



## Request for City Council Committee Action from the Department of Community Planning & Economic Development

**Date:** December 9, 2014

**To:** Council Member Lisa Goodman, Chair, Community Development and Regulatory Services Committee

**Subject:** Downtown East Commons: City-MPRB Memorandum of Understanding

**Recommendation:** Authorize City staff to execute a Memorandum of Understanding with the Minneapolis Park and Recreation Board (MPRB) providing for conveyance and lease back of the Downtown East Commons

### Previous Directives:

On July 19, 2013, the City Council authorized staff to negotiate term sheets with Ryan Companies and the Minnesota Sports Facilities Authority (MSFA) consistent with the general conceptual framework for the Downtown East project. On October 4, 2013, the City Council established a Park Committee to formulate a vision for the new green space. On December 13, 2013, the City Council approved a term sheet with Ryan Companies US, Inc. (Ryan) and MSFA for the Downtown East project, adopted resolutions related to the financing, and authorized City officials to execute necessary agreements.

Prepared by: Miles Mercer, Business Development Lead, CPED  
Approved by: Charles T. Lutz, CPED Deputy Director

Presenter in Committee: Miles Mercer

### Financial Impact

Pursuant to the agreements of the Downtown East development project, the City is already obligated to purchase The Commons property and has financing in place to do so.

### Community Impact

Neighborhood Notification: The Elliot Park neighborhood and the East Downtown Council have both issued letters (dated July 8, 2013 and June 28, 2013, respectively) that are generally supportive of the broader Downtown East project's overall development concept. Ryan provided an update on the Downtown East

project to joint meetings of the Elliot Park/East Downtown Council/Downtown Minneapolis Neighborhood Association on January 16, 2014 and on May 15, 2014  
City Goals: Great Places, Living Well, A Hub of Economic Activity  
Comprehensive Plan: The blocks are guided for Mixed Use. On December 2, 2013, the City Planning Commission found the construction of the new green space as consistent with the Comprehensive Plan.  
Zoning Code: The easterly block is zoned B4N, the westerly block is zoned B4S-2

### **Background Information**

One component of the five-block Downtown East development project is the development of a green space on one and two-thirds of the blocks. This space is currently referred to as the "Downtown East Commons" (The Commons).

Under existing agreements for the Downtown East project, Ryan will clear the site of an existing building and make certain basic improvements to the infrastructure and utilities servicing the property by July 1, 2016. Upon this date, Ryan will transfer ownership of the improved property to the City. Financing for this acquisition is in place.

Staffs of the City and MPRB have negotiated a proposed Memorandum of Understanding that establishes a framework for the City and MPRB to cooperate in the ownership and operation of The Commons in order to promote the public interest and ensure compliance with state law and the City Charter.

MPRB plans to consider approval of the MOU at a committee meeting on December 3 and at the full board meeting on December 17. The City Council is considering approval of the MOU with this report.

### **Memorandum of Understanding**

Attached to this report is the full proposed Memorandum of Understanding between the City and MPRB related to the Downtown East Commons. Key provisions of the MOU include:

- After the City acquires The Commons property from Ryan pursuant to the existing Downtown East agreements, the City will transfer title of the property to MPRB at no cost.
- Contemporaneously, MPRB will lease back the property to the City pursuant to a ground lease, the form of which is an exhibit to the MOU. The ground lease will run as long as the Urban Park Use Agreement is in place. That agreement has an initial term of 30 years with options for extension for a total term of no longer than 50 years. There will be no rent for the ground lease. The MPRB will have no financial obligations for The Commons during the term of the lease.
- At the end of the ground lease, the City will surrender the property back to the MPRB for use as a park. The property will be in as-is condition, however

any existing improvements must meet current state and city building codes and be in reasonable operating condition so as not to require immediate repair.

- City staff will collaborate with MPRB staff during the design phase of The Commons by including an MPRB staff representative on the technical advisory committee that will advise the City on the design, development, and operations process. The City will engage the public during the design process and publicize opportunities that do so. The City, however, will retain final design approval.
- Enhancements, if any, to The Commons continue to be contingent on the availability of funding through fundraising or other sources.
- The City has the right to sublease part or all of The Commons and to contract with a conservancy (such as the new Greening Downtown Minneapolis nonprofit) or other oversight body to operate and maintain The Commons. If a conservancy model is chosen, the City will require that MPRB have representation on the board of any such organization.

# MEMORANDUM OF UNDERSTANDING

## (Downtown East Commons)

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by the CITY OF MINNEAPOLIS, a Minnesota municipal corporation (“City”), and the CITY OF MINNEAPOLIS acting by and through its PARK AND RECREATION BOARD, a unique department of the City under the home rule charter of the City of Minneapolis (“MPRB”).

### RECITALS:

- A. City has authority under the City Charter and Minnesota Statutes, sections 469.048-469.068, to acquire land as part of an industrial development district to address blight caused by marginal property.
- B. MPRB has authority under the City Charter to devise, adopt, and maintain parks and parkways in and adjacent to the City of Minneapolis and upon obtaining title to the same or any part thereof to hold, improve, govern and administer such land for park purposes.
- C. Pursuant to that certain Development Agreement (the “DTE Development Agreement”) dated February 10, 2014 among City, Ryan Companies US, Inc. (“Ryan”) and Minnesota Sports Facilities Authority (“MSFA”), City has agreed to acquire certain real property referred to therein as the “Green Space Property” and legally described on **Exhibit A** to this MOU (the “Property”).
- D. The Property is part of a 5-block mixed-use development of marginal property being constructed by Ryan, which also includes office space, retail space, multi-family housing, a public parking ramp and skyway connections.
- E. The DTE Development Agreement obligates Ryan to demolish existing improvements and construct certain basic improvements to the Property prior to conveyance of the Property to City by July 1, 2016.
- F. City anticipates making additional improvements to the Property and issued a request for proposals (the “RFP”) on September 15, 2014 seeking a qualified landscape architect-led team to design the Property, now known as the “Downtown East Commons,” in accordance with principles and guidelines adopted by a City-appointed advisory committee and with MPRB’s comments with respect thereto.
- G. MSFA is constructing a multipurpose stadium on land adjacent to the Property.

- H. In connection with the comprehensive financing and development plan contemplated by the DTE Development Agreement, the Property is subject to that certain Urban Park Use Agreement (the "Use Agreement") dated February 10, 2014 between Ryan and MSFA, a copy of which was recorded in office of the Hennepin County Registrar of Titles on February 12, 2014 as Document No. T05152295 and that certain Declaration of Restrictive Covenants (Green Space) (the "Declaration") dated February 10, 2014 between Ryan and MSFA, a copy of which was recorded in the office of the Hennepin County Registrar of Titles on February 12, 2014 as Document No. T5152303. The use rights and restrictions in the Use Agreement and Declaration run with title to the land and are binding upon the owner of any right, title or interest in the Property.
- I. City retained the right under the DTE Development Agreement, Use Agreement and Declaration, to transfer ownership of the Property to MPRB or another entity and/or to designate MPRB or another entity to operate the Property, in any event subject to the Use Agreement and Declaration.
- J. On August 6, 2014, MPRB adopted Resolution 2014-259 in which it determined that the contemplated use of the Property did not constitute a traditional public park and that it was not in the best interests of the public for the MPRB to be involved in the development, maintenance or operation of the Property for the term of the Use Agreement and Declaration.
- K. MPRB has proposed, however, that City convey the Property to MPRB for future park use and lease the Property back from MPRB for the term of the Use Agreement and Declaration.
- L. The purpose of this MOU is to establish a framework for how City and MPRB will cooperate in the ownership and operation of the Property in order to promote the public interest and ensure compliance with state law and the City Charter.

**NOW, THEREFORE,** City and MPRB (collectively, the "Parties") agree as follows:

1. Acquisition. City will acquire the Property from Ryan pursuant to the DTE Development Agreement. The Property will contain certain basic improvements, the plans and specifications for which are still being finalized with Ryan (the "Turnkey Improvements"). City will approve the plans and specifications for the Turnkey Improvements and be responsible for payment of the "Green Space Stipulated Amount" under the DTE Development Agreement, as amended from time to time. City will provide MPRB with a reasonable opportunity to comment on the plans and specifications for the Turnkey Improvements as part of the design process described in paragraph 2 below.
2. Design; Construction. The design for Enhancements (as defined below), if any, to the Property will be subject to the following conditions: (i) the design will be comparable to the standards for Gold Medal Park, including mature trees, seating, lighting, and pavement treatments, but without the mound as developed in Gold Medal Park; (ii) the design will provide for flexible programming of the space

with an open core, locating any permanent structures on the perimeter; and (iii) the design may, but is not required to, include a playing field with high quality durable turf. The design work by the consultant(s) to be selected pursuant to the RFP may, subject to available funding, be incorporated into the Turnkey Improvements to be completed by Ryan prior to the “Green Space Delivery Date” under the DTE Development Agreement (the “Interim Enhancements”) and/or improvements to the Property after the Green Space Delivery Date (the “Ultimate Enhancements”) (collectively with the Interim Enhancements, the “Enhancements”). City (and/or its agents) will manage the design and construction of the Enhancements, if any. City staff will collaborate with MPRB staff during the design of such Enhancements, if any, by including an MPRB staff in membership on a technical advisory committee that will advise City on the design, development and operations process for the Property (the “Technical Advisory Committee”). City will provide opportunities for public engagement as part of the design process which will be publicized on the City’s website. City will have final design approval.

3. Funding. It is understood that the Enhancements, if any, will be contingent on funding and that the City (and/or its agents), not the MPRB, will be responsible for developing a funding plan. It is further understood that a funding plan might include a variety of options including, but not limited to, private fundraising, donations, grants, park dedication fees, special assessments and/or a special service district, or other funding sources as permitted by law. The Parties agree to cooperate to allow the City to use tools under the City Charter and other law as appropriate.
4. Ownership. Subject to closing on the conveyance of the Property to City under the DTE Development Agreement, City will transfer and assign all right, title and interest in the Property to MPRB for One and No/100 Dollars (\$1.00) by quit claim deed and other appropriate documentation, including but not limited to an assignment of the Use Agreement. The form of the quit claim deed is attached as Exhibit B. MPRB will contemporaneously lease the Property back to City pursuant to a ground lease in substantially the form attached to this MOU as **Exhibit C** (the “Ground Lease”). The Parties intend that upon such conveyance and lease back, City will be deemed to be the “Owner” under the Use Agreement and City or its agent(s) will be responsible for all obligations of “Operator” under the Use Agreement. City and MPRB will each pay its own legal, accounting and other expenses associated with the sale/lease back transaction and one-half of any closing costs, transfer taxes and recording fees.
5. Operations. City (and/or its agents) will operate and manage the Property for the term of the Ground Lease and abide by its terms.

To advance the goal of better downtown public spaces, the Minneapolis Downtown Council has created a new 501(c)(3) entity, Greening Downtown Minneapolis, which it intends to pair with an oversight committee made up of

some combination of public officials, business executives and community leaders. City is exploring the possibility of using this so-called “conservancy model” for operation of the Property. The conservancy’s role may include some or all of the following functions:

- (a) Publicizing and promoting the venue(s).
- (b) Programming events.
- (c) Scheduling and coordination with MSFA (and the Vikings) on their use rights.
- (d) Obtaining requisite licenses and permits.
- (e) Performing operating and capital maintenance.
- (f) Adopting annual operating and capital budgets.
- (g) Fundraising for operating and capital needs.
- (h) Insuring its activities.
- (i) Establishing user fees and policies.

This model is in the very earliest stages of development and City has made no decision whether Greening Downtown Minneapolis will be selected as the operation model. City will collaborate with MPRB through membership on the Technical Advisory Committee (as provided above in paragraph 2) with regard to any operating model for the Property prior to its selection by City. The Parties agree, however, that if the “conservancy model” or another model with an oversight body is chosen, City will require, as a condition of the selection, representation by the MPRB on such conservancy board or oversight body.

- 6. Term. This MOU shall be effective upon execution by both Parties and will continue until execution and delivery of the Ground Lease.
- 7. General Provisions.
  - (a) Entire Agreement. This MOU supersedes any prior or contemporaneous representations or agreements, whether written or oral, between City and MPRB and contains the entire agreement. Any past practice between City and MPRB is null and void, unless specifically preserved in this MOU.
  - (b) Amendments. Any modification or amendment to this MOU shall require a written agreement signed by both City and MPRB upon approval of the City Council and the MPRB Board.

- (c) Notice. Any notice or statement required to be given under this MOU shall be considered served and received if delivered personally to the City Coordinator or the MPRB Superintendent or if deposited in the U.S. First Class mail, postage prepaid, as follows:

Notice to the City: City Coordinator  
City of Minneapolis  
City Hall Room 301M  
350 South Fifth Street  
Minneapolis, MN 55415

Notice to MPRB: Superintendent  
Minneapolis Park & Recreation Board  
2117 West River Road  
Minneapolis, MN 55411

- (d) Governing Law. This MOU shall be governed by and interpreted in accordance with the laws of the State of Minnesota.
- (e) Captions. Article and section headings contained in this MOU are included for convenience only and form no part of the agreement between City and MPRB.
- (f) Waivers. The waiver by City or MPRB of any breach or failure to comply with any provision of this MOU by the other party shall not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this MOU.
- (g) Counterparts. This MOU may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- (h) Savings Clause. If any court finds any article, section or portion of this MOU to be contrary to law or invalid, the remainder of the MOU will remain in full force and effect.

*(Signature pages follow.)*

*(City's signature page to DTE Commons Memorandum of Understanding)*

IN WITNESS WHEREOF, the Parties, by action of their respective governing bodies, caused this MOU to be executed in accordance with the authority granted in Minnesota Statutes, section 471.59.

**CITY OF MINNEAPOLIS**

Department head approval

\_\_\_\_\_

Director, CPED

By \_\_\_\_\_

Kevin Carpenter

Its Finance Officer

Approved as to form:

\_\_\_\_\_

Assistant City Attorney

*(MPRB's signature page to DTE Commons Memorandum of Understanding)*

**CITY OF MINNEAPOLIS acting by and  
through its PARK AND RECREATION BOARD**

By \_\_\_\_\_

Its President

By \_\_\_\_\_

Its Secretary

Approved as to form

\_\_\_\_\_

Attorney for MPRB

**EXHIBIT A TO MOU**

**LEGAL DESCRIPTION OF GREEN SPACE PROPERTY**

Tracts B and C, Registered Land Survey No. 1824, Hennepin County, Minnesota.

**EXHIBIT B TO MOU**

**FORM OF QUITCLAIM DEED**

**EXHIBIT C TO MOU**

**GROUND LEASE**

**THIS GROUND LEASE** (this "Lease") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between CITY OF MINNEAPOLIS acting by and through its PARK AND RECREATION BOARD, a unique department of the City under the home rule charter of the City of Minneapolis ("Lessor"), and the CITY OF MINNEAPOLIS, a Minnesota municipal corporation ("Lessee").

**RECITALS**

The Lessor is the owner of certain real property located in the City of Minneapolis, County of Hennepin, State of Minnesota.

The Lessee desires to lease such land from the Lessor.

This Lease is being executed to effectuate the purposes of that certain Memorandum of Understanding (Downtown East Commons) dated \_\_\_\_\_, 2014, between Lessor and Lessee.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the Lessor and Lessee hereby agree as follows:

**1. Definitions. The following terms shall have the meanings set forth below:**

Commencement Date. As defined in Section 2.2.

Declaration. As defined in Section 2.1.

Event of Default. As defined in Sections 11.1 and 11.2.

Improvements. All buildings, structures, landscaping, sidewalks, driveways, parking areas, and other improvements that are constructed, placed or located on the Premises during the Term, as the same may from time to time exist.

MSFA. As defined in Section 2.1.

Operating Agreement. As defined in Section 2.1.

Operator. As defined in Section 2.1 or any successors or assigns.

Permitted Encumbrances. The liens and encumbrances set forth on **Exhibit B** attached hereto.

Premises. Those certain parcels of real property legally described on **Exhibit A** attached hereto, together with all Improvements now or hereafter constructed thereon, all located in the City of Minneapolis, Minnesota.

Ryan. As defined in Section 2.1.

Taxes. As defined in Article 5.

Term. The term of this Lease as set forth in Section 2.2.

Use Agreement. As defined in Section 2.1.

## **2. Demise, Term, Title.**

**2.1 Demise. The Lessor hereby demises and leases unto the Lessee, and the Lessee hereby leases from the Lessor, for the consideration and upon the terms and conditions hereinafter set forth, the Premises. The Lessee is authorized to operate and manage the Premises for the Term of this Lease.**

The Lessor and the Lessee acknowledge that the Premises are subject to the Urban Park Use Agreement (the "Use Agreement"), dated February 10, 2014 between Ryan Companies US, Inc. ("Ryan") and the Minnesota Sports Facilities Authority (the "MSFA") and the Declaration of Restrictive Covenants (Green Space) dated February 10, 2014 between Ryan and the MSFA (the "Declaration").

The Lessor and the Lessee intend that, for the Term of this Lease, the Lessee will be deemed to the "Owner" of the Premises under the Use Agreement and Declaration and the Lessee or its agent(s) will be responsible for the obligations of "Operator" under the Use Agreement and Declaration. The Lessee may enter into one or more sublease, management or other agreements (the "Operating Agreement") with one or more entities to operate the Premises (the "Operator").

- 2.2 Term. TO HAVE AND TO HOLD the Premises for a term (the "Term") commencing on the date hereof (the "Commencement Date") and continuing until midnight of the date on which the Use Agreement, as the same may be renewed or extended from time to time, expires or is terminated; provided, however, that in no event will the term be longer than fifty (50) years.**
- 2.3 Covenant of Quiet Possession. The Lessor represents, warrants and covenants that, subject to the Lessor's remedies under Article 11 due to breach of this Lease by the Lessee, the Lessee shall have and enjoy quiet and undisturbed possession of the Premises during the Term.**
- 3. Rent. No rent is required to be paid by the Lessee to the Lessor for the Term of this Lease.**
- 4. Permitted Use. The Lessee may use the Premises for any lawful purpose, consistent with the Use Agreement and Declaration. Specifically, the Lessee or its Operator will maintain the Premises at standards consistent with other urban parks located in Minneapolis, Minnesota, including but not limited to, the maintenance of the surface of the park and the clearing of snow from public walkways, and shall provide at all times public walkways, lights and similar necessary infrastructure.**
- 5. Taxes; Costs; Other Charges. "Taxes" shall mean and include all ad valorem taxes and special assessments with respect to the Premises and the Improvements. The Lessee, sublessee or Operator shall pay any Taxes with respect to the Premises and the Improvements during the Term. The Lessee, sublessee or Operator may install meters for water, sewer, electricity, gas and other utilities or infrastructure, as necessary, and shall pay before delinquency all costs for utilities and other services provided on or to the Premises during the Term. The Lessee, sublessee or Operator shall be responsible for any costs of any kind associated with the construction, operation and management of the Premises for the term of the Ground Lease. Should the Lessor be assessed, charged with, or incur any costs, including liens, of any kind during the term of the Ground Lease due to its ownership interest in the Premises, the Lessee,**

sublessee or Operator will fully reimburse the Lessor for any such assessment, charges, liens or costs.

**6. Indemnity; Insurance.**

**6.1 Defense and Indemnification.** The Lessee agrees to defend and indemnify the Lessor for any liability claims arising from acts or omissions of the Lessee, sublessee or Lessee's Operator, if any, and the Lessee's officers, employees, agents, permittees, parties to or third party beneficiaries of the Use Agreement, or contractors in connection with the construction, operation or use of the Premises. Nothing in this Agreement shall constitute a waiver of the statutory limits on liability set forth in Minnesota Statutes, Chapter 466 or a waiver of any available immunities or defenses.

**6.2 Liability Coverage.** If the Lessee retains an Operator, the Lessee will require the Operator to maintain liability coverage through a commercial general liability ("CGL") insurance policy. Such liability coverage will comply with the following requirements:

- (a) Minimum Limits. Each policy shall have a limit at least equal to the maximum municipal liability limit in Minnesota Statutes, Section 466.04, subd. 1, as amended from time to time. If the policy contains a general aggregate limit, the general aggregate limit shall not be less than \$2,000,000.
- (b) Type of Coverage. The CGL insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and contractually-assumed liability.
- (c) Additional Insured. The Lessor and Lessee shall be endorsed as additional insureds on each policy for all claims arising from or in connection with the Operator's operation or use of the Premises.
- (d) Automobile Liability; Property Damage. The Lessee may in its discretion require the Operator to also maintain coverage for auto liability and damage to or loss of property.

**7. Easements, Covenants and Conditions.** At the request of the Lessee, the Lessor acting in its capacity as landlord shall, from time to time, execute and deliver or join in the execution and delivery of such documents as are necessary, appropriate or required by government agencies, public utilities and other

**companies to permit the orderly operation and use of the Premises.**

8. **Lessor's Warranties.** The Lessor represents and warrants to, and covenants with, the Lessee that:

8.1 **Authority.** The Lessor has full right and authority to enter into this Lease and perform the Lessor's obligations under this Lease as of the commencement of the term hereof

8.2 **Liens; Transfers.** Except for the Permitted Encumbrances, the Lessor will not create any liens or encumbrances on the Premises during the Term unless agreed to by the Lessee. The Lessor will not voluntarily, involuntarily or by operation of law, assign, license, mortgage, hypothecate, sublet, sell or in any other manner transfer this Lease or the Premises without the prior written consent of the Lessee.

8.3 **Violations.** To the best of the Lessor's knowledge, the Premises is not in material violation of any local governmental rule, ordinance, regulation or building code, nor is there a pending or threatened investigation regarding a possible violation of any of the foregoing.

8.4 **Breach of Other Agreements.** The execution and delivery of this Lease by the Lessor will not constitute a violation of any provisions of the City Charter or any laws of the State, and there are no actions, suits or proceedings pending, or to the actual knowledge of the undersigned officers of the Lessor, threatened, before or by any judicial body or governmental authority against or affecting it relating to the Premises, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Lease or to perform any of the terms, covenants and conditions to be performed by the Lessor under this Lease.

9. **Lessee's Warranties.** The Lessee represents and warrants to, and covenants with, the Lessor that:

9.1 **Authority.** The Lessee has full right and authority to enter into this Lease and perform the Lessee's obligations under this Lease as of the commencement of the term hereof.

**9.2 Liens; Transfers.** Except for the Permitted Encumbrances, the Lessee will not create any liens or encumbrances on the Premises that extend beyond the Term unless agreed to by the Lessor. The Lessee may not transfer or assign this Lease without the prior written consent of the Lessor, but may sublet the Premises or any portion thereof; provided, however, that such subleases require that the sublessee adhere to all terms of this Lease. The Lessee shall promptly provide the Lessor with a copy of any sublease. The Lessor, at the Lessee's request, will cooperate with the Lessee in granting such additional rights or interests as may be necessary and agreed to by the parties to allow for the financing, construction and operation of one or more businesses in permanent structures for uses of the type or character, not limited to restaurants, at other park properties owned by Lessor. Lessee will require payment and performance bonds for any construction work performed on the Premises by third parties.

**9.3 Violations.** To the best of the Lessee's knowledge, the Premises is not in material violation of any local governmental rule, ordinance, regulation or building code, nor is there a pending or threatened investigation regarding a possible violation of any of the foregoing.

**9.3 Breach of Other Agreements.** The execution and delivery of this Lease by the Lessee will not constitute a violation of the City Charter or any laws of the State, and there are no actions, suits or proceedings pending, or to the actual knowledge of the undersigned officers of the Lessee, threatened, before or by any judicial body or governmental authority against or affecting it relating to the Premises, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Lease or to perform any of the terms, covenants and conditions to be performed by the Lessee under this Lease.

**10. Surrender.** Upon the expiration or termination of this Lease, the Lessee shall surrender the Premises to the Lessor in as-is condition; provided, however, any of the then existing

Improvements will meet any and all current state and city building codes and will be in reasonable operating condition so as not to require immediate repair. The Lessor and Lessee will cooperate in looking for available sources of funds, such as insurance proceeds, legislative appropriations, or grant programs, to address any conditions that impair Lessor's immediate use of the Improvements and Premises as a downtown park space and in investigating the need for any MPRB levy increases to fund ongoing operations and maintenance. It is expressly understood, however, that the Lessee's agreement to cooperate is not intended to obligate the Lessee to fund any improvements or costs that may be incurred by the Lessor after expiration or termination of this Lease. The Improvements and any equipment, trade fixtures, and personal property remaining upon the Premises after surrender thereof, to the extent not already the property of the Lessor, shall automatically become the property of the Lessor from and after the expiration or termination of the Term. The voluntary or other surrender of this Lease by the Lessee, or a mutual cancellation hereof, shall not work a merger with respect to any or all existing subleases and shall at the option of the Lessor terminate any or all existing subleases or subtenancies or may at the option of the Lessor operate as an assignment to it of any or all such subleases or subtenancies. The terms of this section shall be included in all such subleases.

**11. Default.**

**11.1 Lessee Default.** It shall be a "Lessee Event of Default" for purposes of this Lease if the Lessee fails to perform any of the terms, covenants or conditions of this Lease to be performed by the Lessee and such failure continues for ninety (90) days following receipt of written notice from the Lessor to the Lessee, specifying such failure, or, with respect to those failures which cannot with due diligence be cured within ninety (90) days, then if the Lessee fails to proceed within such ninety (90) days to commence to cure the same and thereafter continue to prosecute the curing of such default with all due diligence (it being intended that in connection with a default not susceptible of being cured with reasonable diligence within ninety (90) days that the time within which the Lessee must cure the same shall be extended for such period as may be necessary to complete the same with reasonable

diligence). If a Lessee Event of Default has occurred, the Lessor's sole remedy shall be to institute an action for specific performance.

**11.2 Lessor Default.** In the event that (i) the Lessor fails to observe, perform or comply with any provision, term, condition, covenant, agreement or warranty required to be observed, performed or complied with by the Lessor under this Lease and (ii) the Lessor fails to cure such default within ninety (90) days after written notice of default from the Lessee, then a "Lessor Event of Default" shall exist under this Lease. Upon the occurrence and during the continuance of a Lessor Event of Default, the Lessee may commence an action in equity to compel the performance by the Lessor of those actions or inactions which serve as the basis of the Lessor Event of Default or take such other actions and seek such other remedies as may be available to the Lessee at law or in equity, provided, however, that the Lessee's damages shall be limited to actual damages incurred by the Lessee and shall not include any consequential or punitive damages.

**11.3 Delay; Waiver.** No delay or omission by either party to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms of this Lease shall impair any such right or power to be construed to be a waiver thereof, except as otherwise herein provided. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

## **12. Condemnation.**

**12.1 Total Taking.** In the event of a condemnation of all or substantially all of the Premises, this Lease shall terminate as of the date of such taking.

**12.2 Partial Taking.** In the event of a condemnation of a part of the Premises, this Lease shall at the option of the

**Lessee continue in full force as to the part of the Premises not thus taken.**

12.3 Disposition of Award. All compensation awarded for a taking of the Premises or any portion thereof, including both the fee and the leasehold estate, shall belong to and be the property of the Lessee.

**13. Notice. All notices required or permitted to be given under this Lease must be in writing and shall be personally delivered or deemed delivered if deposited with the United States Mail, postage prepaid, addressed to the Lessor or the Lessee, as the case may be, at the following addresses:**

To Lessor: Superintendent  
Minneapolis Park & Recreation Board  
2117 West River Road  
Minneapolis, MN 55411

To Lessee: City of Minneapolis  
Department of Community Planning and  
Economic Development  
Crown Roller Mill, Suite 200  
105 Fifth Avenue South  
Minneapolis, MN 55401-2534  
Attention: Director

With copy to:  
City Coordinator  
City of Minneapolis  
City Hall, Room 301M  
350 South Fifth Street  
Minneapolis, MN 55415

Either party may designate any further or different addresses to which subsequent notices shall be sent upon at least ten (10) days' written notice thereof.

14. **Amendment, Modification and Waiver.** No amendment, modification, or waiver of any condition, provision, or term of this Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or its duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.
16. **Negotiated Agreement.** The parties agree that in the event of a dispute neither party shall be ascribed as the author of this Lease nor have any ambiguity resolved against such party on account thereof.
17. **Short-Form Recordable Lease.** The parties will promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of this Lease, setting forth a description of the Premises, the Term of this Lease, and any other portions hereof, as either party may request.
17. **Miscellaneous.** This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto. Time is declared to be of the essence of this Lease. No third party beneficiary rights are created by this Lease. The Section headings contained in this Lease are for purposes of reference only and shall not limit or define the meaning of any of the terms of provisions hereof. All approvals required hereunder shall also be in writing. This Lease shall be governed by and construed in accordance with the laws of the State of Minnesota. Whenever, in this Lease, anything is to be done or performed by the Lessee or Lessor, unless otherwise expressly provided to the contrary, it shall be done or performed at the sole cost and expense of the Lessee or Lessor as the case may be. Any prevention, delay or stoppage due to strikes, labor disputes, acts of God, inability to obtain labor or materials, governmental restrictions, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty, and other causes beyond the control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations of

**either the Lessor or Lessee with regard to the payment of monies. Except as otherwise expressly provided herein, any consent or approval required in this Lease may not be unreasonably withheld or delayed. Unless provision is made for a specific time period, consent or approval shall be given or withheld within thirty (30) days of the request for such consent or approval. If a disapproval is not given within the required time period, the requested party shall be deemed to have given its approval.**

*[The remainder of this page is intentionally left blank. Signature pages follow.]*

(Lessor's signature page to Ground Lease)

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease the day and year first above written.

**LESSOR:**

**CITY OF MINNEAPOLIS  
ACTING BY AND THROUGH ITS  
PARK AND RECREATION BOARD**

By \_\_\_\_\_

Its President

By \_\_\_\_\_

Its Secretary

Approved as to form

\_\_\_\_\_

Attorney for Minneapolis

Park and Recreation Board

STATE OF MINNESOTA        )  
  ) ss.  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the President, and \_\_\_\_\_, the Secretary of the City of Minneapolis acting by and through its Park and Recreation Board, a unique department of the City under the home rule charter of the City of Minneapolis, on behalf of the department.

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

*(Lessee's signature page to Ground Lease)*

**LESSEE:**

**CITY OF MINNEAPOLIS**

By \_\_\_\_\_  
Its Finance Officer

Department Head Approval:

\_\_\_\_\_  
CPED Director

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

STATE OF MINNESOTA        )  
  ) ss.  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the Finance Officer of the City of Minneapolis, a Minnesota municipal corporation, on behalf of the municipal corporation.

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Notary Public

**EXHIBIT A TO GROUND LEASE**

**LEGAL DESCRIPTION**

Tracts B and C, Registered Land Survey No. 1824, Hennepin County, Minnesota.

**EXHIBIT B TO GROUND LEASE**

**PERMITTED ENCUMBRANCES**

1. Terms and conditions of and easements contained in Urban Park Use Agreement between Ryan Companies US, Inc. and Minnesota Sports Facilities Authority dated February 10, 2014 and filed February 12, 2014 as Document No. T5152295.

[Assigned to the City of Minneapolis acting by and through its Park and Recreation Board by Assignment dated \_\_\_\_\_ and filed \_\_\_\_\_ as Document No. \_\_\_\_\_.]

2. Terms and conditions of Declaration of Restrictive Covenants (Green Space) between Ryan Companies US, Inc. and Minnesota Sports Facilities Authority dated February 10, 2014 and filed February 12, 2014 as Document No. T5152303.
3. Terms and conditions of Declaration of Restrictive Covenants (Signage) between Ryan Companies US, Inc. and Minnesota Sports Facilities Authority dated February 10, 2014 and filed February 12, 2014 as Document No. T5152302.
4. Terms and conditions of Declaration of Restrictive Covenants between Ryan Companies US, Inc. and Minnesota Sports Facilities Authority dated February 10, 2014 and filed February 12, 2014 as Document No. T5152292.
5. Terms and conditions of Ground Lease dated \_\_\_\_\_ between City of Minneapolis acting by and through its Park and Recreation Board, lessor, and the City of Minneapolis, lessee, as shown by Memorandum of Lease dated \_\_\_\_\_ and filed \_\_\_\_\_ as Document No. \_\_\_\_\_.
6. [*others?*]