

**Reciprocal Use Agreement**  
**City of Minneapolis, acting by and through its Park and Recreation Board**  
**and**  
**DeLaSalle High School Nicollet Island**

This Reciprocal Use Agreement (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2006, by and between the City of Minneapolis, acting by and through its Park and Recreation Board, a body corporate and politic under the laws of Minnesota, 2117 West River Road, Minneapolis, Minnesota 55411 (“MPRB”) and DeLaSalle High School, One DeLaSalle Drive, Minneapolis, Minnesota 55401 (the entity is referred to as “DeLaSalle” and the property at One DeLaSalle Drive is referred to as the “DeLaSalle Property”).

**RECITALS**

WHEREAS, on May 19, 1983 the MPRB entered into an agreement with the Minneapolis Community Development Agency (“MCDA”) for the acquisition and transfer of lands for the redevelopment of Nicollet Island and surrounding areas also known as the “Nicollet Island Agreement”; and

WHEREAS, the Nicollet Island Agreement, section 1.2, specifically addresses the DeLaSalle property and requires the MPRB to “use its best efforts to construct upon property adjacent to the DeLaSalle property an outdoor neighborhood recreational Athletic Facility . . . after a reciprocal agreement between the [MPRB] and owners of the DeLaSalle property has been agreed to for the use of the Athletic Facilities and negotiated existing facilities of DeLaSalle.”

WHEREAS, MPRB owns the property bounded by Grove Street, East Island Avenue, Nicollet Street and the Burlington Northern Railroad tracks (“MPRB Property”) adjacent to the physical education fields on the DeLaSalle Property, legally described in Exhibit A.

WHEREAS, DeLaSalle wishes to construct, at its expense, an Athletic Facility, as described in Section 1.3 of this Agreement and illustrated in the Concept Plan attached to this Agreement as Exhibit B at an estimated cost in excess of \$2,000,000 on the MPRB Property and on the DeLaSalle Property that would be jointly used and programmed by DeLaSalle and the MPRB;

WHEREAS, pursuant to MPRB Policies and Procedures, Section 7.F, “Policy on Joint Use,” the MPRB endeavors to maximize the use of scarce urban land to serve the recreational needs of Minneapolis residents by (a) maximizing the use of the facilities of other public and private agencies, (b) attaching MPRB facilities to or building MPRB facilities cooperatively with schools and other agencies and (c) co-locating recreational facilities with schools and, pursuant to that policy, MPRB has 25 shared use agreements with Minneapolis public schools and several other shared use agreements with private non-profit and social service agencies, including the Boys & Girls Club, the Minneapolis

YWCA (formerly the Young Women's Christian Association), and DeLaSalle High School, and the Park Board has found that those agreements promote the mission of the MPRB and the general welfare of the City;

WHEREAS, the MPRB currently uses and maintains the MPRB Property as recreational property with tennis courts located on it and open space around the tennis courts and DeLaSalle uses the tennis courts for school related athletic activities, pursuant to that certain February 24, 1999 "Agreement between Minneapolis Park and Recreation Board and DeLaSalle High School" (the "1999 Agreement"), which 1999 Agreement also provides the MPRB with certain joint-use rights to the DeLaSalle Parking Facility (as defined in the 1999 Agreement) and meeting facilities within the DeLaSalle High School Building;

WHEREAS, the MPRB believes that the combination of the MPRB Property and the DeLaSalle Property and the investment of over \$2,000,000 by DeLaSalle to construct the Athletic Facility would result in a substantially greater utilization of the MPRB Property for recreational use, provide the MPRB with access to a new outdoor athletic field for football and soccer and existing indoor athletic facilities that will enhance the recreation opportunity for Minneapolis residents and their children, and the Park Board would not have the resources itself to construct and maintain such facilities;

WHEREAS, pursuant to that certain Resolution of the MPRB dated August 29, 2005, the MPRB resolved to consider acting upon a reciprocal use agreement that would provide DeLaSalle the right to construct a part of the Athletic Facility on the MPRB Property for DeLaSalle's and the MPRB's use upon satisfaction of certain conditions precedent including review and approval of "a detailed site plan, design, location and use of the proposed Athletic Facility" by a Citizens Advisory Committee ("CAC") initiated by the MPRB and completion of an Environmental Assessment Worksheet ("EAW");

WHEREAS, a CAC duly appointed by the MPRB reviewed, approved and recommended MPRB approval of the Concept Plan, pursuant to that certain Citizens Advisory Committee Resolution Related to the Athletic Facility Proposed by DeLaSalle on Nicollet Island, October 4, 2005, and the MPRB accepted the CAC recommendation and approved the Concept Plan as the basis for an EAW by the City of Minneapolis;

WHEREAS, the City of Minneapolis, through its Department of Community Planning and Economic Development, completed and, on December 23, 2005, by action of its City Council, accepted, an EAW for the Athletic Facility, based on the Concept Plan;

WHEREAS, the MPRB has determined that the conditions precedent to entering into a reciprocal use agreement have been met and the construction of an athletic field adjacent to DeLaSalle, in part on the MPRB Property, under the terms of this Agreement, is in the best interests of the Minneapolis park system and the residents of Minneapolis;

WHEREAS, the MPRB is not willing to sell the MPRB Property to DeLaSalle and DeLaSalle is offering to share use of these facilities with the MPRB as part of the consideration for the MPRB's cooperation; and

WHEREAS, DeLaSalle and the MPRB wish to enter into a reciprocal use agreement for construction and shared use of the Athletic Facility and granting the MPRB access to DeLaSalle's school and gymnasium for MPRB activities and DeLaSalle has obtained the consent of the fee owner of the property for this reciprocal use agreement (see Exhibit C);

NOW, THEREFORE, in consideration of the premises, and the agreements contained herein, the MPRB and DeLaSalle agree as follows:

## AGREEMENT

### SECTION 1

#### DEFINITIONS

1.1 MPRB Property. The MPRB Property is that property legally described in Exhibit

A.

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1.2 DeLaSalle Property. The DeLaSalle property is that property legally described in

Exhibit D.

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1.3 Athletic Facility. The Athletic Facility shall consist of athletic fields and related improvements on the MPRB Property and on the DeLaSalle Property consistent with the Concept Plan and approved EAW, including, at a minimum, the following:

- An open field with one regulation sized football field/practice field; with one regulation soccer field and three junior soccer fields imposed over the football field.
- Temporary or permanent goal posts and soccer goals, backstops and safety features common to physical education or athletic field development.
- Practice areas for other activities as may be accommodated by the fields.
- Permanent seating areas for up to 750 spectators in open bleacher seating, including facilities to accommodate persons with disabilities.
- Permanent press box located at the top rear of the spectator seating; approximately 8' high, 35' long, 8' wide

- Storage, refreshment, and sanitary considerations for public assembly.
- Landscape features to enhance the boundaries and additional features to enhance the image of the site consistent with the history of Nicollet Island.
- Field lighting mounted on 70' poles, using best available technology to 'focus' light onto the field and minimize light spill (max. 1 footcandle outside project limits)
- Speakers mounted behind seating area/adjacent to press box to provide minimal spill outside the spectator area.
- Scoreboard mounted on north wall of the existing gymnasium at the lowest practical height
- Four-foot high decorative fence along top of retaining walls (north, east and south) for safety and to contain errant balls; no fence/ gates at pedestrian access points at East Island Road and Grove Street

## SECTION 2

### CONDITIONS PRECEDENT

DeLaSalle agrees that failure to comply with the following conditions precedent renders this Agreement void and that if any of the following conditions are not met the MPRB is relieved of any obligation in this or any other agreement.

- 2.1 DeLaSalle shall be solely responsible for and shall bear all costs, including its attorney fees, for securing the release of any claim or restriction on land use that the State of Minnesota or any of its political subdivisions may have to any portion of the MPRB Property, but specifically excluding costs incurred by the MPRB or others in negotiating and drafting this Agreement and participating in the approval process for the project.
- 2.2 DeLaSalle shall, at its sole expense, secure from the City of Minneapolis all approvals and permits required for construction of the Athletic Facility, the right to construct the Athletic Facility on a portion of the Grove Street right-of-way.
- 2.3 DeLaSalle agrees to follow and adhere to all federal, state and local laws, rules and regulations that may apply to the MPRB Property, including Park Board ordinances, rules and regulations.
- 2.4 DeLaSalle shall provide the MPRB with a financing plan for the construction of the athletic fields and detailed commitments to complete the project prior to the commencement of construction of the project.

- 2.5 DeLaSalle shall commence construction of the project within twenty-four (24) months of the date upon which the final approval of a project has been granted by all governmental entities with jurisdiction over the project, including issuance of a judgment or approval of a settlement of any third party litigation that postpones the construction start after issuance of other governmental approvals.
- 2.6 Until all the conditions precedent to this Agreement have been met to the reasonable satisfaction of the MPRB, no legal right, interest, claim or title in the MPRB Property will have accrued, inured, or be transferred under this Agreement.

### SECTION 3

#### TERM

- 3.1 Initial Term. The initial term of this Agreement shall commence on the date first written above and shall terminate on the date which is thirty (30) years after the above-stated date of this Agreement unless sooner terminated under the terms of this Agreement.
- 3.2 Additional Terms. DeLaSalle may, at its option, renew this Agreement for one or two additional terms of twenty (20) years each if the facilities have been operated for athletic and recreational purposes in accordance with this Agreement for the previous term.

### SECTION 4

#### DELASALLE OBLIGATIONS

- 4.1 Design, construction and maintenance obligations. DeLaSalle shall at its own expense design, construct and maintain the Athletic Facility described in Section 1.3 of this Agreement, in accordance with the Concept Plan by doing the following:
- Constructing field areas for physical education and athletic use in accordance with city regulations.
  - Constructing and maintaining utilities to serve the program needs of the school on the site, including potable water for drinking and water for irrigation services, electrical supply for lighting and maintenance.
  - Constructing circulation facilities and pathways as needed to provide access to and through fields and other activity areas for students and visitors and for MPRB programs.

- Installing lighting for the fields and facilities as necessary for use and protection subject to the MPRB's approval for design.
  - Restoring and landscaping the premises and areas disturbed by construction.
  - Paying for the relocation, design and construction of at least three (3) tennis court facilities on property owned by MPRB, at a time and location selected by the MPRB.
- 4.2 Program Obligations. DeLaSalle agrees to provide physical education and training programs to MPRB constituents. Programming activities will be reviewed annually by both parties to determine if changes and enhancements would be beneficial. DeLaSalle shall consult with MPRB to determine what activities are of interest to MPRB's constituents.
- 4.3 Development of Volunteer Service Projects. DeLaSalle shall cooperate with MPRB in developing and, through DeLaSalle staff, faculty and students, participating in volunteer service projects through the Minneapolis Park system.
- 4.4 Maintenance. During the initial term of this Agreement and any Additional Terms, DeLaSalle shall maintain the Athletic Facility and all related aspects thereof in a condition that suitable for high school athletic events and to the environmental standards set by the MPRB for athletic fields.
- 4.5 Auxiliary Parking Lot. If within twenty four (24) months after the completion of the Athletic Facility the MPRB, in consultation with its Citizens Advisory Committee and affected neighborhood residents, determines that an auxiliary parking lot is necessary, DeLaSalle shall construct an auxiliary parking lot located adjacent to East Island Avenue and between First Avenue Bridge and the Burlington Northern Railroad tracks and shall landscape the area adjacent to this auxiliary parking lot.

## SECTION 5

### CONSTRUCTION REQUIREMENTS

- 5.1 Design Requirements. The Athletic Facility design will conform to applicable codes, permit requirements, and design guidelines.
- 5.1.1 The MPRB will cooperate with the development of the design for the Athletic Facility by reviewing interim drafts for conformance with the Concept Plan and the design requirements of the MPRB.

5.1.2 Before DeLaSalle proceeds with final plans and specifications for the construction of the project, DeLaSalle shall submit to the MPRB Board for its approval design development plans, specifications, and related documents for the construction work which shall include at least the following: (1) site plan; (2) utility and drainage plan; (3) foundation and floor plans for the bleachers, (4) cross sections of the bleacher structure and a typical section of the retaining wall on East Island Avenue; (5) elevations of all sides of the bleacher and a typical section of the retaining wall on East Island Avenue; and (6) landscape plan.

5.1.3 The MPRB shall have authority to recommend and approve selections of materials and details for the project on the basis of compatibility with MPRB design standards, including without limitation the playing surface for the field and, if the MPRB determines that an auxiliary parking lot is necessary, the paving surface for the parking lot.

5.2 Prevailing Wage. DeLaSalle agrees to comply with the MPRB's and the City of Minneapolis' policy requiring payment of the prevailing wage for all labor used in the construction of the Athletic Facility and shall employ union labor.

5.3 Performance and Payment Bond. Before beginning any work on and/or for the Athletic Facility, DeLaSalle shall provide the MPRB with copies of Payment and Performance Bonds in the full contract amount for each and every contract DeLaSalle enters into for any such work. The Payment and Performance Bonds shall name the MPRB as an intended third party beneficiary and shall be in a form acceptable to the MPRB and from a reputable company acceptable to the MPRB. Failure to provide these bonds constitutes a default under this Agreement.

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5.4 Mechanic's Liens. DeLaSalle shall not suffer or permit any statements of mechanic's liens to be filed against the MPRB Property or any part thereof by reason of work, labor, services or materials supplied or claimed to have been supplied to DeLaSalle or anyone holding the MPRB or any part thereof through or under DeLaSalle. If any such statement of mechanic's lien shall at any time be filed against the MPRB Property, DeLaSalle shall cause the same to be discharged of record within twenty (20) days after the date of actual notice to DeLaSalle of filing the same. If DeLaSalle shall fail to discharge such mechanic's lien within such period, then in addition to any other right or remedy of the MPRB, the MPRB may, but shall not be obligated to, discharge the same whether by paying the amount claimed to be due or by procuring the discharge of such lien by deposit in court, by giving security, or in such other manner as is or may be prescribed by law. Any amount paid by the MPRB for any of the aforesaid purposes, and all reasonable other expenses of the MPRB, including reasonable attorney fees, in or about procuring the discharge of such lien, with all necessary disbursements in connection therewith, with interest thereon at the rate of eighteen percent (18%) per annum from the date of payment, shall be repaid by

DeLaSalle to the MPRB. The MPRB shall have the right to post and maintain on the MPRB Property notices of non-responsibility under the laws of Minnesota, and nothing herein shall be construed to subject the MPRB's property, if otherwise exempt, to such liens.

## SECTION 6

### INDEMNIFICATION

- 6.1 DeLaSalle will indemnify and hold the MPRB harmless from any claims arising from any and all activities related either to the construction of or use of the Athletic Facility and from any and all activities of any kind run or sponsored by DeLaSalle on the MPRB Property.
- 6.2 To the extent allowed by law, the MPRB will indemnify and hold DeLaSalle harmless from any liability claims related to activities in the Athletic Facility, or in DeLaSalle's gymnasium or on the MPRB Property, for programs run or sponsored by MPRB.

## SECTION 7

### INSURANCE

- 7.1 DeLaSalle shall, at its sole cost and expense, obtain and maintain casualty insurance in the full value of the Athletic Facility improvements, including the portion on the MPRB Property.
- 7.2 DeLaSalle and the MPRB shall each obtain and maintain general public liability insurance against claims for personal injury, death or property damage occurring on or about the Athletic Facility or in the DeLaSalle premises, such insurance to afford protection to the limit of not less than One Million Dollars (\$1,000,000.00) with respect to injury or death to a single person, and to the limit of not less than Two Million Dollars (\$2,000,000.00) with respect to any one accident, and to the limit of not less than One Million Dollars (\$1,000,000.00) with respect to any property damage. Each party shall name the other as an additional insured on any such policy.
- 7.3 Such policies of insurance to be obtained by DeLaSalle shall be written in companies reasonably satisfactory to the MPRB, and shall be written in such a form and shall be distributed in such companies as shall be reasonably acceptable to the other party. Such policies shall be delivered to the MPRB endorsed "premium paid" or with a receipt for payment of the premium issued by the company or agency issuing the policy or accompanied by any other evidence satisfactory to the other party that the premiums thereon have been

paid, not less than ten (10) days prior to entry onto the MPRB Property and the expiration of any then current policy.

- 7.4 The MPRB shall have the right to self-insure and shall provide DeLaSalle with evidence of such insurance upon request.

## SECTION 8

### USE

- 8.1 Permitted Uses. MPRB and DeLaSalle may not use the Athletic Facility (including the MPRB Property and the portion of the DeLaSalle Property on which the Athletic Facility is constructed), or permit the Athletic Facility to be used, for any purposes other than athletic and recreational programs under MPRB or DeLaSalle supervision.
- 8.2 Non-discrimination Covenant. DeLaSalle and MPRB each hereby covenants and warrants to the other that it shall not engage in or permit discrimination against persons seeking access to the Athletic Facility on the basis of age, sex, race, religion, color, affectional preference, creed or national origin, income status or on any basis not allowed under federal, state or local laws.
- 8.3 Prohibited Uses. Neither DeLaSalle nor the MPRB shall use or occupy the Athletic Facility or knowingly permit the Athletic Facility to be used or occupied contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto; in any manner which would violate any certificate of occupancy affecting the same; which would cause the value or usefulness of the Athletic Facility or any part thereof substantially to diminish (reasonable wear and tear excepted); or which would constitute a public or private nuisance or waste.
- 8.4 Joint Programming Board. DeLaSalle and the MPRB shall cooperate in the programming and scheduling of use of the Athletic Facility and DeLaSalle's gymnasium through a Joint Programming Board, consisting of an equal number of representatives appointed by the MPRB Superintendent and the President of DeLaSalle. The scheduling of the Athletic Facility by the Joint Programming Board will be entered into the Park Board's master schedule of its facilities.

## SECTION 9

### DELASALLE'S RIGHTS

- 9.1 Entry Rights.

- 9.1.1 MPRB hereby grants DeLaSalle the right of entry unto the MPRB Property for the purpose of investigating the MPRB Property in connection with the design of the project, including without limitation taking soil borings, conducting and subsurface archaeological investigation, provided DeLaSalle shall not unreasonably interfere with existing use of the MPRB Property before DeLaSalle satisfies all conditions precedent to construction.
- 9.1.2 Subject to satisfaction by DeLaSalle of all conditions precedent to construction, MPRB hereby grants DeLaSalle the right to entry onto the MPRB Property for the purpose of demolishing existing improvements, including the existing tennis courts and fences, and constructing the Athletic Facility in accordance with approved plans and specifications.
- 9.2 Use Rights. Subject to and commencing upon completion of construction of the Athletic Facility, the MPRB hereby grants DeLaSalle the right and license to use the MPRB Property to conduct athletic and recreational events and activities at the Athletic Facility at reasonable and appropriate times and the right to maintain, and repair the Athletic Facility in accordance with this Agreement.

## SECTION 10

### MPRB'S RIGHTS

#### 10.1 Access and Use.

- 10.1.1 DeLaSalle herein grants the MPRB the right to access and use DeLaSalle's gymnasium for an estimated one hundred fifty (150) hours per year at reasonable times that do not interfere with DeLaSalle's use of such facilities for the purpose of conducting athletic and recreational activities under MPRB supervision.
- 10.1.2 DeLaSalle herein grants the MPRB the right to use the DeLaSalle Property portion of the Athletic Facility for the purpose of conducting athletic and recreational activities under MPRB supervision for an estimated three hundred and fifty (350) hours per year at reasonable times scheduled pursuant to Section 11 of this Agreement that do not interfere with DeLaSalle's use of the Athletic Facility.
- 10.1.3 DeLaSalle shall not charge the MPRB any fee or otherwise for the access and use rights to the DeLaSalle property provided in sections 10.1.1 and 10.1.2 of this Agreement.

## SECTION 11

### PROGRAMMING AND SCHEDULING

11.1 Joint Programming Board. DeLaSalle and the MPRB shall cooperate in setting policies for programming and scheduling of use of the Athletic Facility and DeLaSalle's gymnasium through a Joint Programming Board, consisting of an equal number of representatives appointed by the MPRB Superintendent and the President of DeLaSalle.

11.2 Scheduling and Permitting. DeLaSalle staff and the MPRB staff shall work together in the scheduling and permitting of recreational activities and/or athletic events at the Athletic Facility or at DeLaSalle's property to avoid scheduling conflicts but ensure that the interest of both parties under this Agreement are adequately met. The parties anticipate that the respective access to use for athletic events by DeLaSalle at the Athletic Facility and the Park Board at the Athletic Facility and DeLaSalle gymnasium under sections 9 and 10 will be approximately equal. All events undertaken at the Athletic Field will require a permit for the purpose of scheduling and confirming use in accordance with this Agreement. The parties anticipate that the Athletic Field will be used primarily by DeLaSalle during the school year and its programs will have first priority for permits. The parties anticipate that the Athletic Facility will be used primarily by the MPRB during the summer months and its programs will have first priority for permits. The parties will each be primarily responsible for scheduling 112 days in accordance with the following schedule: Spring, April 1<sup>st</sup> through the end of the school year, 10 weeks, DeLaSalle will schedule 50 weekdays and the MPRB will schedule 20 weekend days; Summer, end of school until start of football practice, 10 weeks, the MPRB will schedule 70 days; Fall, start of football through early Novemeber, 12 weeks, DeLaSalle will schedule 60 weekdays and two weekend days and the MPRB schedules 22 weekend days; Winter early November until April 1<sup>st</sup>, 20 weeks, no athletic or recreational events scheduled on the athletic field. The parties may by mutual agreement exchange dates during any period so long as each remains primarily responsible for scheduling an equal number of days.

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## SECTION 12

### ABANDONMENT OF PROJECT

12.1 Abandonment of Project. If, for any reason, DeLaSalle decides not to construct this Athletic Facility or to abandon the project after partial or complete construction:

- 12.1.1 DeLaSalle shall remove all of its equipment from the MPRB Property, and any equipment or other property of DeLaSalle that is not removed shall be deemed abandoned and become the property of the MPRB.
- 12.1.2 DeLaSalle shall restore the MPRB Property to its prior condition and suitable for immediate use by the MPRB.
- 12.1.3 DeLaSalle agrees that if it decides at any time during this Agreement to abandon or no longer use the Property for the purpose set forth in this Agreement, it will turn that portion of the Athletic Facility identified by this Agreement back to the MPRB by terminating this Agreement for its use and executing any documents necessary to reinstate the land.
- 12.1.4 DeLaSalle shall reimburse the MPRB for any and all costs incurred by MPRB in connection with performance of this Agreement or the abandonment of the project by DeLaSalle including, but not limited to attorney fees.

## SECTION 13

### BREACH; TERMINATION

- 13.1 Breach. If DeLaSalle shall vacate or abandon the MPRB Property; shall allow the MPRB Property to be appropriated or used of any other purpose or use than those set forth in this Agreement; or if any waste shall be made thereon; or if any term, condition or covenant of this Agreement shall be violated by DeLaSalle; then and in any of said cases DeLaSalle shall be in breach of this Agreement. DeLaSalle does hereby authorized and fully empower the MPRB to cancel and annul this Agreement, and to reenter and take possession of the MPRB Property, and by force if necessary, and to remove all persons and their property therefrom, and to use such force and assistance in effecting and perfecting such removal as the MPRB may deem advisable to recover at once full and exclusive possession of the MPRB's property.
- 13.2 Automatic Termination. Notwithstanding any other provision contained herein, this Agreement shall automatically terminate upon the occurrence of any of the events described below:
  - 13.2.1 A petition by or against DeLaSalle under the bankruptcy laws of the United States, which petition is not dismissed within ninety (90) days from the date of such filing;
  - 13.2.2 The assignment by DeLaSalle of its assets for the benefit of creditors under any state insolvency laws;

- 13.2.3 The taking by a court of jurisdiction of DeLaSalle and its assets pursuant to proceedings brought under the provisions of any federal reorganization act;
- 13.2.4 The appointment of a receiver of DeLaSalle's assets;
- 13.2.5 The divestiture of DeLaSalle's estate herein by other operation of law; or
- 13.2.6 A lapse in the insurance coverage DeLaSalle is required to maintain pursuant to Section 7 above which continues for ten (10) days after notice by MPRB to DeLaSalle specifying such lapse in such insurance coverage.

13.3 No Limitation of Remedies. Nothing in this Section 13 shall be construed as a limitation of remedies available to either party upon default of the other party.

#### SECTION 14

##### NO RELATIONSHIP CREATED

- 14.1 No provision of this Agreement shall be construed to create a partnership, joint venture or other relationship between DeLaSalle and MPRB other than or specifically set forth in this Agreement.

#### SECTION 15

##### GOVERNING LAW/SEVERABILITY

- 15.1 This Agreement shall be governed and interpreted in accordance with Minnesota laws. Should any term, covenant, condition, provision, or part thereof, of the Agreement be held in valid or unenforceable, by a court of competent jurisdiction, the remaining terms and provisions shall, nevertheless, remain in full force and effect.

#### SECTION 16

##### BINDING EFFECT

- 16.1 This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties.

## SECTION 17

### ENTIRE AGREEMENT; 1999 AGREEMENT

- 17.1 This Agreement constitutes the final and entire Agreement between the Parties and they shall not be bound by any terms, covenants, conditions, representations or warranties not expressly contained herein. This Agreement may not be amended except by written instrument executed by both Parties.
- 17.2 The 1999 Agreement shall continue in full force and effect, provided DeLaSalle and the MPRB agree that, (a) subject to satisfaction of all conditions precedent to commencing construction, DeLaSalle shall have the right to demolish the tennis courts and remove the adjacent landscaping from the MPRB Property for the purpose of constructing and maintaining the Athletic Facility; (b) DeLaSalle shall have the right to use other nearby MPRB tennis courts (including any tennis courts MPRB requires DeLaSalle to pay for under this Agreement) on the same terms DeLaSalle currently uses the existing tennis courts on the MPRB Property, and (c) the right of the MPRB to use the DeLaSalle Parking Facility pursuant to and as defined in the 1999 Agreement shall continue unabated.

## SECTION 18

### TIME OF THE ESSENCE

- 18.1 MPRB and DeLaSalle each agree to proceed diligently as in good faith to perform its obligations under this Agreement, time being of the essence.

*Signature page follows.*

IN WITNESS WHEREOF, the parties execute this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2006.

**DELASALLE HIGH SCHOOL**  
One DeLaSalle Drive  
Minneapolis, Minnesota

**THE CITY OF MINNEAPOLIS,**  
**Acting by and through its**  
**PARK & RECREATION BOARD**

By: \_\_\_\_\_  
Brother Michael Collins, FSC  
Its: President

By: \_\_\_\_\_  
Its: President

By: \_\_\_\_\_  
Its: Secretary

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Park Board General Counsel