not have any obligation to make City Payments hereunder unless or until the Authority has issued the Project Bonds.

## **ARTICLE V MAINTENANCE, TAXES AND INSURANCE**

### **Section 5.1. Maintenance, Repairs and Utilities.**

(a) The MLS Owner Group shall throughout the Agreement Term and at its own expense (i) keep and maintain the Project and all parts thereof in good repair and operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof, and (ii) keep the Project and all parts thereof in safe condition and free from filth, nuisance or conditions unreasonably increasing the danger of fire.

(b) The MLS Owner Group shall contract in its own name and pay for all utilities and utility services used by the MLS Owner Group in, on or about the Project, and the MLS Owner Group shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

(c) The City shall have no obligation to provide any funding for the operations or maintenance of the Project. However, the City, if requested, will use all reasonable efforts to support the MLS Owner Group in finding funding to assist with operations and maintenance of the Project.

**Section 5.2. Taxes, Assessments and Other Governmental Charges.** The MLS Owner Group shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of

the MLS Owner Group therein) or any buildings, improvements, machinery and equipment at any time installed thereon, or the income therefrom or City Payments and other amounts payable under this Agreement, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would encumber the Authority's title to the Project. Without limiting the foregoing, the parties expect that while the Project is owned by the Authority, the Project will be exempt from all ad valorem property taxes by reason of such ownership. Neither the City nor the Authority will voluntarily take any action that may cause or induce the levy or assessment of ad valorem taxes on the Project. If such a levy or assessment occurs, the City and/or the Authority shall, at the MLS Owner Group's request and at the MLS Owner Group's expense, cooperate with the MLS Owner Group in all reasonable ways to prevent and/or remove any levy or assessment against the Project.

**Section 5.3. Title Insurance.** The Authority will purchase, at the MLS Owner Group's expense, from a company duly qualified to issue such insurance in the State, an American Land Title Association owner's policy of title insurance, such policy to be at least in the amount of the principal amount of the Project Bonds at the time outstanding. Such policy shall provide for mechanics' lien coverage (to the extent available from the insurer), access and zoning coverage and deletion of the survey exception. A copy of said policy or commitment and endorsements or commitments therefor required by Section 1.7 hereof will be delivered to the Trustee by the Authority at the times required in Section 1.7 hereof. The Net Proceeds of such policy shall be applied in accordance with the provisions of Article IV of this Agreement.

**Section 5.4. Casualty Insurance.**

(a) From and after the execution by the MLS Owner Group of a Project Construction Contract for the Project, the MLS Owner Group shall at its sole cost and expense obtain and shall maintain throughout the Agreement Term, a policy or policies of insurance to keep the Project constantly insured against loss or damage by fire, lightning, earthquake and all other risks covered by the extended coverage insurance endorsement then in use in the State in an amount equal to the Full Insurable Value thereof (subject to loss deductible clauses not in excess of \$500,000). The Full Insurable Value of the Project shall be determined at least once every three years by an architect, contractor, appraiser, appraisal company or one of the insurers, to be selected and paid by the Authority. Notwithstanding the foregoing, during the Construction Period, the MLS Owner Group may provide, in lieu of the insurance described above, builder's risk insurance in the amount of the full replacement cost thereof (subject to loss deductible clauses not in excess of \$500,000). The insurance required pursuant to this Section shall be maintained at the MLS Owner Group's sole cost and expense, and shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the MLS Owner Group, the Authority, the City and the Trustee as insureds as their respective interests may appear, shall contain a provision that such insurance may not be cancelled by the issuer thereof without at least 30 days' advance written notice to the MLS

Owner Group, the Authority, the City and the Trustee and shall be payable to the Trustee as provided in Article IV hereof.

(b) In the event of loss or damage to the Project, the Net Proceeds of casualty insurance carried pursuant to this Section shall be paid to the Trustee and shall be applied as provided in Article IV of this Agreement.

**Section 5.5. Public Liability Insurance.**

(a) The MLS Owner Group shall at its sole cost and expense maintain or cause to be maintained at all times during the Agreement Term general accident and public liability insurance (including but not limited to coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), under which the MLS Owner Group, the Authority, the City and the Trustee shall be named as insureds, properly protecting and indemnifying the MLS Owner Group, the Authority, the City and the Trustee, in an amount not less than the current absolute statutory waivers of sovereign immunity under Sections 537.600 and 537.610 of the Revised Statutes of Missouri, as amended (which for calendar year 2017 is equal to \$2,762,789) for all claims arising out of a single accident and \$414,418 for any one person in a single accident or occurrence). Further, the policy shall be adjusted upward annually, to remain at all times not less than the inflation-adjusted sovereign immunity limits as published in the Missouri Register on an annual basis by the Department of Insurance pursuant to Section 537.610 of the Revised Statutes of Missouri, as amended. The policies of said insurance shall contain a provision that such insurance may not be cancelled by the issuer thereof without at least 30 days' advance written notice to the MLS Owner Group, the Authority, the City and the Trustee.

(b) In the event of a public liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

**Section 5.6. Other Insurance.** The MLS Owner Group agrees throughout the Agreement Term to maintain or cause to be maintained, in connection with the Project, (i) the Worker's Compensation coverage required by the laws of the State, and (ii) if the Project Site is located in an area identified as having "special flood hazards" as such term is defined pursuant to applicable federal law, flood insurance in commercially reasonable amounts, but only to the extent that such flood insurance costs are financially feasible for the Project to support.

**Section 5.7. Blanket Policies of Insurance.** The MLS Owner Group may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided that the MLS Owner Group complies with each and all of the requirements and specifications of this Article respecting insurance.

**Section 5.8. Insurance Certificate.** From and after the delivery to the Trustee of the Project Construction Contract, and no later than each anniversary thereof, the MLS Owner Group shall provide to the Authority and the Trustee certificates from the insurance companies which provide insurance coverage for the MLS Owner Group (the "Insurance Certificate") to the effect that the insurance requirements of this Article have been satisfied and copies of all such

insurance policies, or originals or certificates thereof, each bearing notations evidencing payment of the premiums, or other evidence of such payment; provided, evidence of the insurance required by Section 3.3 hereof is not required until the Authority acquires any portion of the Project Site.

**Section 5.9. RESERVED.**

**ARTICLE VI  
DAMAGE, DESTRUCTION AND CONDEMNATION**

**Section 6.1. Damage and Destruction.**

(a) If during the Agreement Term, the Project is damaged or destroyed, in whole or in part, by fire or other casualty, to such extent that the claim for loss (including any deductible amount pertaining thereto) resulting from such damage or destruction is greater than \$250,000, the MLS Owner Group shall promptly notify the Trustee in writing as to the nature and extent of such damage or loss and whether it is practicable and desirable to rebuild, repair, restore or replace such damage or loss.

(b) If the MLS Owner Group shall determine that such rebuilding, repairing, restoring or replacing is practicable and desirable, the MLS Owner Group shall proceed promptly with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing of the property damaged or destroyed so as to place the Project in substantially the same condition as existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the MLS Owner Group and as will not impair operating unity or productive capacity of the Project or the character of the Project. In such case, any Net Proceeds of casualty insurance required under this Agreement and received with respect to any such damage or loss to the Project, if such Net Proceeds exceeds \$250,000, shall be paid to the Trustee and shall be deposited into a separate account to be established in the Construction Fund and if such Net Proceeds do not exceed \$250,000, such Net Proceeds shall be paid to the MLS Owner Group. Such Net Proceeds shall be used and applied (i) in accordance with the disbursement requirements of Section 1.7 hereof if required to be deposited in the Construction Fund, and (ii) for the purpose of paying the cost of such rebuilding, repairing, restoring or replacing such damage or loss. Any Net Proceeds remaining after completion of such rebuilding, repairing, restoring or replacing shall be deposited into the Bond Fund pursuant to the Project Indenture. If such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the MLS Owner Group may elect to rebuild, repair, restore or replace the Project only if the MLS Owner Group shall have provided sufficient funds to nonetheless complete the work thereof in excess of the amount of said Net Proceeds.

(c) If the MLS Owner Group, after consultation with the Authority and the City, shall determine that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, or there are insufficient funds for said purpose, any Net Proceeds of casualty insurance required by Section 3.4 hereof and received with respect to any such damage or loss to the Project shall be paid into the Bond Fund pursuant to the Project Indenture and shall be used to redeem Project Bonds on the earliest possible redemption date or to pay the principal of any

Project Bonds as the same become due. The MLS Owner Group agrees to be reasonable in exercising its judgment pursuant to this subsection (c).

(d) The City and the Authority shall not, by reason of the inability of the City, the Authority or the MLS Owner Group to use all or any part of the Project during any period in which the Project is damaged or destroyed, or is being repaired, rebuilt, restored or replaced, or by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the MLS Owner Group, the Trustee or the Owners of the Project Bonds or any abatement or diminution of the City Payments payable by the City under this Agreement or of any other obligations of the City or the Authority under this Agreement except as expressly provided in this Section.

**Section 6.2. Condemnation or Insured Deficiency of Title.**

(a) If during the Agreement Term, (i) title to, or the temporary use of, all or any part of the Project shall be condemned by or be sold under threat of condemnation to any authority possessing the power of eminent domain, or (ii) title to all or any part of the Project shall be found to be deficient or nonexistent, to such extent that the claim or loss resulting from such condemnation or loss of title is greater than \$250,000, the MLS Owner Group shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation, or the date of sale under threat of condemnation, or proceedings determining such loss of title notify the Trustee in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the MLS Owner Group shall determine that such substitution is practicable and desirable, the MLS Owner Group shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed prior to the exercise of the said power of eminent domain or loss of title, including the acquisition or construction of other improvements which will be deemed a part of the Project and available for use and occupancy without the payment of any rent other than herein provided to the same extent as if such other improvements were specifically described herein and demised hereby. In such case, any Net Proceeds received from any award or awards in respect of the Project or any part thereof made in such condemnation or eminent domain proceedings or of title insurance received with respect to any such loss of title, if such Net Proceeds exceed \$250,000, shall be paid to the Trustee, shall be deposited into a separate account to be established in the Construction Fund and if such Net Proceeds do not exceed \$250,000, such Net Proceeds shall be paid to the MLS Owner Group. Such Net Proceeds shall be used and applied (i) in accordance with the disbursement requirements of Section 1.7 hereof if required to be deposited in the Construction Fund, and (ii) for the purpose of paying the cost of such substitution. Any Net Proceeds remaining after completion of such substitution shall be deposited into the Bond Fund pursuant to the Project Indenture.

(c) If the MLS Owner Group, after consultation with the City and the Authority, shall determine that it is not practicable or desirable to acquire or construct substitute improvements, any Net Proceeds of condemnation awards or title insurance received by the MLS Owner Group

shall be paid to the Trustee and deposited into the Bond Fund pursuant to the Project Indenture and shall be used to redeem Project Bonds on the earliest possible redemption date or to pay the principal of any Project Bonds as the same becomes due and payable.

(d) The City and the Authority shall not, by reason of the inability of the City, the Authority or the MLS Owner Group to use all or any part of the Project during any such period of restoration or acquisition or by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement from the MLS Owner Group, the Trustee or the Owners of the Project Bonds or any abatement or diminution of the City Payments payable by the City under this Agreement nor of any other obligations of the City or the Authority hereunder except as expressly provided in this Section.

## **ARTICLE VII SPECIAL COVENANTS**

**Section 7.1. No Warranty of Condition or Suitability.** No party hereto makes any warranty, either express or implied, as to the condition of the Project or as to its suitability for the Authority's or the MLS Owner Group's purposes or needs.

**Section 7.2. RESERVED.**

**Section 7.3. Permitted Use of the Project.** Subject to the provisions of this Article and the Act, the MLS Owner Group shall have the right to use the Project for any purpose allowed by law. Except as provided in this Agreement, the City and the Authority reserve no power or authority with respect to the operation of the Project by the MLS Owner Group and activities incident thereto, it being the intention of the parties hereto that so long as the MLS Owner Group shall duly and faithfully observe and perform all of the terms, covenants, provisions and agreements of this Agreement, the MLS Owner Group shall manage, administer and govern the Project on a continuing day-to-day basis.

**Section 7.4. Compliance with Laws, Ordinances, Orders, Rules and Regulations.** The MLS Owner Group shall comply with all laws, ordinances, orders, rules and regulations of duly constituted public authorities which may be applicable to it or to the Project. Notwithstanding any provision contained in this Section, however, the MLS Owner Group shall have the right at its own cost and expense to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance (including all ordinances of general application of the City), order, judgment, decree, rule, regulation, direction or requirement, and during such contest or review the MLS Owner Group may refrain from complying therewith, provided that such contest does not materially impair the obligation of the MLS Owner Group under this Agreement.

**Section 7.5. Permits and Authorizations.** The MLS Owner Group shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification, improvement or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured and payment therefor made. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws,

ordinances, governmental regulations and requirements and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of Article III hereof.

**Section 7.6. Covenant to Maintain Records and Accounts and Furnish Reports.**

The MLS Owner Group covenants and agrees that, so long as any of the Project Bonds remain Outstanding, the MLS Owner Group will keep proper books of record and account in which full, true and complete entries will be made of all transactions relating to the acquisition, planning, construction, equipping and improvement of the Project. Following the date of the issuance and delivery of the Project Bonds the MLS Owner Group will require the Construction Manager to prepare at least once in each 30-day period a progress report concerning the construction of the Project. A copy of each such report and a statement of the expenditures made in connection with the acquisition, planning, construction, equipping and improvement of the Project will be provided to the City and the Authority and, upon request, the Trustee..

**Section 7.7. Right of Inspection.** The MLS Owner Group will permit the Authority, the City, the Trustee and the Owner or Owners of 10% or more in aggregate principal amount of the Project Bonds then outstanding (or such persons as such Owner or Owners may designate) to visit and inspect at the expense of such persons, the Project and to discuss the affairs, finances and accounts of the MLS Owner Group with its and their officers and independent accountants, all at such reasonable times and as often as the Authority, the City, the Trustee or such Owner or Owners may reasonably request.

**Section 7.8. Restrictions on Mortgage or Sale.** The MLS Owner Group will not mortgage, pledge or otherwise encumber the Project or any part thereof, nor will it sell, lease or otherwise dispose of the Project or any material part thereof; provided, however, subject to the requirements of Section 5.10 hereof, the MLS Owner Group may lease or allow the sublease of the Project to or by the MLS Team or others which, in the determination of the Authority, are necessary or desirable to carry out the purposes allowed by law, including, but not limited to, contractual arrangements as to parking, signage, concessions, naming rights and other advertising, telephonic and other communications rights, and media rights of all types; provided, further, the MLS Owner Group may mortgage, pledge or otherwise encumber any fixtures constituting Project Improvements and any Project Equipment if such fixtures or Project Equipment are capable of removal without substantial damage to the Project and the removal thereof would not substantially impair the structural strength or utility of the Project; and provided, further, the MLS Owner Group may sell any portion of the Project which shall have been replaced by other similar property of at least equal value, or which shall cease to be necessary for the efficient operation of the Project. In the event of sale, the MLS Owner Group will (i) deposit the proceeds into the Bond Fund pursuant to the Project Indenture for the payment of outstanding Project Bonds or (ii) apply the proceeds to the replacement of the property so disposed of by other property which shall be incorporated into the Project as hereinbefore provided. The MLS Owner Group may cease to operate, abandon or otherwise dispose of any property which has become obsolete, nonproductive or otherwise unusable to the advantage of the MLS Owner Group.

**Section 7.9. Additions, Modifications and Improvements to the Project.**

(a) The MLS Owner Group shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project as the MLS Owner Group from time to time may deem necessary or desirable for its purposes; provided, however, the MLS Owner Group shall not make any additions, modifications or improvements which will adversely affect the operation of the Project or substantially reduce its value. All additions, modifications and improvements made by the MLS Owner Group pursuant to the authority of this Section shall (a) be made in a workmanlike manner and in strict compliance with all laws and ordinances applicable thereof, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Project.

(b) No addition, modification or improvement to the Project made pursuant to this Section shall entitle the MLS Owner Group to any reimbursement of any City Payments from the City, the Trustee or the Owners, nor shall the City be entitled to any abatement or diminution in City Payments under this Agreement.

**Section 7.10. Assignment and Subleasing.** The MLS Owner Group may assign this Agreement in whole or in part, and may sublease the Project as a whole or in part, without the necessity of obtaining the consent of either the City or the Trustee, subject, however, to each of the following conditions:

(a) No assignment or sublease shall relieve the MLS Owner Group, the City or the Authority from primary liability for any of their obligations hereunder, and in the event of any such assignment or sublease the City shall continue to remain primarily liable for payment of the City Payments specified in Section 2.7 hereof and for performance and observance of the other covenants, warranties, representations and agreements on the City's or the Authority's part herein provided to be performed and observed by it to the same extent as though no assignment or sublease had been made; and

(b) The MLS Owner Group shall, prior to any such assignment or sublease, furnish or cause to be furnished to the Trustee an opinion of counsel nationally recognized on the subject of municipal bonds to the effect that such assignment or sublease will not cause the interest on any tax-exempt Project Bonds to be includable in gross income for federal income tax purposes or otherwise adversely affect the exclusion from gross income for federal income tax purposes of the interest on any tax-exempt Project Bonds;

(c) The MLS Owner Group shall provide prior written notice of any such assignment or sublease to the City and the Authority, and, within 60 days after the delivery thereof, furnish or cause to be furnished to the Trustee a true and complete copy of each such assignment, assumption of obligations and sublease, as the case may be; and

(d) Such assignment or sublease shall be approved by the governing board of the Authority.

**Section 7.11. Granting of Easements.** If no Event of Default under this Agreement shall have happened and be continuing, the MLS Owner Group may at any time or times, with the prior written consent of the Authority, (a) grant or cause to be granted easements, licenses,

rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property included in the Project, or (b) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the MLS Owner Group shall determine. The MLS Owner Group will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon delivery to the Trustee of: (i) a copy of the instrument of grant or release or of the agreement or other arrangements; (ii) a written application signed by an Authorized MLS Owner Group Representative requesting such instrument; and (iii) a certificate executed by an Authorized MLS Owner Group Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Project, will not impair the effective use or interfere with the efficient and economical operation of the Project.

## **ARTICLE VIII DEFAULT AND REMEDIES**

**Section 8.1. Events of Default.** If any one or more of the following events shall occur and be continuing with respect to the City, it is hereby defined as and declared to be and to constitute an Event of Default or “default” under this Agreement with respect to the City and if any one or more of the following events shall occur and be continuing with respect to the Authority or the MLS Owner Group, it is hereby defined as and declared to be and to constitute an Event of Default or “default” under this Agreement with respect to the Authority and the MLS Owner Group:

(a) Once the City has appropriated a City Payment or any monies allocated to pay Reimbursement Obligations, then failure by the City to pay such appropriated City Payment or any monies allocated to pay Reimbursement Obligations (except as further provided herein) during the Agreement Term for a period of five business days after said payments are due and payable; or

(b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Agreement on the City’s or the MLS Owner Group’s part to be observed or performed, and such default shall continue for 60 days after written notice by another party or the Trustee specifying such default or such longer period as shall be reasonably required to cure such default; provided that (i) the defaulting party has commenced such cure within said 60-day period, and (ii) the defaulting party diligently prosecutes such cure to completion; or

(c) The City or the MLS Owner Group shall (i) admit in writing its inability to pay its debts as they become due; or (ii) file a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future Federal or State statute or regulation, or file a pleading asking for such relief; or (iii) make an assignment for the benefit of its creditors; or (iv) consent to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or shall fail to have vacated or set aside the appointment of any trustee, receiver or liquidator which was made without the City’s or the MLS Owner Group’s, as

applicable, consent or acquiescence; or (v) be finally adjudicated as bankrupt or insolvent under any Federal or State law; or (vi) be subject to any proceeding or suffer the entry of a final and non-appealable court order, under any Federal or State law appointing a receiver, trustee or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not the subject of the City's consent, shall not be dismissed, vacated, denied, set aside or stayed within 60 days after the day of entry or commencement; or (vii) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(d) The MLS Owner Group shall vacate or abandon the Project, and the same shall remain uncared for and unoccupied for a period of 60 days; or

(e) Default or the occurrence of an Event of Default under the Project Indenture; or

(f) If any representation or warranty made in this Agreement by the MLS Owner Group, the Authority or the City, or in any certificate, agreement, instrument or statement furnished or made or delivered pursuant hereto or thereto or in connection herewith or therewith, shall prove to have been incorrect in any material respect when made or effected.

Notwithstanding anything to the contrary in this Agreement, an Event of Non-Appropriation shall not be considered an Event of Default.

**Section 8.2. Remedies on Default.** If any Event of Default hereof shall have occurred and be continuing hereunder, and except as otherwise provided in this Agreement, the defaulting party shall, upon written notice from one of the other parties hereto specifying such default, proceed immediately to cure or remedy such default, and, shall, in any event, within 30 days after receipt of notice, commence to cure or remedy such default. If such cure or remedy is not taken or not diligently pursued, or the default is not cured or remedied with a reasonable time, any aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default, including, but not limited to proceedings to compel specific performance or observance of any obligation, agreement or covenant under this Agreement to the extent permitted by applicable law. Any defaulting party shall forfeit its rights to enforce this Agreement during the time that it is in default.

**Section 8.3. Trustee's Obligations Upon Event of Default.**

(a) If any Event of Default shall have occurred and be continuing with respect to the City, then the Trustee shall cause the City Payments and any funds allocated to the payment of Reimbursement Obligations for the remainder of the City's Fiscal Year to become due and payable.

(b) If an Event of Default of the Project Indenture or the Reimbursement Indenture shall have occurred and be continuing, the remedies of the Trustee and the Owners of the Project

Bonds or the Reimbursement Obligations shall be as set forth in the applicable Project Indenture or Reimbursement Indenture.

**Section 8.4. Limitations on Remedies.** Notwithstanding any provision of this Agreement to the contrary, a judgment requiring a payment of money may be entered against the City by reason of an Event of Default hereunder only as to City Payments which would otherwise have been payable by the City hereunder during the remainder of the Fiscal Year in which such Event of Default occurs.

**Section 8.5. MLS Owner Group's Performance of the City's Obligations.** Upon non-receipt by the Trustee of any City Payment when due or upon termination of this Agreement with respect to the City upon the occurrence of an Event of Non-Appropriation, the MLS Owner Group may (but shall not be obligated so to do), and without waiving or releasing the City from any obligation hereunder, make any such City Payment (including City Payments which would have been payable hereunder but for termination of this Agreement with respect to the City upon the occurrence of an Event of Non-Appropriation) from moneys on deposit in the Expense Fund or from any other available moneys of the MLS Owner Group, and the payment of any such City Payment by the MLS Owner Group shall be treated as a payment by the City for purposes of Section 6.1 hereof.

If the City shall fail to make any other payment or to keep or perform any of its obligations as provided in this Agreement, then the MLS Owner Group, or the Trustee in the MLS Owner Group's name, may (but shall not be obligated so to do) upon the continuance of such failure on the City's part for 60 days after notice of such failure is given to the City by the MLS Owner Group or the Trustee, and without waiving or releasing the City from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all sums so paid by the MLS Owner Group or the Trustee and all necessary incidental costs and expenses incurred by the MLS Owner Group or the Trustee in performing such obligations shall be deemed Additional Payments, and such amounts advanced by the Trustee shall be paid by the MLS Owner Group to the Trustee on demand, but solely from moneys on deposit in the Expense Fund.

**Section 8.6. Rights and Remedies Cumulative.** The rights and remedies reserved by the MLS Owner Group, the City and the Authority hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The MLS Owner Group, the City and the Authority shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

**Section 8.7. Waiver of Breach.** No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the City of any covenant, agreement or undertaking by the City, the MLS Owner Group may nevertheless accept from the City any payment or payments hereunder without in any way waiving the MLS Owner Group's right to exercise any of its rights and remedies as

provided herein with respect to any such default or defaults of the City which were in existence at the time when such payment or payments were accepted.

**Section 8.8. Trustee's Exercise of the Trustee's Remedies.** Whenever any Event of Default shall have occurred and be continuing, the Trustee shall exercise any or all of the rights required to be taken by the Trustee under this Article. In addition, the Trustee shall have available to it all of the remedies prescribed by the Project Indenture.

## **ARTICLE IX AMENDMENTS, CHANGES AND MODIFICATIONS**

**Section 9.1. Amendments, Changes and Modifications.** Prior to the issuance of any Project Bonds, the parties hereto may execute such amendments, changes or modifications hereto without the approval of any third party who is not a party hereto. Except as otherwise provided in this Agreement or in the Project Indenture, subsequent to the initial issuance of Project Bonds and prior to the payment thereof having been made in accordance with the provisions of the Project Indenture, this Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee, given in accordance with the provisions of the Project Indenture.

## **ARTICLE X MISCELLANEOUS PROVISIONS**

**Section 10.1. Notices.** All notices, certificates or other communications required or desired to be given or delivered hereunder shall be in writing and shall be deemed duly given or delivered when mailed by certified United States first class mail postage prepaid, when delivered personally, or when dispatched by reputable commercial overnight courier marked for next day morning delivery, addressed as follows:

(a) To the Authority:

Land Clearance for Redevelopment Authority of the City of St. Louis  
1520 Market Street, Suite 2000  
St. Louis, Missouri 63103  
Attention: Executive Director

with a copy to:

St. Louis Development Corporation  
1520 Market Street, Suite 2000  
St. Louis, Missouri 63103  
Attention: General Counsel

(b) To the City:

City of St. Louis, Missouri  
1200 Market Street

St. Louis, Missouri 63103  
Attention: \_\_\_\_\_

With a copy to:

City Counselor  
City of St. Louis, Missouri  
1200 Market Street, Room 314  
St. Louis, Missouri 63101

(c) To the MLS Owner Group:

SC STL LLC  
9401 Indian Creek Parkway  
Suite 800  
Overland Park, Kansas 66210  
Attn: Terry Matlack, Vice Chairman

With a copy to:

Husch Blackwell LLP  
190 Carondelet Plaza  
Suite 600  
Clayton, MO 63105  
Attn: Gregory R. Smith

All notices given by certified mail as aforesaid shall be deemed to have been delivered three days after posting with the United States Postal Service. Notice sent by overnight courier shall be deemed to have been delivered at 12:00 p.m. (noon) on the business day next succeeding the business day of dispatch. A duplicate copy of each notice, certificate or other communication given hereunder by one party to the others shall also be given to the Trustee at its address as set forth in the Project Indenture. The parties and the Trustee may from time to time designate, by notice given hereunder to the other such parties, another address to which subsequent notices, certificates or other communications shall be sent.

**Section 10.2. Consents and Approvals.** Wherever in this Agreement it is provided that a party hereto shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the party shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules. Any approvals or consents required by the Authority hereunder may be given by the Executive Director. Any approvals or consents required by the City hereunder may be given by the City Counselor.

**Section 10.3. No Pecuniary Liability.** No provision, covenant or agreement contained in this Agreement, the Project Indenture or the Project Bonds, or any obligation herein or therein

imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or any taxing powers of the City.

**Section 10.4. Reserved.**

**Section 10.5. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State.

**Section 10.6. Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the MLS Owner Group, the Authority and the City and their respective successors and assigns.

**Section 10.7. Severability.** If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

**Section 10.8. Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 10.9. Exculpation.** No member of the Authority and no public official and no officer or employee of the Authority or of the City shall have any personal liability for payment of any claim or for the performance of any duty, obligation or undertaking arising from this Agreement.

**Section 10.10. Electronic Transactions.** The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents will be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names and caused their respective seals to be affixed thereto, and attested as to the date first above written.

“CITY”

**THE CITY OF ST. LOUIS, MISSOURI**

By: \_\_\_\_\_  
Francis G. Slay, Mayor

By: \_\_\_\_\_  
Darlene Green, Comptroller

(SEAL)

Attest:

\_\_\_\_\_  
Parrie May, City Register

Approved as to Form:

\_\_\_\_\_  
Michael Garvin, City Counselor

STATE OF MISSOURI        )  
  ) SS.  
CITY OF ST. LOUIS        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF MISSOURI        )  
  ) SS.  
CITY OF ST. LOUIS        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

“AUTHORITY”

**LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF THE CITY OF ST. LOUIS**

(SEAL)

By: \_\_\_\_\_  
Otis Williams, Executive Director

ATTEST:

\_\_\_\_\_

APPROVED AS TO LEGAL FORM FOR THE AUTHORITY

\_\_\_\_\_  
David Meyer  
Assistant City Counselor

STATE OF MISSOURI     )  
  )SS  
CITY OF ST. LOUIS     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me appeared Otis Williams, to me personally known, who, being by me duly sworn, did say that he is the Executive Director of the LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF THE CITY OF ST. LOUIS, a public body corporate and politic of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said Authority, and said instrument was signed and sealed in behalf of said Authority by authority of its Board of Commissioners, and said acknowledged said instrument to be the free act and deed of said Authority.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

**“MLS Owner Group”**

**SC STL LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MISSOURI        )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_day    of       \_\_\_\_\_,    20\_\_,    before    me    appeared  
\_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he  
is the \_\_\_\_\_of SC STL LLC, and that foregoing instrument was signed on  
behalf of said company by authority of its members, and said individual acknowledged said  
instrument to be the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the  
County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

EXHIBIT A  
PROJECT SITE



Vicinity Map



EXHIBIT B-1  
FORM OF REQUISITION FOR SITE COSTS

EXHIBIT B-2  
FORM OF REQUISITION FOR PROJECT COSTS

**DRAFT**

**Confidential**  
Attorney/Client Work Product Privilege

**EXHIBIT C**  
**ESTIMATED PROJECT SOURCES AND USES**

**ESTIMATED PROJECT COSTS:**

<i>Cost Type</i>	<i>Estimated Cost</i>
Stadium Design/Construction	\$140,000,000
Private Contribution to Site Improvements <sup>1</sup>	\$15,000,000
<i>Total Estimated Costs:</i>	\$155,000,000

**ESTIMATED FINANCING SOURCES:**

MLS Team Owner Group Private Equity/Debt <sup>2</sup>	\$95,000,000
Reimbursement Amount	\$10,000,000
City Contribution of New Use Tax Revenues/Bond Proceeds	\$50,000,000
<i>Total Estimated Sources:</i>	\$155,000,000

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<sup>1</sup>The State of Missouri will contribute (via lease or conveyance of fee title) the majority of the Project Site and will perform certain site clearing and infrastructure work.

<sup>2</sup> Excludes other private equity contributions, such as the payment of the MLS expansion fee.