

Order 64-23/24

Passage: 8-0 (Zarro absent) on 11/13/2023

Effective 11/23/2023

KATE SNYDER (MAYOR)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANDREW ZARRO (4)
MARK DION (5)

**ORDER APPROVING THE AGREEMENT BETWEEN
PORTLAND UNITED, LLC AND THE CITY OF PORTLAND
FOR THE USE AND OCCUPANCY OF FITZPATRICK STADIUM**

ORDERED, that the agreement with Portland United, LLC for the use and occupancy of Fitzpatrick Stadium is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to execute the Portland United, LLC Agreement and whatever other documents are necessary to effect the intent and purpose of this order.

STADIUM USE AGREEMENT
FOR USE AND OCCUPANCY
OF
JAMES J. FITZPATRICK STADIUM

between

PORTLAND UNITED, LLC¹, a Maine limited liability company

and

THE CITY OF PORTLAND, a municipal corporation

DATED: as of [REDACTED], 2023

¹ NTD: a separate to-be-formed Maine LLC (which will be wholly-owned and controlled by Portland United, LLC) which will likely own/operate the team and hold the USL franchise rights ("TeamCo") might become the party to this Agreement through assignment/contribution of assets from Portland United, LLC.

EXHIBITS

EXHIBIT A

DESCRIPTION OF IMPROVEMENTS

EXHIBIT B

DESCRIPTION OF EXCLUSIVE PREMISES

EXHIBIT C

DESCRIPTION OF STADIUM PREMISES

EXHIBIT D

DESCRIPTION OF PARKING FACILITIES

**STADIUM USE AGREEMENT
FOR USE AND OCCUPANCY OF
JAMES J. FITZPATRICK STADIUM**

This Stadium Use Agreement for Use and Occupancy of James J. Fitzpatrick Stadium (this "Agreement") is made and entered into as of [DATE] (the "Effective Date") in Portland, Maine, by and between Portland United, LLC, a Maine limited liability company (the "Club") and The City of Portland, Maine, a body politic and corporate (the "City").

RECITALS

- A. The City owns that certain multipurpose sports stadium on Deering Avenue in Portland, Maine known as James J. Fitzpatrick Stadium (the "Stadium"). The Stadium is used for the exhibition of sport contests and other events including, but not limited to, high school and college soccer, lacrosse and football games.
- B. The Club owns the rights to a professional soccer franchise in that certain professional soccer league known as "USL League One" within the professional soccer organization known as the United Soccer League (the "USL") (together, with all other leagues and affiliate entities within the USL, collectively, the "League"), and the Club anticipates it will begin hosting League soccer games during the 2025 USL League One season.
- C. The City and the Club now propose that the Club construct improvements and additions to the Stadium (collectively, the "Improvements") in accordance with the Approved Plans (as hereinafter defined) and which are generally described or listed on Exhibit A attached hereto and by this reference made a part hereof.
- D. The City and the Club propose that the Club use and occupy the Stadium to host League games and other events throughout the Term (as hereinafter defined).

NOW, THEREFORE, in consideration of the construction of the Improvements, the use of the Stadium, the covenants and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Club and the City have agreed to enter into this Agreement and set forth herein their mutual agreements and understandings as follows:

- 1. **Definitions.** The terms as defined in this Section 1, shall have the following meanings in this Agreement unless the context otherwise requires:

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether

through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

"Approved Architect" shall have the meaning assigned thereto in Section 3 hereof.

"Approved Construction Schedule" shall have the meaning assigned thereto in Section 3 hereof.

"Approved Facilities Construction Schedule" shall have the meaning assigned thereto in Section 3 hereof.

"Approved Facilities Plans" shall have the meaning assigned thereto in Section 3 hereof.

"Approved Plans" shall have the meaning assigned thereto in Section 3 hereof.

"Architect's Certificate" shall mean a certificate of the Approved Architect, stating that the Improvements have been completed and are ready for use and occupancy by the Club.

"Broadcast" shall mean any and all methods and formats of distributing audio and/or visual content of any Club Event (whether television, radio, digital, or otherwise) in a final usable broadcasted form to be viewed, listened to, otherwise consumed by an end-user, including, without limitation, television, radio, livestream and all other digital distribution of content, telecasts in theaters or other similar venues where multiple people in one location watch, listen, or otherwise consumer content simultaneously (in each case, whether or not any such broadcast requires the end-user to pay an admission charge, subscription fee, or so-called "pay-per-view" fee).

"Broadcast Receipts" shall mean the gross amount received by the Club from or arising out of the broadcast of any Club Event, whether paid directly to the Club or through a revenue sharing arrangement with the League.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal or State legal holiday or any day on which banking institutions in the State of Maine are authorized or required by law or other governmental action to close.

"CBA" shall mean any Collective Bargaining Agreement between the League (or any Affiliate of the League) and the United Soccer League Players Association (or any Affiliate or designee or successor association thereto).

"Club" shall have the meaning assigned thereto in the preamble hereof.

"Club Event" shall mean Home Games (as defined below) and all other Club-hosted events at the Stadium and/or on the Stadium Premises throughout the Term. All Club Events shall begin between 12:00 p.m. and 8:00 p.m. unless otherwise agreed to in writing by the City.

"Club Operated Parking Facility" shall have the meaning set forth in Section 2(b)(i).

"Club Products" shall mean the Club or any other League club or League programs, year books or similar written and/or photographic material, scarves, soccer balls, posters, pins, clothing,

pennants, caps, collectibles, and any and all other Club, or other League club or League, apparel or other merchandise inclusive of Club, other League club, and/or League logos or other marks.

"Club Storage Area" means two (2) 20' (length) x 18' (width) x 8'6" (height) storage containers (i) selected by the Club, in its reasonable discretion, (ii) paid for by the Club, and (iii) placed in a reasonable area designated by the City within the Stadium Premises, which area shall be subject to relocation by the City upon reasonable prior notice to the Club; provided that any such new location shall be reasonable and within the Stadium Premises. For clarity, the Club Storage Area is for the Club's exclusive use; provided, however, if the Club determines in its sole discretion, there is additional space available, the City will be permitted to utilize such additional space for reasonable storage purposes.

"City" shall have the meaning assigned thereto in the preamble hereof.

"Concessions" shall mean the business of selling, renting and/or furnishing goods and/or services, including, without limitation, food, beverages (including alcoholic and non-alcoholic beverages), souvenirs, novelties, apparel and any other merchandise during Club Events. For the avoidance of doubt, the term Concessions does not include parking.

"Construction Completion Date" shall mean the date on which the Improvements are complete and ready for use and on which a certificate of occupancy has been issued by the City of Portland Permitting & Inspections Department (or appropriate authority as applicable).

"CPI" shall mean the United States Department of Labor - Bureau of Labor Statistics Consumer Price Index for Portland, Maine (All Urban Consumers, All Items) (1982-1984=100). If the CPI formula should be revised, such revised CPI shall be modified, if necessary, by making such adjustments as may be required to produce substantially equivalent financial results to those that would have resulted if the formula had not been revised. If the CPI should be so revised that such adjustment cannot reasonably be made, or if the CM shall be discontinued, there shall be substituted for the CPI a reasonably reliable and comparable index or other information furnished by a government or independent third party source evaluating changes in the cost of living or purchasing power of the consumer dollar in Portland, Maine hereof.

"Damage" shall have the meaning assigned thereto in Section 20 hereof.

"Damage Estimate" shall have the meaning assigned thereto in Section 20 hereof.

"Excluded Games" shall have the meaning assigned thereto in Section 9 hereof.

"Exclusive Premises" shall mean the Club Storage Area and home locker room in each case described in greater detail on Exhibit B attached hereto and by this reference made a part hereof.

"Fixed Signage" shall mean any physical signage (including, without limitation, the sale of advertising space) that is (1) placed and operated within the Stadium Premises by the Club, and (2) remains continuously visible throughout the Term.

"Force Majeure Event" shall mean any of the following events which prevents a party from performing its obligations hereunder: any act of God, strike, lockout, League dissolution, termination or expiration of Club's expansion and/or franchise agreement with the League, or other industrial disturbance; pandemic, epidemic or any other outbreak; act of public enemy, blockade, war, insurrection, or riot; landslide, earthquake, tornado, fire, storm, flood, or washout; title dispute, or other litigation; governmental restraint, either federal or state, civil or military; civil disturbance; or explosion.

"Home Game" shall mean any League Game, Pre-Season Game, or Post-Season Game played by the Club at the Stadium.

"Improvement Completion Date" shall have the meaning assigned thereto in Section 3 hereof.

"Improvements" shall have the meaning assigned thereto in the recitals hereof.

"League" shall have the meaning ascribed to it in the recitals hereof.

"League Game" shall mean any professional soccer game scheduled by the League between the Club and another league member the outcome of which shall be included in determining the participants in the applicable League playoffs.

"Material Change" shall mean (i) any change (which shall include any single change or two or more changes which cumulatively comprise a material change) in (1) the general character, design, color or general aesthetic appearance of the exterior of the Improvements; (2) the size or capacity of the Improvements or the quality of the materials used therein; or (3) the orientation of or access and entrance to the Stadium; and (ii) any other material change, if the cost of such change, as reasonably estimated by the Club, is in excess of Two Hundred Thousand Dollars (\$200,000).

"Net Club Revenue" shall mean, with respect to each Club Event, the sum of the following, whether paid to the Club (or an Affiliate thereof), or to any Person authorized to receive the same on behalf of the Club (or an Affiliate thereof):

(i) the total of all dollar amounts paid for any ticket or other source of admission to Club Events, including any license fee charged in excess of the ticket charges (if applicable);

(ii) all Net Concession Revenues;

(iii) all Net Signage Revenues; *provided, however*, that the City shall be entitled to fifteen percent (15%) of all Net Signage Revenues received by Club from Fixed Signage at the Stadium during the Term (the "City Signage Revenue");

(iv) all revenues resulting from the sale of Club Products;

(v) all revenue derived from the sale of audio and/or visual broadcast rights to Home Games or any other Club Event (regardless of the form or medium of broadcast or distribution);

(vi) all revenue derived from commercial sponsorships or any other media activities, subject to (iii) above with respect to Fixed Signage; and

(vii) all other revenues received by the Club (or Affiliate), directly or indirectly, including as a result of a League initiative or requirements.

(viii) Net Club Revenue does not include parking revenue.

"Net Concession Revenue" shall mean all revenue derived from Concessions and catering sales within the Stadium Premises during Club Events less all reasonable fees and expenses paid to or retained by the applicable concessionaire or other vendor in accordance with any concession (or other) agreement with the City or the Club in connection with the operation of Concessions stands/booths or other similar services during Club Events.

"Net Parking Revenue" shall mean all revenue derived from the operation of On-Site Parking Facilities and Off-Site Parking Facilities during Club Events less all documented reasonable fees and expenses paid or otherwise incurred by the City, or, in the case of Club Operated Parking Facilities, the Club, in connection with the operation of the Parking Facilities during Club Events.

"Net Signage Revenue" shall mean all consideration received by the Club in connection with the operation of the scoreboard and all Fixed Signage and Temporary Signage at the Stadium during the Term less the Club's documented expenses incurred in the operation and marketing of such scoreboard and signage.

"New Playing Surface" shall have the meaning set forth in Section 3(a)(vi) hereof.

"Notice" shall have the meaning assigned thereto in Section 30 hereof.

"Off-Site Parking Facilities" shall mean those areas in the general vicinity of the Stadium that are owned or controlled by third parties and are currently available for the parking of motor vehicles, including the areas identified as Maine Med 1, Maine Med 2, and King Middle School on Exhibit D.

"On-Site Parking Facilities" shall mean those areas owned by the City adjacent to or near the Stadium that are currently available for the parking of motor vehicles by persons attending events at the Stadium, including the areas identified as Hadlock, Gated Lot, Trough/Expo, and Fitzpatrick on Exhibit D.

"Parking Facilities" shall mean, collectively, the On-Site Parking Facilities and the Off-Site Parking Facilities.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Post-Season Game" shall mean any game played by the Club at the Stadium following the completion of the scheduled Regular Season as part of the USL League One Playoffs organized by the League, culminating with the USL League One championship game.

"Pre-Season" shall mean the period from the first regularly scheduled Pre-Season Game to the last regularly scheduled Pre-Season Game of the Club in the Stadium.

"Pre-Season Game" shall mean any soccer game played by the Club in the Stadium during the Pre-Season.

"Project Costs" shall mean the following costs to the extent that such costs are incurred or accrued by or for the account of the Club for the construction and development of the Improvements in accordance with the terms of this Agreement, not reimbursed or reimbursable by others, and properly allocable to the Improvements: all architectural and engineering costs, all permit costs, all direct costs for labor, materials and subcontract performance that are incorporated into the Improvements, demolition costs, construction costs, the cost of equipment and other capital improvements installed in the Stadium Premises, site preparation costs, and all other costs which would customarily be considered to be "hard costs" or "architectural or engineering costs" of the Improvements and otherwise satisfy the criteria set forth in this sentence.

"Regular Season" shall mean the period from the first League Game to the last regularly scheduled League Game of the Club in the Stadium as established by the annual schedule of the League, including Post-Season Games.

"Revised Plans" shall have the meaning assigned thereto in Section 3 hereof.

"Stadium" shall have the meaning assigned thereto in the recitals hereof.

"Stadium Premises" shall mean that part of the Stadium within the Stadium's perimeter wall necessary for the proper exhibition of professional soccer according to League rules, standards, and guidelines, including the playing field, seating, locker rooms, medical room, press box, Club Storage Area and ticket sales facilities as set forth on the drawing attached hereto as Exhibit C.

"Temporary Signage" shall mean any signage (including, without limitation, the sale of advertising time or space) that is (1) placed and operated by the Club, whether within the Stadium Premises or otherwise and (2) unless otherwise agreed to by the Parties, is only visible during Club Events.

"USL" shall have the meaning ascribed to it in the recitals hereof.

2. Premises.

(a) Right to Use and Occupancy. The City hereby grants to the Club the right to use and occupy the Stadium and Stadium Premises, but only for the purpose, at the time during each calendar year, for the consideration, and upon the terms and conditions expressed in this Agreement. The City warrants and represents that it has the right and power to grant the rights granted herein. The Club acknowledges and agrees that it has inspected the Stadium and Stadium

Premises and it agrees to accept them and all equipment furnished therewith as is and where is, and Club acknowledges that City has not made any warranties or representations of any kind with respect thereto, except as expressly provided in this Agreement.

(b) Parking.

(i) Spectator Parking. For each Club Event, and for so long as the Parking Facilities are available for the City's use in connection with this Agreement, the City shall have the sole right to operate or cause to be operated the Parking Facilities for parking of spectator motor vehicles for each Club Event. Commencing approximately two (2) hours prior to the scheduled start of each Club Event, the City shall provide staff to operate or cause to be operated the Parking Facilities as set forth in this Section. If the City reasonably determines, however, that the City is not able to sufficiently operate one or more of the Parking Facilities for a Club Event, the City shall provide no less than 48 hours advanced notice to the Club, and the Club will have the right to operate, or engage a third party to operate, such Parking Facility or Facilities (or any portion thereof) for such Club Events (in each case, a "Club Operated Parking Facility").

(ii) Club Parking. For each Club Event, and for so long as the Parking Facilities are available for the City's use in connection with this Agreement, the Club shall have the right at no additional cost to the Club, to use and occupy thirty (30) On-Site Parking Facilities parking spaces for Club players, coaches, staff, and any other Club or League personnel at no cost to the Club. Upon 48 hours prior written notice to the City, the Club may reserve up to twenty (20) additional parking spaces for such personnel for which the Club shall pay the City 80% of the City's standard rate for the spaces. For any additional non-reserved parking spaces used by the Club, the Club will pay to the City the standard rate for the spaces.

(iii) Parking Revenues. Subject to Section 2(b)(iv), for each Club Event, the City shall collect and retain all Net Parking Revenue.

(iv) Parking Revenues for Club Operated Parking Facility. For each Club Event for which the City has determined that it is not able to operate one or more Parking Facilities and the Club (or a third party acting on behalf of the Club) operates a Club Operated Parking Facility, the Club shall collect all Net Parking Revenue from any such Club Operated Parking Facility, and the Club shall promptly remit to the City payment in an amount equal to one hundred percent (100%) of all such Net Parking Revenue. Along with said payment, Club shall provide the City with copies of supporting documentation of all revenues and expenses related to Club Operated Parking Facilities in form and substance reasonably satisfactory to the City.

(v) The Club acknowledges and agrees that the parties that own or control the Off-Site Parking Facilities may no longer allow the City to use such facilities at some point in the future. The City also reserves the right to add to or reduce the number of parking spaces in the On-Site Parking Facilities at any time. The City makes no representations or warranties about the number of available parking spaces in any Parking Facility during the Term of this Agreement.

(c) Exclusive Premises. Notwithstanding anything to the contrary herein, the City hereby grants to the Club the exclusive right to use and occupy the Exclusive Premises throughout each year during the term of this Agreement.

3. Construction of Improvements.

(a) Improvements.

(i) Approval of Program and Estimate. The Club shall deliver to the City a copy of its proposed construction program and estimate for the Improvements on or before February 1, 2024. If the City does not approve of the Club's proposed construction program and estimate for the Improvements, the City shall deliver to the Club written notice of its disapproval within twenty (20) Business Days after its receipt thereof; *provided, however*, subject to any applicable laws, the City's approval shall not be unreasonably withheld. If the City does not provide such notice of its disapproval within the time period set forth above, the City will be deemed to approve the Club's proposed construction program and estimate for the Improvements. If the City disapproves such proposed program and estimate, then the City's disapproval notice shall set forth the City's reasons for such disapproval in reasonable detail. Upon receipt of any such disapproval notice, the Club and the City shall work together in good faith to revise the proposed program and estimate to address the City's reasons for disapproval within fourteen (14) Business Days after the Club's receipt of the disapproval notice; *provided*, that any such revisions must be in compliance with the rules, guidelines, and standards set forth and required by the League and applicable laws, ordinances, regulations, and rules. Each resubmission of the program and estimate shall be subject to the same approval process applicable to the original proposed program and estimate under this Section 3(a)(i). For the purposes of this Agreement, any program and estimate for the Improvements approved by the City in accordance with this Section 3(a)(i) shall be referred to as the "Approved Program and Estimate." The Club shall deliver to the City a description prepared by the Club's chosen architect of any changes, additions, or modifications to the Approved Program and Estimate. Any Material Change to the Approved Program and Estimate is subject to the City's prior written approval, which shall either be granted or denied within ten (10) Business Days after the City's receipt of the modified program and estimate incorporating any such Material Change.

(ii) Approval of Construction Schedule. On or before May 1, 2024, the Club shall deliver to the City a reasonably detailed schedule for the construction of the Improvements. If the City does not approve of the Club's schedule for the construction of the Improvements, the City shall deliver to the Club written notice of its disapproval within twenty (20) Business Days after its receipt thereof; *provided, however*, the City's approval shall not be unreasonably withheld. If the City does not provide such notice of its disapproval within the time period set forth above, the City will be deemed to approve the Club's schedule for the construction of the Improvements. For clarity, the proposed construction schedule shall provide that construction of the Improvements shall (1) commence on or before July 1, 2024, (2) be completed prior to the commencement of the Club's first Pre-Season Game in 2025, and (3) be performed in a manner so as not to prevent or interfere with the playing of any games or unreasonably interfere with the use, occupancy or enjoyment of the Stadium by other Stadium tenants or their patrons. If the City disapproves such proposed schedule, then the City's disapproval notice shall set forth the City's reasons for such disapproval in reasonable detail. Upon receipt of any such disapproval

notice, the Club and the City shall work together in good faith to revise the proposed construction schedule to address the City's reasons for disapproval within fourteen (14) Business Days after the Club's receipt of the disapproval notice; provided, that any such revisions must be in compliance with the rules, guidelines, and standards set forth and required by the League and applicable laws, ordinances, regulations, and rules. Each resubmission of such schedule shall be subject to the same approval process applicable to the original proposed schedule under this Section 3(a)(ii). For the purposes of this Agreement, any construction schedule for the Improvements approved by the Club in accordance with this Section 3(a)(ii) shall be referred to as the "Approved Construction Schedule."

(iii) Approval of Plans. The Club shall submit for City approval a copy of its proposed construction drawings, plans, and specifications for the Improvements as they are from time to time prepared in accordance with the Approved Construction Schedule and Approved Program and Estimate. If the City does not approve of such proposed construction drawings, plans and specifications, the City shall deliver to the Club written notice of its disapproval within twenty (20) Business Days after its receipt thereof. If the City does not provide such notice of its disapproval within the time period set forth above, the City will be deemed to approve the Club's proposed plans and specifications for the Improvements. If the City disapproves such proposed plans and specifications, then the City's disapproval notice shall set forth the City's reasons for such disapproval in reasonable detail. Upon receipt of any such disapproval notice, the Club and the City shall work together in good faith to revise the proposed construction schedule to address the City's reasons for disapproval within fourteen (14) Business Days after the Club's receipt of the disapproval notice; provided, that any such revisions must be in compliance with the rules, guidelines, and standards set forth and required by the League and applicable laws, ordinances, regulations, and rules. Each resubmission of plans and specifications shall be subject to the same approval process applicable to the original proposed plans and specifications under this Section 3(a)(iii). For the purposes of this Agreement, any plans and specifications for the Improvements approved by the Club in accordance with this Section 3(a)(iii) shall be referred to as the "Approved Plans."

(iv) Prosecution of Construction. The Club shall (A) use commercially reasonable efforts to minimize any interference that the construction of the Improvements may have on the other Stadium tenants and their respective patrons' use of the Stadium, and (B) use its commercially reasonable efforts to ensure that the construction is being completed substantially in accordance with the Approved Construction Schedule. In no event will the Club allow its construction or any other activities to prevent any other Stadium tenant or licensee or their patrons from occupying and using the Stadium and the Stadium Premises for an event at the Stadium.

(v) Cost of Construction. The Club shall expend not less than, and shall not be required to spend more than, One Million US Dollars (\$1,000,000) in Project Costs for the construction of the Improvements. In the event that the projected Project Costs based upon the construction bids for the construction of the Improvements and in accordance with the Approved Program and Estimate and Approved Plans exceed One Million US Dollars (\$1,000,000) in Project Costs, then the Club may either, in its reasonable discretion, (1) prepare revisions to the Approved Plans (the "Revised Plans") and submit them to the City for review and approval in accordance with the procedures set forth in section 3(a)(i)-(iii), or (2) terminate this Agreement. Once the

construction of the Improvements has commenced, the Club shall pay for all costs and expenses that arise in connection with such construction (including, without limitation, any cost overruns).

(vi) The Club acknowledges that (i) the City is considering constructing a new synthetic turf field playing surface to be installed at a location approved by the City (the “New Playing Field”), and will not be included as part of the Improvements, but rather will be designed, developed, and constructed by the City, (ii) the Club agrees that the Club will be responsible for a portion of the total cost thereof in the amount of Two Hundred Thousand US Dollars (\$200,000). The Club will provide the City with such payment on the later of (1) December 31, 2026, or (2) the date that the City either (a) includes the New Playing Field in its annual capital improvement program or (b) otherwise secures grant or other financial commitments for funding the remaining costs of the New Playing Field. Such payment is in addition to and is not included in the Project Costs set forth above. The City will be responsible for the remaining portion of the cost of the New Playing Field. All decisions related to the location, design, construction, and construction schedule for the New Playing Field will be made in the City’s sole discretion. If the City does not complete construction of the New Playing Field prior to the termination of this Agreement, the City will return the \$200,000 payment to the Club within thirty days after termination.

(b) Contractors; Subcontractors. Upon reasonable request from the City, the Club shall provide the City with a list of design/build team contractors and subcontractors that the Club, in its reasonable discretion, has selected to work on the Improvements. The Club shall use commercially reasonable efforts to ensure that all contractors and subcontractors comply with all material legal requirements in connection with the performance of all construction work.

(c) Performance of Construction Work. The Club shall, at its own cost and expense construct or cause to be constructed at the Stadium, the Improvements in accordance with the Approved Plans and the Approved Construction Schedule. Any and all construction work shall be done diligently, in conformity with all applicable legal and environmental requirements, including, without limitation, the Americans with Disabilities Act (42 U.S.C. §12101, et. seq.) and the Building and Fire Codes of the City of Portland, Maine, in a good and workmanlike manner, under the supervision of the Approved Architect, and in accordance with all applicable industry and professional standards. Once the Club commences the construction of the Improvements, the Club will diligently prosecute such construction to completion in accordance with the Approved Construction Schedule and the Approved Facilities Construction Schedule, respectively, subject to delays resulting from Force Majeure Events outside of the control of the Club. The Club shall obtain, at its sole expense, all building permits and other approvals necessary for the construction of the Improvements and shall commence construction thereof on or about a date mutually agreed upon by the Parties. The Club shall use its commercially reasonable efforts to complete construction of the Improvements on or before a date mutually agreed upon by the Parties.

(d) City Inspections. The City and its representatives may, from time to time, at the City’s own cost and expense, during reasonable business hours, in a manner which will not unreasonably interfere with construction work in progress, inspect the Improvements and the construction thereof and shall be furnished, upon request, with copies of all plans, shop drawings, and specifications relating to the Improvements to determine whether or not the construction of the Improvements is being or has been done in accordance with the provisions of this Agreement,

the Approved Plans and the Approved Facilities Plans. Prior to making such inspections, the City shall notify the Club's designated contact person which, as of the date of this Agreement, is Gabe Hoffman-Johnson. If the City inspectors determine in their commercially reasonable discretion that any such work is being done contrary to the obligations set forth in Section 3 of this Agreement, including the Approved Plans and the Approved Facilities Plans, the City will provide the Club prompt notice thereof (a "Noncompliance Notice"). Upon the Club's receipt of such Noncompliance Notice, the Club will have a reasonable amount of time to cure any such noncompliance, or otherwise dispute the alleged noncompliance set forth in the Noncompliance Notice in accordance with the dispute resolution process set forth in Section 36 of this Agreement. The Club acknowledges and agrees that any such inspection by the City is for purposes of determining compliance with the provisions of this Agreement, the Approved Plans and the Approved Facilities Plans and that such inspections shall not be deemed to impose any duty or liability upon the City to supervise any aspect of or approve the quality of the Improvements or any construction work.

(e) Permits. The Club shall, at its own expense, obtain all permits, licenses and other governmental approvals and authorizations which are required for the construction, operation or occupancy of the Improvements. Before allowing occupancy or use of the Improvements, the Club, at its own cost and expense, shall obtain and deliver to the City certificates of occupancy for the Improvements.

4. Term; Option to Extend Term.

The term of this Agreement shall begin on February 1, 2024 and, unless earlier terminated in accordance with the terms hereof, shall expire on the last day of the Post-Season during the 2029 calendar year (the "Initial Term"). The Club shall have two (2) consecutive options (each a "Club Extension Option") to extend the term of this Agreement beyond the Initial Term, in each case for a Five (5) year renewal term (each renewal term, together with the Initial Term, collectively, the "Term"); *provided, however*, in order to exercise a Club Extension Option, the Club must provide the City with no less than sixty (60) days' prior written notice thereof, and the Club must not be in material default under the provisions of this Agreement at the end of the then-current Term.

5. Use and Occupancy.

(a) Soccer Games and Other Club Events. Subject to the provisions of subsection 5(b) below, the Club shall have the exclusive right to play professional soccer games (and conduct pregame, half-time and post-game activities) at the Stadium Premises on each Club Scheduled Date on which a Home Game is to be played during the period commencing with the Pre-Season and including the Regular Season and, if Post-Season games are to be played as Home Games, the Club shall have the right to do so during the Post-Season, during each year of the Term covered by this Agreement. The Club shall exercise this exclusive right only on the dates (day or night) regularly scheduled for professional soccer games in accordance with the official League schedule pertaining to professional soccer games to be played and hosted within the Stadium Premises by the Club. For all Club Events, the Club will have access to the Stadium and Stadium Premises in accordance with the terms hereof at least six (6) hours prior the scheduled start of time of the event. The City will work with the Club in good faith to provide the Club additional access to the Stadium (beyond the dates set forth above) for Club practices and other training.

Notwithstanding anything to the contrary in this Agreement, the Club acknowledges and agrees that it may not be able to schedule a Post Season game at the Stadium if another Stadium user is already scheduled to use the Stadium on a given day during the Post Season. In the event of a schedule conflict, the Parties will work together in good faith to achieve a reasonable solution, but under no circumstances will the City be obligated to cancel another Stadium user's scheduled event at the Stadium in order to accommodate the League's Post Season schedule.

(b) Exercise of Club's Selection of Dates. On or before the 1st day of September of each calendar year during the Term, the City shall provide the Club with a list in writing of no less than forty (40) dates (including at least 30 weekend dates and 10 weekday dates) within the reasonably anticipated timeframe of the Regular Season in the following calendar year for the Club to choose from for scheduling of Club Events (the "Offered Dates"). Within 10 business days after the Club's receipt of the Offered Dates, the Club will notify the City in writing of its selection of twenty-five (25) of the Offered Dates, including anticipated Post Season Game dates, and the City will reserve those dates for the Club's use (the "Club Reserved Dates"). Such final selection of Club Reserved Dates shall be binding and not subject to change, except as set forth below or as otherwise agreed to in writing by the Parties. After Club Reserved Dates have been selected, and after the City reasonably determines that other potential Stadium users have had a reasonable opportunity to schedule dates for use of the Stadium, the Club may request additional dates for Club Events by following the City's ordinary scheduling process utilized by other Stadium users. Once the League has confirmed the final schedule for the then-upcoming Regular Season, the Club will provide the City with a copy thereof and, to the extent that the Club determines in its sole discretion that any Club Reserved Dates are not needed for Home Games or scheduled Club Events, those Club Reserved Dates will be "released" back to the City for use through its ordinary scheduling process. All Club Reserved Dates that are not released back to the City and other dates scheduled by the City for the Club after the Club selects the Club Reserved Dates are referred to herein as "Club Scheduled Dates." In the event that the Club does not advance to the League playoffs, the Club will release any Post Season Game Club Scheduled Dates to the City.

(c) Sale of Club Products. The Club shall have the exclusive right during the term of this Agreement, to sell, either directly or through others, Club Products. The City agrees to make available to the Club or its designated licensee(s) during Club Events (i) reasonable, nonexclusive space at the concession stand for the sale of Club Products and (ii) unimproved space in one or more locations reasonably determined by the City, after good faith discussion with the Club, within the Stadium Premises to locate one or more "pop-up" or temporary specialty stores for the sale of Club Products.

(d) Permits and Approvals; Signs. The Club acknowledges and agrees that it is solely responsible for securing all necessary or required permits and approvals for its operation of a professional soccer team and its proposed uses of the Stadium and the Stadium Premises. All signs shall conform to the City of Portland signage standards and Club shall, at its own expense, acquire all necessary permits and approvals to erect said signs. When signs are erected, Club agrees that such signs shall be maintained in good condition at the sole cost and expense of the Club. The City makes no representations or warranties as to the suitability of, or the ability to obtain any regulatory approvals for the Club's use of the Stadium and the Stadium Premises. The Club further acknowledges and agrees that this Agreement only grants permission to use the Stadium and the Stadium Premises in accordance with the terms and conditions set forth herein

and that this Agreement is not a building permit or a license or permit to operate a business or any concession. The Club acknowledges and agrees that the City of Portland is acting as the owner of the Stadium and the Stadium Premises in connection with this Agreement, and not in its regulatory capacity. Accordingly, except as specifically set forth in this Agreement, nothing in this Agreement obligates any City official or employee to grant any permit, license, or other regulatory approval requested by the Club in connection with its use of the Stadium or the Stadium Premises.

(e) Restoration. The Club agrees that at all times during the Term and upon termination of this Agreement, the Club shall restore, repair, and replace all aspects of the Stadium and Stadium Premises that are disturbed or damaged as a result of the Club's presence or use of the Stadium or the Stadium Premises or the presence or use of its employees, players, contractors, subcontractors, invitees, or volunteers, reasonable wear and tear excepted. Any and all such repair, replacement, and restoration work shall be performed to the City's reasonable satisfaction and at the sole expense of Club. The Club acknowledges and agrees that its obligation to repair, replace, and restore all aspects of said property under this paragraph shall survive the termination of this Agreement.

(f) Club acknowledges and agrees that, so long as the City is not in material default under this Agreement, Club shall defend, indemnify, and hold the City harmless at all times from any claims, liability, losses, costs, expenses (including, without limitation, reasonable attorney's fees) fines, damages or judgments (collectively, "Claims"), just or unjust, arising out of or relating to any contracts between the Club and any third parties.

6. Media.

(a) Broadcasts and Exhibitions. Subject to applicable League rules, the Club shall have the right to receive all revenue derived from any broadcast, dissemination or exhibition described in this Section 6(a). Nothing herein is intended to limit the right of the Club to authorize broadcasts or dissemination by radio, television, internet or other digital means, or otherwise of professional soccer games, or any other events in which the Club participates, played or hosted away from the Stadium by the Club. The Club shall have the exclusive right, with respect to radio, television, internet or other digital means, as follows:

(i) to broadcast and disseminate, by radio, television, internet streaming or any other digital means, or any other method of transmission or communication, livestream and/or any audio and video reports or highlights of all and/or any part of all Club Events and any other events in which the Club participates at *any* location during the term of this Agreement; and

(ii) to authorize the exhibition of Home Games by means of any method of Broadcast, in the Club's absolute discretion.

(b) Commercial Sponsors. The Club shall have the exclusive right to authorize and receive all revenues derived from the sale of commercial sponsorships of (i) any Broadcast of any Club Event, or any other events in which the Club participates at *any* location during the term of this Agreement, and (ii) any Broadcasts of special Club programs originating from the Stadium prior to any of such Club Events or other events.

(c) Press Facilities. On each day that the Club has scheduled a Club Event and the right to use and occupy the Stadium Premises in accordance with Section 5 hereof, the City shall make the press box available for use by the Club (and journalists and media representatives), without additional cost to the Club.

7. Consideration.

(a) Net Club Revenue. Commencing with the 2025 Pre-Season and thereafter throughout the term of this Agreement, and subject to the City Signage Revenue, the Club shall receive all Net Club Revenue for each Home Game played by the Club at the Stadium Premises, and for all other Club Events that take place within the Stadium Premises.

(b) Payments to the City. For each Home Game played during the Term of this Agreement (as applicable depending on the Club's exercise of the Club Extension Option), the Club shall pay the following, as consideration to the City for and on account of the Club's use and occupancy of the Stadium and Stadium Premises hereunder:

(i) In consideration of the Improvements and the Club's contribution to the New Playing Field, for each of the first ten (10) calendar years during the Term of this Agreement, the Club shall pay no rental fees for the Stadium, but Club shall be responsible for the fees and costs associated with permitted events at the Stadium, including fees and costs for public safety personnel, at the then-current rates, in each case as provided by the City in writing to the Club. Notwithstanding the foregoing, until such time as the Improvements are completed, if the Club uses the Stadium as permitted hereunder to host Club Events, the Club shall pay the City all use and rental fees charged by the City to other Stadium users for the Club's use of the Stadium during such Club Events; and

(ii) In the event that the Club exercises the second Club Extension Option, then, commencing upon the beginning of the second extension and thereafter throughout the Term of this Agreement, the Club shall pay the City all then-current applicable use and rental fees and other fees and charges (as provided by the City in writing to the Club) charged by the City to other Stadium occupants/licensees.

8. Use and Occupancy by the City.

The City reserves, and shall have the exclusive right to, the use and occupancy of the Stadium (other than the Exclusive Premises), and to the possession thereof, at all times during the Term of this Agreement, except during the Club Scheduled Dates and any other dates that such use and occupancy is granted to the Club, as provided hereunder.

City Covenants.

(a) Maintenance of Stadium Premises; Cleaning; Trash Removal. Except as otherwise provided herein, during the Term, the City shall maintain the playing field at the Stadium, the Stadium, and the Stadium Premises in substantially the same condition that they were in at the beginning of the Term. The City will also be responsible for maintaining the Improvements, except for the Exclusive Premises, in good working order, reasonable wear and

tear excepted. Such maintenance will be performed in the City's reasonable discretion. The Club will be solely responsible for all maintenance and repair of the Exclusive Premises.

During the Term, the City shall, at its expense, furnish all labor, material, supplies, and equipment necessary to maintain and clean the Stadium and keep it in an orderly condition, including the prompt removal and disposal of all rubbish, trash and garbage in the Stadium prior to the time the Club is permitted to use the Stadium for each Club Event.

Unless otherwise specified in this Agreement, the City has no other obligations to maintain, repair, or replace any aspect of the playing field, the Stadium, the Stadium Premises, the Parking Facilities, or any other property subject to this Agreement in any manner above and beyond the City's customary practice for maintenance of the same as it relates to the use of the Stadium by other users/licensees.

(b) Field Painting; Restoration. The Club will not paint or remove paint from the playing field at the Stadium without the City's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed. If the City consents to the Club's painting or removal of paint from the field, the Club will do so at the Club's sole expense, and the Club will repaint the playing field to the City's reasonable satisfaction, and at times specified by the City to ensure that appropriate lines, logos, or other markings are in place for other Stadium users. For clarity, the City acknowledges and agrees that, in order for the Club to host Home Games at the Stadium, the Club may be required to paint and remove paint from playing field at the Stadium in order to comply with applicable requirements for the exhibition of a professional soccer team participating in the League.

(c) Additional Covenants. Notwithstanding anything to the contrary herein, the City covenants and agrees that:

(i) it shall deliver the Stadium Premises to the Club prior to each Club Event in a condition comparable to the condition of the Stadium Premises delivered to other licensees/occupants;

(ii) at the Club's reasonable discretion, visiting soccer clubs shall be permitted to practice on the Stadium Premises' playing field on Club Scheduled Dates during the six (6) hour period prior to the scheduled start of time of the Club Event.

(d) Club acknowledges and agrees that the City has no obligation to incur any cost or expense, provide any services, or perform and maintenance repairs under this Agreement except those specified in this Agreement.

9. Crowd Control-Security Enforcement and Traffic Control

(a) Security. To the extent the Club, in its reasonable discretion, deems it necessary for any Club Events, the Club shall be responsible for non-police officer crowd control and security enforcement within the Stadium and Stadium Premises for each Club Event and shall provide appropriate personnel therefor. In the event that the City reasonably determines that police, fire, and/or paramedic services are necessary for any Club Event, then the Club shall pay for the

wages of required personnel and all other reasonable costs and fees associated with providing such personnel.

(b) Traffic Mitigation. The Club and the City shall work together in good faith to implement a traffic mitigation program as reasonably necessary to control traffic in and out of the Stadium and the Parking Facilities.

10. Intentionally omitted.

11. Operating Costs. For all Club Events, the City will only pay for customary expenses to operate and maintain the Stadium Premises that the City, in its reasonable discretion, determines are identical or substantially similar to those expenses for which it is responsible in connection with other (non-Club Event) events within the Stadium Premises. For clarity, in connection with each Home Game, the Club shall pay for all expenses incurred in connection with all announcers, fan experience and all other game day operations staff, Concessionaires, personnel for home and visitor bench areas, banners and decorations, any other Club promotional activities or activations in connection with such Home Game and in order to ensure compliance with any additional League requirements, and any other reasonably necessary costs that the City is not required to pay for hereunder.

12. Signage

(a) Signage; Scoreboard Arrangement. Subject to the City's approval, not to be unreasonably withheld, the Club shall be permitted to install, maintain and operate, or supply a scoreboard and other signage at the Stadium suitable for professional soccer, in accordance with applicable League guidelines and applicable sign laws, ordinances, rules, and regulations. The Club shall have the right to (1) operate, manage and control all scoreboards and signage at the Stadium at all times during the Term of this Agreement (other than during non-Club Events at the Stadium, at which time the City shall have the right to operate the scoreboards), (2) manage all advertising and promotional programs thereon or otherwise in connection therewith, and (3) subject to the City Signage Revenue, collect all Net Signage Revenues at all times throughout each year during the Term of this Agreement.

(b) The City shall be entitled to place City and school signage at the Stadium and Stadium Premises in areas not then in use by the Club. Club will not remove or relocate any such signage or any other signage existing at the Stadium or Stadium Premises as of the Effective Date without the City's prior written approval.

13. Entry and Inspection

The City reserves, and always shall have the right to enter the Stadium for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Stadium or to inspect the operations conducted therein. The City shall use its best efforts to assure that any such entry or inspection shall be conducted in such a manner so as to minimize any interference with the Club's use of the Stadium. In the event that any such entry or inspection by the City discloses that the Stadium is not in a reasonably safe or satisfactory condition the City shall have the right to cause the Club to correct any such unsafe or unsatisfactory condition created by the Club or by the Club's use or occupancy of the Stadium Premises, except to the extent that the correction of

such condition is within the scope of the City's maintenance, operation, repair or other general obligations hereunder.

14. Utilities and Service

The City shall furnish, without cost to the Club, gas, electric power, water and sewer services, subject to state and federal regulations regarding energy consumption; provided, however, the Club will be responsible for payment of utility costs attributed to the use of the Stadium lights during Club Events and the use of the Exclusive Premises. The City will provide the Club with reasonably satisfactory evidence (statements/invoices from electricity provider) of such costs at the end of each calendar year of the Term, and the Club shall remit payment within sixty (60) days thereafter.

15. Indemnification; Liens.

To the fullest extent permitted by law, Club shall defend, indemnify and hold the City, its officers, agents and employees, harmless at all times from any claims, liability, losses, costs, expenses (including, without limitation, reasonable attorney's fees) fines, damages or judgments (collectively, "Claims"), just or unjust, that arise out of or are caused by any breach of this agreement by the Club, or any act or omission constituting negligence or willful misconduct on the part of the Club, its members, officers, agents, contractors, subcontractors, or employees, which Claims arise out of or result from the activities hereunder, said Claims to include, without being limited to, claims for personal injury, death, or property damage, including injury or damage to City employees or property; and claims based upon violation of any environmental law or regulation governing hazardous substances. Club's obligations under this paragraph shall survive termination of this Agreement to the extent that the underlying act or omission resulting in the Claim occurs during the Term. Notwithstanding anything to the contrary in this Agreement, the Club is not obligated to indemnify, hold harmless, or defend the City or any of its officers, employees, contractors, subcontractors, or agents against any Claim (whether direct or indirect) to the extent such Claim arises out of or results from the negligence or willful misconduct of the City or any of its officers, employees, or agents, or the City's failure to comply with any of its obligations set forth in this Agreement.

Club shall not suffer or permit any mechanic's lien or other lien to be filed against the Stadium, Stadium Premises, Improvements, or any part thereof, by reason of labor, work, services or materials supplied or claimed to have been supplied to Club, and Club shall defend, indemnify and hold the City harmless from and against any claims, costs or liabilities, including any attorney's fees expended thereon, that result from any such lien.

16. Insurance

(a) Club Insurance. Within 30 days after execution of this Agreement, and, in any event prior to any use of or entry into the Stadium, the Club will procure and maintain:

- Occurrence based Commercial General Liability Insurance coverage in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage;

- Workers' Compensation Insurance coverage to the extent required by law, which shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees;

With respect to the Commercial General Liability Insurance, the Club shall name the City as an additional insured for coverage for claims for which the City does not have governmental immunity, including, without limitation, those areas where government immunity has been expressly waived as set forth in 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the City under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the City. Within 30 days after execution of this Agreement, the Club shall furnish the City and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the City of termination of insurance from the insurance provider or agent. The Club shall also provide a copy of any endorsement naming the City as additional insured. In no event will the Club be permitted to enter the Stadium Premises under this Agreement until it has provided the above referenced insurance documentation. Upon City's reasonable request, the Club shall provide the City with a complete copy of any of the above-referenced policies. The Club shall be responsible for any and all deductibles and/or self-insured retentions (not to exceed \$10,000.00 without prior written approval of Corporation Counsel). The City's acceptance or lack of acceptance of the Club's Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of the Club's obligation to obtain and maintain such insurance as required by this agreement.

The Club shall be also responsible for securing insurance coverage with respect to its own equipment, supplies and other personal property ("Club Property") with such property and casualty insurance as it deems necessary in its sole discretion, and the City shall have no responsibility therefor. Club assumes all risk of damage, loss or casualty to Club Property while located at the Stadium or the Stadium Premises. The Club shall defend, indemnify and hold the City harmless from any claim arising out of or relating to any damage, loss or casualty to Club Property. Any casualty insurance obtained by Club for the Club Property shall include a waiver of subrogation against the City. Notwithstanding anything to the contrary in this Agreement, the Club is not obligated to defend, indemnify or hold harmless, the City for any such claim to the extent such claim arises out of or results from the negligence or willful misconduct of the City, or any of its officers, employees, or agents, or the City's failure to comply with any of its obligations set forth in this Agreement.

(a) City Insurance. During the Term, City shall maintain insurance or self-insurance of not less than the statutory liability cap pursuant to the Maine Tort Claims Act, 14 M.R.S.A. §8101 et seq., including for the acts and omissions of its employees occurring within the course and scope of employment, and pursuant to the Maine Worker's Compensation Act of 1992, 39 M.R.S.A. §101 et seq. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the Licensee under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the City. Within thirty (30) days after execution of this Agreement, the City shall furnish the Club and thereafter maintain certificates evidencing all such coverages.

17. Damage and Destruction

(a) Repairs of Damage and Termination Rights. If all or a part of the Stadium is damaged by fire, earthquake, hurricane, blizzard, or other casualty (any such fire, earthquake, hurricane, blizzard or other casualty is hereinafter referred to as "Damage"), the City shall promptly give the Club notice of the City's reasonable estimate of the time required to repair such Damage (the "Damage Estimate"). If the Damage Estimate contemplates that the Damage can be repaired on or before the first (1st) anniversary of the date on which such Damage occurred, then (i) the City shall repair the Damage, (ii) the Club shall have the right to play its Home Games and host all other Club Events at any other locations of its choice during the construction period, and (iii) this Agreement shall remain in full force and effect. If the Damage Estimate contemplates that the Damage cannot be repaired on or before such first (1st) anniversary date, then the Club may give notice to the City, within thirty (30) calendar days after the Club receives the Damage Estimate, terminating this Agreement as of the date of such Damage. In the event that the Club does not elect to terminate this Agreement pursuant to this Section 17, and the City fails to substantially complete its repair of the Damage within thirty (30) calendar days after the expiration of the time period set forth in the Damage Estimate (which period shall be extended to the extent of any actual delays caused by the Club or any Force Majeure Event), then the Club may terminate this Agreement by delivering written notice thereof to the City. To the extent repair or replacement is required to the Improvements (or any portion thereof) that benefit other users of the Stadium, and such improvements are covered by City insurance, any such repair or replacement of such Improvements at the Stadium as a result of any Damage thereto shall be performed by the City in accordance with plans and specifications reasonably approved by the City. Any such repair or replacement to Improvements (or any portion thereof) that are exclusively used and enjoyed by the Club during the Term, shall be performed by the Club in accordance with plans and specifications reasonably approved by the City.

(b) Damage During Last Year of Term. Notwithstanding anything to the contrary contained in this Section 18, if the Damage Estimate contemplates that the repair of the Damage shall take more than sixty (60) calendar days to complete, and such completion shall occur during the last twelve (12) months of the Term of this Agreement, then the City and the Club shall each have the option to terminate this Agreement as of the date of such Damage by giving written notice to the other, in the case of the City together with the Damage Estimate, or, in the case of the Club, within thirty (30) calendar days after the Club's receipt of the Damage Estimate.

(c) Abatement. During the period the Stadium Premises or any part thereof is rendered unusable due to such Damage and repair, the Club's obligations hereunder to make any payments to the City shall be proportionately reduced based upon the extent to which the Damage and repair thereof prevents the Club from conducting its business at the Stadium in the manner in which such business was conducted prior to such Damage.

18. Alterations and Improvements

The Club will not make any alterations or improvements to the Stadium except in accordance with plans previously approved in writing by the City.

19. Waiver

The waiver by the City of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of consideration hereunder by the City shall not be deemed to be a waiver of any preceding breach by the Club of any term, covenant or condition of this Agreement other than the failure of the Club to make the particular payment so accepted, regardless of the City's knowledge of such preceding breach at the time of acceptance thereof. Except as otherwise provided herein, any failure on the part of the City to require or exact full and complete compliance with any of the covenants or conditions of this Agreement shall not be construed as in any manner changing the terms hereof or to stop the City from enforcing the full provisions hereof, nor shall the terms of this Agreement be changed or altered in any manner whatsoever other than by written agreement of the City and the Club.

20. Remedies.

(a) Club Defaults. Except as otherwise provided herein, in the event that the Club shall (i) default in the performance or fulfillment of any covenant or condition herein contained on its part to be performed or fulfilled and shall fail to cure or to commence and diligently pursue the curing of such default within thirty (30) calendar days following its receipt of a written notice from the City specifying the default complained of and the date on which its rights hereunder will be terminated as hereinafter provided if such default is not cured, or (ii) file a voluntary petition in bankruptcy, or (iii) be adjudicated bankrupt, or (iv) make a general assignment for the benefit of creditors, *then* and in either or any of said events, the City may, at its option, without further notice or demand upon the Club, immediately cancel and terminate this Agreement and terminate all of the rights of the Club in or to the Stadium and Stadium Premises in or to the further possession thereof. The rights and remedies of the City as hereinabove set forth, are cumulative only and shall in no way be deemed to limit any of the other provisions of this Agreement or otherwise to deny to the City any right or remedy at law or in equity which the City may have or assert against the Club under any law in effect at the date hereof or which may hereafter be enacted or become effective, it being the intent hereof that the rights and remedies of the City, as hereinabove set forth, shall be supplemental to or in addition to or in aid of the other provisions of this Agreement and of any right or remedy at law or in equity which the City may have against the Club.

(b) Termination. Any election on the part of the City to terminate this Agreement must be in writing, properly executed by the City and served upon the Club. No termination of this Agreement on account of a default by the Club shall be or become effective by operation of law or otherwise, unless and until the City shall have given such written notice to the Club. Neither any notice to pay any consideration or portion thereof due and payable or notice to deliver up possession of the Stadium Premises given pursuant to any law of the State of Maine, nor any proceeding in the nature of an unlawful detainer taken by the City shall, of itself, and in the absence of such written notice as above provided, operate to terminate this Agreement.

(c) City Defaults. At no time shall the City be deemed to be in default under this Agreement, unless and until the Club shall have given to the City notice in writing, specifying such default and the City shall have failed to cure or to commence and diligently pursue the curing of such default within a period of thirty (30) calendar days after receipt of such written notice. In the event that the City fails to cure or diligently pursue the curing of any default under this Agreement within such thirty (30) calendar day period, then the Club may, at its option, without further notice or demand upon the City or upon any person or persons claiming by, through or under the City, immediately cancel and terminate this Agreement.

(d) Except for Club's obligations under section 15 (Indemnification, Liens), notwithstanding anything to the contrary in this Agreement, the liability of each Party to the other under this Agreement shall be limited to actual, direct damages only and all other damages and remedies are waived. Neither party nor its respective officers, directors, agents, employees shall be liable, irrespective of whether such claim of liability is based upon breach of warranty, tort (including negligence, whether of any of the Parties to this Agreement or others), strict liability, contract, operation of law or otherwise, to the other party, or its officers, directors, agents, employees, successors or assigns, for incidental, delay, indirect, punitive, or consequential damages connected with, related to or arising from performance or non-performance of this Agreement, or any action or inaction in connection therewith including, without limitation, claims in the nature of lost revenues, income or profits (other than payments expressly required and due under this Agreement).

21. Force Majeure

Except as otherwise provided herein, should either party hereto be reasonably delayed in or prevented, in whole or in part, from performing any obligation or conditions hereunder or from exercising its rights hereunder by reason of or as a result of any Force Majeure Event, such party shall be excused from performing such obligations or conditions while such party is so delayed or prevented.

22. Title to Improvements. Upon the expiration or earlier termination of this Agreement, except for title to the Exclusive Premises, which, for the avoidance of doubt shall be owned outright by the Club, title to the Improvements shall automatically vest in the City without the need for any conveyance instrument or other documents evidencing the transfer of title to the City.

23. Quiet Enjoyment

The City covenants that the Club (upon payment by the Club of any consideration due, and the performance by the Club of the terms, covenants and conditions, in each case as set forth in this Agreement) shall peacefully and quietly have, hold and enjoy (i) the Stadium Premises on the Club Reserved Dates and during the periods otherwise herein provided in which the Club is given the right to the use and occupancy of the Stadium Premises, and (ii) the Exclusive Premises at all time during the Term of this Agreement.

24. Notices.

Any notice, demand, request, consent, approval and any other communications (any of the foregoing, a "Notice" required, permitted, or desired, to be given hereunder shall be in writing sent by registered or certified mail, postage prepaid, return receipt requested or delivered by hand or reputable overnight courier addressed to the Party to be so notified at its address hereinafter set forth or to such other address as such party may hereafter specify in a Notice delivered in accordance with the provisions of this Section 30. Any such Notice shall be deemed to have been received three (3) Business Days after the date such Notice is mailed or on the date of delivery by hand or courier addressed to the parties as follows (provided that neither the City nor the Club shall be deemed to have received any Notice not actually received):

If to the City: City of Portland
Attn: City Manager
389 Congress Street
Portland, Maine 04101

With a copy to: Office of the Corporation Counsel at the same address

If to the Club: Portland United, LLC
Attn: Gabe Hoffman-Johnson
7 Stratton Place
Portland, Maine 04101
gabe@usltoportland.com

With a copy to: Caleb E. Ginsberg, Esq.
303 Bartlett Street
Portsmouth, New Hampshire 03801
ginsberg.caleb@gmail.com

25. Construction of this Agreement; Jurisdiction.

(a) Maine Law. This Agreement shall be deemed to be made and shall be construed in accordance with the laws of the State of Maine. Unless otherwise resolved by agreement of the parties, the City and the Club covenant and agree to submit to the personal jurisdiction of the Cumberland County Superior Court for any dispute, claim, or matter arising out of or related to this Agreement.

(b) Section Headings. The section headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular sections hereof to which they refer.

(c) Sole Instrument. This Agreement embodies and constitutes the sole and entire agreement between the parties hereto with respect to the subject matter hereof. There are no terms, obligations, covenants or conditions between the parties hereto, other than as contained herein. No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the parties with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified or abandoned, in whole or in part,

except by such instrument in writing and no subsequent oral agreement shall have any validity whatsoever.

(d) Time. Time is of the essence hereof, and every term, covenant and condition shall be deemed to be of the essence hereof, and any breach by the City or the Club shall be deemed to be of the very substance of this Agreement.

(e) Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the City, and to such successors and assigns of the Club as are permitted to succeed to the Club right upon and subject to the terms hereof.

(f) No Partnership. Nothing herein contained shall make, or be construed to make, the City or the Club a partner of one another nor shall this Agreement be construed to create a partnership or joint venture between any of the parties hereto or referred to herein.

(g) Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

26. Nondiscrimination

The Club agrees not to discriminate in any manner against any person or persons on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in the Club's use or occupancy of the Stadium Premises. Club shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination, including, without limitation, the provision of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment. The Club agrees to comply with all applicable City, state, and federal laws and regulations regarding equal opportunity.

27. Payments.

All payments to the City under the terms of this Agreement shall be made payable to the City of Portland and delivered to _____², or as otherwise specified in writing from time to time by the City.

28. Club Employees.

The Club agrees that its and its Affiliates' members, managers, employees, associates, advisors, agents, players, or contractors shall not be deemed to be employees of the City for any purpose. The City shall have no obligation or responsibility for resolving any labor disputes or

² City to confirm.

grievances which may arise between the Club and its members, managers, employees, associates, advisors, agents, players, or contractors employed to perform any services relating to this Agreement. The Club agrees to provide sufficient personnel to perform all services required by this Agreement. The Club shall be responsible for all required federal, state, and local reports, records and payments in connection with social security, unemployment insurance, and other charges and taxes that apply to the Club. The City shall have no responsibility for providing any of the above reports, records and payments.

29. Workers' Compensation

By signing this Agreement, the Club hereby certifies that it is aware of the provisions of Maine Revised Statutes, Title 39-A, Part 1, Chapter 1 (the Maine Workers Compensation Act of 1992) and shall comply with such provisions. If reasonably requested by the City, the Club shall provide the City with evidence of compliance with the workers' compensation laws of the State of Maine. The Club shall provide the City with a waiver of subrogation from its insurance carrier when proof of insurance is due.

30. Land and Water Conservation Fund Act. The parties hereto agree to work together in good faith during the Term as reasonably necessary to avoid the Stadium Premises (or any portion thereof) being subject to a required "conversion" under the Land and Water Conservation Fund Act of 1965 (the "**LWCF Act**"). In the event that the parties are unable to prevent such a conversion, the Club will be responsible for all costs associated with the conversion, including, without limitation, the cost of any real estate acquisition required under the LWCF Act as part of such conversion.

31. League Rules. Notwithstanding anything to the contrary in this Agreement, the City acknowledges that the Club, in its operation of a professional soccer franchise in the League, is obligated to comply with applicable League rules and restrictions ("**League Rules**"). In the event that any such League Rules require alterations or improvements to the Stadium or the Stadium Premises, the Club may request that the City make such alterations or improvements at the Club's expense or allow the Club to so at the Club's expense. In such event, the City will engage in good faith discussions with the Club in order to identify a commercially reasonable solution, satisfactory to the City, that permits the Club, at its own expense, to continue to host Club Events in the Stadium through the remainder of the Term. In the event that the Club is unable to comply with the League Rules due to the condition of the Stadium or Stadium Premises, the Club may terminate this Agreement upon prior written notice to the City. In no event will the City be responsible for incurring any obligation or expense as a result of the League Rules except as specifically set forth in this Agreement.

32. No property rights. This Agreement is a license only and no provision hereof shall be construed as conveying an easement or other estate in land. The Club will not record this agreement or any portion thereof in the Cumberland County Registry of Deeds.

33. Compliance with laws. The Club and the City agree to comply with all applicable laws, rules, regulations, and City ordinances and policies in its operations hereunder, including but not limited to all applicable federal, state and local environmental law and regulations, including without limitation all laws and regulations governing hazardous substances, with respect

to all its activities in the Stadium and the Stadium Premises, and to conduct all its activities on such property in a safe, responsible, reasonable and business-like manner.

34. No Third-Party Beneficiaries. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not.

35. No Assignment. This Agreement is non-transferable and shall not be assigned, pledged, sublet or otherwise transferred to another party except upon the prior written approval of the other Party.

36. Attorney's Fees. Each Party (in such capacity, the “Non-Prevailing Party”) shall pay all reasonable attorney's fees and costs incurred by the other Party (in such capacity, the “Prevailing Party”) if: (i) the Prevailing Party should institute litigation for breach of any material term or condition of this Agreement by the Non-Prevailing Party and ultimately prevail in any such litigation; (ii) if the City is the Prevailing Party in a litigation for an unlawful detainer of the Stadium or Stadium Premises by the Club as Non-Prevailing Party; (iii) the Prevailing Party is made a party to litigation, instituted by a third party related to the Non-Prevailing Party’s use of the Stadium or Stadium Premises under this Agreement; or (iv) if the Prevailing Party is required to defend itself, and ultimately prevails, against any action or defense prosecuted by the Non-Prevailing Party or any third party arising out of the Non-Prevailing Party’s use or occupancy of the Stadium or Stadium Premises. Fees and costs of defense incurred by the Prevailing Party shall be reimbursed within thirty (30) days of invoice whether the litigation is prosecuted to judgment or not. Amounts advanced by the Prevailing Party not reimbursed within said thirty (30) days, shall bear interest at a rate of one and one-half percent (1½%) per month.

37. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties for no less than sixty (60) days. If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation within sixty (60) days as set forth herein, the parties agree first to try in good faith to settle the dispute by non-binding mediation administered by an attorney selected by agreement of the parties and licensed to practice law in Maine.

38. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.

[Signature page follows]

IN WITNESS WHEREOF, this Stadium Use Agreement for Use and Occupancy of James J. Fitzpatrick Stadium is executed by the parties' duly authorized representatives as of the date first above written.

THE CITY OF PORTLAND

By: _____
Name: Danielle P. West
Title: City Manager

[PORTLAND UNITED, LLC] a Maine
limited liability company

By: _____
Name: Gabe Hoffman-Johnson

Title: Manager Approved as to form:

City Corporation Counsel

Approved as to funds:

City Finance Director

EXHIBIT A
DESCRIPTION OF IMPROVEMENTS³

Site Lighting

- Install and upgrade current MUSCO lighting to meet USL specifications
-
- Projected expense range: \$485,000 - \$500,000

Press Box

- Make cosmetic and operational improvements to Press Box
- Likely to include infrastructure to improve broadcast and streaming operations
- City will have ability to use on non-gameday
- Projected expense range: \$40,000 - \$60,000

Team Locker Rooms

- Other Stadium users will have ability to use Visitor locker room on non-gamedays if not in use by the Club.
- Projected expense range: \$250,000 - \$300,000

Club Storage Area

- Club to add storage containers
- City to have use of space in containers if available.
- Projected expense range: \$10,000 - \$20,000

Ticketing Entrance

- Club to improve ticketing entrance and Stadium access points
- City will have ability to use on non-gameday
- Projected expense range: \$10,000 - \$20,000

Audio System

- Club to improve Speaker and Audio system
- City will have ability to use on non-gameday
- Projected expense range: \$40,000 - \$50,000

Miscellaneous

- Other Electronics Allowance
- Site Accessories and Landscaping
- Associated utility connection costs

³ The information below is from the term sheet. Parties to confirm stadium construction plan / Improvements and insert further detail as applicable.

- Additional Operational and Fan Experience Elements
- City will have ability to use on non-gameday
- Projected expense range: \$150,000 - \$300,000

EXHIBIT B

DESCRIPTION OF EXCLUSIVE PREMISES

[]⁴

⁴ NTD: Insert detailed description of Club's Exclusive Premises (Club Storage Area and home locker room).

EXHIBIT C

DESCRIPTION OF STADIUM PREMISES⁵

⁵ NTD: Insert overhead drawing and/or description of the entirety of the Stadium Premises.