

**PLAYING AND USE AGREEMENT**  
**BY AND BETWEEN**  
**CITY OF SAINT PAUL**  
**AND**  
**MINNESOTA UNITED SOCCER CLUB, LLC**

**DATED AS OF \_\_\_\_\_, 2016**

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I DEFINED TERMS.....	2
Section 1.1    Defined Terms. ....	2
Section 1.2    Construction of Terms. ....	12
ARTICLE II TERM.....	12
Section 2.1    Grant. ....	12
Section 2.2    Term and Renewal. ....	13
ARTICLE III FINANCIAL MATTERS .....	14
Section 3.1    Annual Rent .....	14
Section 3.2    Interest.....	14
Section 3.3    Financial Information.....	14
Section 3.4    Taxes.....	15
Section 3.5    Tax Compliance.....	15
ARTICLE IV USE AND OWNERSHIP OF THE STADIUM, THE STADIUM SITE AND APPURTENANT AREAS.....	16
Section 4.1    Ownership of Stadium and Site. ....	16
Section 4.2    Suitability for Use. ....	16
Section 4.3    Club’s Permitted Use. ....	16
Section 4.4    Home Games Played at Stadium.....	17
Section 4.5    Public Uses and Scheduling.....	17
Section 4.6    City Access. ....	18
Section 4.7    Ground Lease and Non-Disturbance Agreement.....	18
Section 4.8    O&M Agreement. ....	18
ARTICLE V ASSIGNMENT, SUBLETTING; REMOVAL OF PROPERTY; SURRENDER.....	19
Section 5.1    General Restrictions on Assignment and Subletting by the Club.....	19
Section 5.2    Permitted Assignments. ....	19
Section 5.3    Assignments; Procedure.....	20
Section 5.4    Assignment by the City.....	22
Section 5.5    Removal or Disposition of Stadium Personalty.....	22
Section 5.6    Surrender of the Stadium. ....	22
ARTICLE VI OPERATIONS.....	23
Section 6.1    Operation and Management of the Stadium, the Stadium Site and Appurtenant Areas and Green Spaces. ....	23
Section 6.2    Use and Operation Covenants.....	24
Section 6.3    Liquor Licenses.....	25
Section 6.4    Naming Rights. ....	26
Section 6.5    Advertising.....	26
Section 6.6    Broadcast Rights. ....	27

Attachment D

Section 6.7	Communication System.....	27
Section 6.8	Royalty Free License.....	27
Section 6.9	Suites, Club Seats and Personal Seat Licenses.....	27
Section 6.10	Operation of Concessions.....	28
Section 6.11	Parking.....	29
ARTICLE VII OPERATIONS COVENANTS.....		29
Section 7.1	Interference with Franchise.....	29
Section 7.2	Corporate Existence.....	30
ARTICLE VIII CAPITAL IMPROVEMENTS AND ALTERATIONS.....		30
Section 8.1	Capital Improvements.....	30
Section 8.2	Short Term and Long Term Capital Improvement Plan.....	30
Section 8.3	Performance of Capital Improvements.....	31
Section 8.4	Alterations.....	31
Section 8.5	Title to Capital Improvements and Alterations.....	32
Section 8.6	Emergency Repairs.....	32
Section 8.7	City's Access.....	32
Section 8.8	Liens.....	32
ARTICLE IX INDEMNIFICATION.....		32
Section 9.1	Indemnification by the Club.....	32
Section 9.2	Additional Indemnification by Club.....	33
Section 9.3	Indemnification by the City.....	33
ARTICLE X INSURANCE; RESTORATION.....		33
Section 10.1	Club's Insurance Coverage.....	33
Section 10.2	Event License Agreements / Insurance Requirements.....	36
Section 10.3	Stadium Restaurants / Insurance Requirements.....	36
Section 10.4	Governmental Immunity.....	37
Section 10.5	Increase in Coverage.....	37
Section 10.6	Deductibles.....	37
Section 10.7	Payment for Covered Losses.....	38
Section 10.8	Cooperation Regarding Risk Management.....	38
Section 10.9	Requests for Underwriting Information.....	38
Section 10.10	Club Interests.....	38
Section 10.11	Loss Information.....	39
Section 10.12	Insurance Terms.....	39
Section 10.13	Restoration.....	39
ARTICLE XI EMINENT DOMAIN.....		40
Section 11.1	Termination for Condemnation.....	40
Section 11.2	Allocation of Award.....	40
Section 11.3	Performance of Work.....	41
Section 11.4	Temporary Taking.....	41

Attachment D

ARTICLE XII ENVIRONMENTAL MATTERS.....	41
Section 12.1    Covenants of Club.....	41
Section 12.2    Club’s Indemnity of City.....	42
ARTICLE XIII DEFAULT AND REMEDIES.....	43
Section 13.1    Event of Default.....	43
Section 13.2    Remedies upon Club Event of Default.....	44
Section 13.3    Remedies upon City Event of Default.....	44
Section 13.4    Injunctive Relief; Specific Performance.....	45
Section 13.5    Remedies Cumulative; Waiver; No Consequential or Incidental Damages.....	45
Section 13.6    Notice of Material Breach.....	46
Section 13.7    City Officials, Employees, Agents, Members and Officers Not Liable.....	46
ARTICLE XIV REPRESENTATIONS AND WARRANTIES.....	47
Section 14.1    Representations and Warranties of City.....	47
Section 14.2    Representations and Warranties of Club.....	47
ARTICLE XV DISPUTE RESOLUTION.....	48
Section 15.1    Application.....	48
Section 15.2    Dispute Resolution Process.....	49
ARTICLE XVI MISCELLANEOUS.....	49
Section 16.1    Recording of this Agreement.....	49
Section 16.2    Further Actions.....	49
Section 16.3    Good Faith; Approvals or Consents, Regulatory Approvals.....	50
Section 16.4    Notice of Matters.....	50
Section 16.5    Form of Notices; Addresses.....	50
Section 16.6    Force Majeure.....	51
Section 16.7    Calculation of Time.....	52
Section 16.8    Time is of the Essence.....	52
Section 16.9    Incorporation by Reference.....	52
Section 16.10   Entire Agreement.....	52
Section 16.11   Amendment.....	52
Section 16.12   Binding Effect; Assignment.....	52
Section 16.13   Headings.....	52
Section 16.14   No Presumption Against Drafter.....	52
Section 16.15   Severability.....	53
Section 16.16   Third Party Beneficiaries.....	53
Section 16.17   Governing Law; Venue.....	53
Section 16.18   Counterparts.....	53
Section 16.19   Relationship of Parties.....	53
Section 16.20   Nondiscrimination.....	54
Section 16.21   Estoppel Certificate.....	54
Section 16.22   Approval of League.....	54
Section 16.23   MLS Termination Clause.....	54

Attachment D

Section 16.24 MLS Required Provisions.....55  
Section 16.25 Termination Prior to Commencement Date.....55  
Section 16.26 No Waiver of City Immunity or Liability.....55  
Section 16.27 Data Practices Act.....55

**EXHIBITS**

EXHIBIT A	ANNUAL MAINTENANCE PLAN
EXHIBIT B	LEGAL DESCRIPTION FOR BUS BARN PROPERTY
EXHIBIT C	PROJECT CONCEPT DESIGN
EXHIBIT D	PROHIBITED ADVERTISING
EXHIBIT E	FORM OF ACKNOWLEDGMENT OF COMMENCEMENT DATE
EXHIBIT F	LITIGATION
EXHIBIT G	FORM OF MEMORANDUM OF AGREEMENT
EXHIBIT H	FORM OF NON-DISTURBANCE AGREEMENT
EXHIBIT I	AFFORDABLE SEATING PLAN
EXHIBIT J	GUIDELINES FOR NAMING PROPOSALS
EXHIBIT K	ANNUAL RENT SCHEDULE
EXHIBIT L	[INTENTIONALLY DELETED]
EXHIBIT M	GROUND LEASE

**PLAYING AND USE AGREEMENT**

**THIS PLAYING AND USE AGREEMENT** (this “Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Saint Paul, a municipal corporation of the State of Minnesota (the “City”), and Minnesota United Soccer Club, LLC, a Minnesota limited liability company (the “Club”).

**RECITALS:**

A. The Club is a wholly-owned subsidiary of MUSC Holdings, LLC, a Minnesota limited liability company (the “Team”).

B. The Team and the Club have entered into a letter of intent with Major League Soccer, L.L.C., a Delaware limited liability company (“MLS”), pursuant to which the Club’s professional soccer team will play its home games in a stadium to be constructed by the Team in the Minneapolis/Saint Paul metropolitan area at a location approved by the MLS and that meets the requirements of the MLS.

C. The City has acquired the right by lease to the former bus barn property on the north side of Interstate 94 and Snelling Avenue at 400 Snelling Avenue, Saint Paul, Minnesota consisting of approximately 10 acres (the “ Bus Barn Property”) pursuant to the Net Ground Lease dated \_\_\_\_\_, 2016 (the “Ground Lease”) with the Metropolitan Council (the “Metropolitan Council”).

D. The City and the Team desire that the Team design and construct the Stadium on certain portions of the Bus Barn Property and any adjacent land secured by the Team and assigned or transferred to the City (the “Team Acquired Property”) (together, the “Stadium Site”) where the Club will play its home games in the MLS once the Stadium has been designed and constructed. The City and the Team have entered into that certain Development Agreement dated \_\_\_\_\_, 2016 (the “Development Agreement”) to provide for the planning, design, development, construction, equipment and furnishing of the Stadium and related infrastructure.

E. As contemplated by the Development Agreement, the Stadium and the Stadium Site will be part of the redevelopment of the approximately 34.5 acre parcel bounded by Snelling Avenue, University Avenue, Pascal Avenue and St. Anthony Avenue (the “Midway Development Site”). As a material inducement for the Team to locate, design and construct the Stadium on the Stadium Site and for the Club to manage and operate the Stadium and to play its home professional soccer games in the Stadium, the City will lead a planning process for a master development plan (the “Master Development Plan”) for the Midway Development Site with involvement from the surrounding community, land owners, the Club and the Team. Under the Master Development Plan, and subject to the approval of the City Council and Mayor of specific improvement projects identified and proposed in the Master Development Plan, the City will (a) participate in the funding of building the streets in the public right of way, sewers, storm water management and parking lots/structures necessary for the redevelopment of the Midway Development Site, (b) enter into a public private partnership to fund green spaces or public plazas, (c) collaborate with the Club and the Team on the design of public plazas and green

## Attachment D

spaces contiguous to the Stadium, and (d) lead a traffic management planning process with public and private partners to encourage bike and transit use, maximize parking options and ease congestion.

F. The City has determined that the construction and operation of the Stadium, the implementation of the Master Development Plan and the performance of this Agreement are in the best interests of the City and serve a public purpose, and the City has passed Resolution 15-1539, dated August 26, 2015, in relation to the Stadium and Master Development Plan. Among other things, the construction and operation of the Stadium will: (i) provide a multi-purpose stadium and related infrastructure for professional soccer and other events; (ii) further the vitality of the Midway Development Site by generating increased economic activity; and (iii) further economic development and stimulate the local economy overall.

G. Pursuant to the Development Agreement, the parties thereto agreed to enter into a playing and use agreement between the City and the Club. This Agreement is that playing and use agreement between the City and the Club to provide for the Club's management, operation and/or use of the Stadium, the Stadium Site and Appurtenant Areas as more clearly set forth below.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, which are hereby incorporated into this Agreement, and the mutual promises, undertakings and covenants hereinafter set forth, and intending to be legally bound hereby, the City and the Club covenant and agree as follows:

### **ARTICLE I DEFINED TERMS**

#### Section 1.1 Defined Terms.

In addition to other terms defined herein, the following terms used in this Agreement shall have the meaning set forth below:

“Advertising” shall mean, collectively, all advertising, sponsorship, and promotional activity, signage, designations (including “pouring rights” or similar designations and rights of exclusivity and priority), messages and displays of every kind and nature, whether now existing or developed in the future, including permanent, non-permanent, and transitory signage, or advertising displayed on permanent or non-permanent advertising panels or on structures, fixtures, or equipment (such as scoreboard advertising and canopy advertising); audio or video public address advertising and message board advertising; programs; electronic insertion, blocking and other forms of virtual signage; sponsor-identified projected images; advertising on or in schedules, admission tickets, and yearbooks; all other print and display advertising; promotional events sponsored by advertisers; advertising display items worn or carried by Concessionaires or personnel engaged in the operation of any Event; logo, slogan or other forms of advertising affixed to or included with cups, hats, T-shirts, jerseys, and similar items; advertising of Concessions; advertising through Broadcast Rights; and other Concessions, promotional or premium items.



## Attachment D

“Advertising Rights” shall mean the right to display, control, conduct, lease, permit, sell and enter into agreements regarding the display of Advertising in or about the Stadium, on the Appurtenant Areas Displays and on the Projection Tower subject to Section 6.5.

“Affiliate” of a specified Person shall mean any corporation, partnership, limited liability company, sole proprietorship or other Person that directly or indirectly, through one or more intermediaries Controls, is Controlled by, or is under common Control with the Person specified. For purposes of this definition, the terms “Controls,” “Controlled by,” or “under common Control” mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person.

“Agreement” shall mean this Playing and Use Agreement by and between the City and the Club, as the same may be amended, modified or supplemental from time to time.

“Alterations” shall mean any alteration, addition, modification or improvement to the Stadium or the Stadium Site, carried out by the Club pursuant to Section 8.4 at the sole cost of the Club. Alterations shall not be treated as Capital Improvements. For clarity, Alterations shall not include Club Personal Property.

“Annual Maintenance Plan” shall mean the written plan for Maintenance for each Year submitted to the City by the Club pursuant to Section 6.1 hereof and identifying the items of Maintenance proposed to be performed, Maintenance that has been performed in the previous twelve (12) months, and Maintenance planned to be performed for the next twelve (12) months in order to maintain the Stadium and the Appurtenant Areas in good working order. The Annual Maintenance Plan will also list identified repairs needed, their status and timetable for completion. In all events, the Annual Maintenance Plan will include the type of information outlined or summarized in Exhibit A.

“Annual Rent” shall have the meaning set forth in Section 3.1.

“Appurtenant Areas” shall mean the area outside of the Stadium Footprint within the Stadium Site including the Stadium Parking Areas, the Plaza Area, the Promenade and Stadium Site Green Spaces.

“Appurtenant Areas Displays” shall mean video, electronic or other projection displays located in the Appurtenant Areas constructed and maintained by the Club and for which the Club is granted hereunder the exclusive right to program the contents and projections from the displays, including Advertising, information, films, sporting events and other programs, and to retain all revenues therefrom. Appurtenant Area Displays are subject to City ordinances.

“Assign” or “Assignment” shall have the meaning set forth in Section 5.1 hereof.

“Broadcast Rights” shall mean the rights and other fees and arrangements relating to the production and distribution of the Events for commercial televisions, noncommercial televisions (by over-the-air, cable or otherwise), internet and other interactive media, and any other media hereinafter available whether or not within the current contemplation of the Parties, including direct sales of Advertising, radio broadcast or any other media fees and revenues, and any income attributable to such broadcasts (whether in or out of the local market).

## Attachment D

“Bus Barn Property” shall mean the real property referred to in Recital C of this Agreement, leased to the City by the Metropolitan Council pursuant to the Ground Lease and described on Exhibit B.

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which banks are required or authorized to close in Saint Paul, Minnesota.

“Capital Improvement Plan” shall mean the short term and long term Capital Improvement plan for each Year submitted to the City by the Club pursuant to Section 8.2. The short term portion of the plan shall identify the Capital Improvements that the Club expects to be performed during the upcoming Year and the next succeeding Year that, for each such Year identifies (a) the items of work expected to be performed, (b) cost estimates for each item of work proposed, and (c) the estimated timetable for completion of each item of proposed work.

“Capital Improvements” shall mean all capital modifications, replacements or additions to the Stadium and Appurtenant Areas that are reasonably necessary to keep the Stadium and the Appurtenant Areas for which the Club has such responsibility in the condition required by this Agreement or to prevent the facilities and amenities of the Stadium and such Appurtenant Areas, from becoming materially outdated or obsolete.

“City” shall mean the City of Saint Paul, a municipal corporation of the State of Minnesota.

“City Indemnified Persons” shall mean the City and its elected officials, appointed officials, board or agency members, officers, employees, agents and attorneys.

“Claim” shall mean any claim, demand or dispute between the Parties relating to this Agreement, including any Environmental Complaint.

“Club” shall mean Minnesota United Soccer Club, LLC, a Minnesota limited liability company, a wholly-owned subsidiary of the Team.

“Club Agents” shall mean the Club’s members, governors, managers, officers, employees and agents.

“Club Events” shall mean events scheduled by the Club or events permitted by the Club to be held in the Stadium that are not League Events, Home Games or Other Events and for which the Club may impose such charges and fees for the use of the Stadium which shall be retained by the Club.

“Club Indemnified Persons” shall mean the Team, the Club and their respective members, governors, officers, manager, employees, agents and attorneys.

“Club Personal Property” shall mean moveable personal property, furniture, furnishings, and equipment paid for by the Club and all removable tenant fixtures paid for by the Club or the Team.

## Attachment D

“Commencement Date” shall mean the date that is the earlier of (a) the date on which the Club has commenced occupancy of the Stadium pursuant to this Agreement, or (b) the date on which the following have occurred: (i) the General Contractor (as defined in the Development Agreement) has issued to the Team and the City a certificate of Substantial Completion, and (ii) a temporary certificate of occupancy has been issued.

“Communication System” shall mean the internal broadcasting system at the Stadium, including public address system, scoreboards, game clocks, televisions, matrix boards, loudspeaker systems, public address systems, timers, clocks, message centers (including electronic message boards), video screens, signs, marquees, displays, Wi-Fi, internet, any future mode of communication and any other facilities within the Stadium designed to communicate with spectators at Events (and all control rooms and equipment rooms for the same).

“Concession Operations” shall mean the exercise and operation of Concession Rights at the Stadium.

“Concession Rights” shall mean, collectively, (a) the exclusive right (i) to sell, display, distribute and store Concessions, (ii) to conduct catering and banquet sales and services (including catering service with respect to suites, private clubs, restaurants and party areas) within the Stadium, and (iii) to operate food, beverages and liquor services, including full services restaurants and bars within the Stadium, and (b) the exclusive right to sell, display and distribute Concessions on the Stadium Site and in Stadium Site Green Spaces, the Promenade, and Plaza Areas maintained by the Club under this Agreement, for League Events, and Home Games, subject to City ordinances.

“Concessionaire” shall have the meaning set forth in Section 6.10 hereof.

“Concessionaire Personal Property” shall mean moveable personal property, furniture furnishings and equipment paid for by a Concessionaire and all removable tenant fixtures paid for by a Concessionaire.

“Concessions” shall mean all food and beverages, liquor services subject to Law, novelties and merchandise, or other products sold by a designated Concessionaire at the Stadium.

“Condemnation” shall mean any taking of property by exercise of the power of eminent domain, whether by formal condemnation proceedings or by purchase under the threat of the exercise of the power of eminent domain.

“Consequential Damages” shall mean a special, indirect or incidental loss or damage, including but not limited to, lost profits, lost business opportunities, lost MLS fees, pursuit costs, costs of delay, loss from collateral contracts, harm to reputation, loss of investment, out of pocket expenses, or costs of business interruption.

“Damages” shall mean a direct loss, liability, claim, damage, cost or expense, whether the action is for money damages or for equitable or declaratory relief. In no event shall Damages by one party against the other party include punitive, exemplary, multiple, or Consequential Damages, regardless of the type or nature of the loss, claim, or theory of recovery.

## Attachment D

“Development Agreement” shall mean that certain Development Agreement between the City and the Team, dated \_\_\_\_\_, 2016, as same may be amended, modified or supplemented from time to time.

“Dispute Notice” shall have the meaning set forth in Section 15.2.

“Emergency Repairs” shall mean any repairs, maintenance, modifications or improvements which, if not immediately made, would endanger the health and safety of the people working in or attending an Event in the Stadium, would cause imminent damage to any significant component of the Stadium, or would render the Stadium or any material portion of its mechanical, electrical or plumbing systems or other significant component thereof unusable for previously scheduled Events.

“Environmental Complaint” shall mean any written complaint by any Person or Governmental Authority setting forth a cause of action for personal injury or property damage, natural resource damage, contribution or indemnity for response costs, civil or administrative penalties, criminal fines or penalties, or declaratory or equitable relief arising under any Environmental Law or any order, notice of violation, citation, subpoena, request for information, or other written notice or demand of any type issued by any Governmental Authority pursuant to any Environmental Law.

“Environmental Law” shall mean all Laws, including any consent decrees, settlement agreements, judgments, or orders issued by or entered into with a Governmental Authority pertaining or relating to: (a) pollution or pollution control; (b) protection of human health or the environment; (c) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; or (d) the protection of endangered or threatened species.

“Event” or “Events” shall mean League Events, Club Events, Other Events, and other events at the Stadium.

“Event of Default” shall have the meaning set forth in Section 13.1 hereof.

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

“Force Majeure” shall mean acts of God, accidents, fire or other casualty, earthquake, hurricane, tornadoes, named storms, flood, war, riot, intervention by civil or military authorities of government, insurrection, or other civil commotion, governmental action, material shortages, Work Stoppages, or any other similar or like event or occurrence beyond the reasonable control of a Party hereto, that causes such Party to be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder. Unavailability of funds shall not constitute Force Majeure.

“Franchise” shall mean the rights granted to the Club by the League to operate a League team and to play League games within a defined geographic area that includes the City of Saint Paul, Minnesota.

## Attachment D

“Governmental Authority” shall mean any federal, state, county, city, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof.

“Ground Lease” means the Net Ground Lease dated \_\_\_\_\_, 2016 between the Metropolitan Council, as lessor, and the City, as lessee, pursuant to which the City has a long-term lease for the Bus Barn Property.

“Home Games” shall mean the Club’s League games scheduled to be played at the Stadium, including all pre-season, regular season, playoff and championship home games, and any international soccer games in which the Club participates that are played in the Minneapolis/Saint Paul metropolitan area.

“Initial Rent Payment Date” shall mean the first day of the month that a Home Game is played at the Stadium, contemplated to be on or about April 1, 2018, but in no case later than April 1, 2019.

“Labor Peace Agreement” shall have the meaning set forth in Section 6.2(j) hereof.

“Law” or “Laws” shall mean any law, statute, code, ordinance, rule, regulation or constitutional or charter provision, duly enacted or adopted by any Governmental Authority.

“League” shall mean MLS’s professional soccer league of which the Club will be a member team prior to the Commencement Date.

“League Events” shall mean any Home Games and any other League soccer-related events scheduled by the Club or the League to be held in the Stadium, including all-star games.

“Legal Requirements” shall mean present and future Laws (including Environmental Laws) applicable to the design, development, construction, equipping, use, occupancy, possession, operation, maintenance and management of the Stadium, the Appurtenant Areas, Stadium Site Infrastructure and the Stadium Site.

“Maintenance” shall mean the provision of labor and materials that are required to maintain and repair the Stadium in a safe and clean manner consistent with the other stadiums where the League’s professional soccer teams play their home games and the requirements of this Agreement and, if established, meeting the standards and specifications by the League. Maintenance shall include any items of work in the Annual Maintenance Plan. Maintenance shall not include Capital Improvements.

“Manage” or “Management” shall mean manage, coordinate, control, operate and supervise the conduct and operation of the ordinary and usual business and affairs pertaining to or necessary for the proper operation, maintenance and management of the Stadium, as applicable, all in accordance with the terms and provisions of this Agreement.

“Master Development Plan” shall mean the master development plan for the Midway Development Site referred to in Recital E of this Agreement.

## Attachment D

“Midway Development Site” shall have the meaning set forth in Recital E hereto and the Development Agreement.

“Midway Green Spaces” means the green spaces in the Midway Development Site outside of the Stadium Site that are an extension of the Stadium Site Greenways.

“Midway Green Spaces Agreement” means the separate agreement to be entered into by the City and the Club and, if applicable, RK Midway upon transfer of the Midway Green Spaces to the City, which will set forth the provisions relating to the design, construction, operations and maintenance of the Midway Green Spaces.

“MLS” means Major League Soccer, L.L.C., a Delaware limited liability company, or its successor that operates the League in which the Club will be a member team prior to the Commencement Date.

“MLS Rules” means (i) (A) the MLS Constitution, (B) the Collective Bargaining Agreement between MLS and the Major League Soccer Players Union (and any extension, replacement or other subsequent collective bargaining agreement involving MLS players), (C) the Group License Agreement between MLS and the Major League Soccer Players Union (and any extension, replacement or other subsequent group license agreement involving MLS players), (D) the Rights Agreement between MLS and SUM dated as of January 1, 2012, (E) each of the MLS Agreements, (F) each of the rules, regulations, memoranda, resolutions, policies, procedures, interpretations and directives of the MLS Board of Governors and/or the Commissioner, (G) each of the rules, regulations, memoranda, resolutions, policies, procedures, interpretations and directives of the SUM Board of Governors and/or the chief executive officer of SUM, (H) all agreements between MLS and any player, and (I) any other agreements and arrangements to which MLS is (or hereafter may become) subject or by which MLS or its assets are (or hereafter may become) bound, in each case (including the MLS Agreements) as they may be adopted, amended or modified from time to time and including the custom and practice thereunder; and (ii) all obligations of SUM members under (A) each of the SUM Agreements, (B) the Rights Agreement between MLS and SUM dated as of January 1, 2012, and (C) any other agreements and arrangements to which SUM is (or hereafter may become) subject or by which SUM or its assets are (or hereafter may become) bound, in each case as they may be adopted, amended or modified from time to time.

“Naming Rights” shall mean the sole and exclusive right to grant the privilege to, or to sell to, any third-party or parties the right to name and rename all or separately name and rename the Stadium, the Appurtenant Areas Displays, the Projection Tower, the Plaza Area, and the Stadium Site Green Spaces maintained by the Club and any portions of the Stadium within the Stadium Footprint, (and to retain all revenues and proceeds therefrom); provided, however, that Naming Rights shall not include the right to name or rename: (i) any public streets, roadways or rights-of-way; (ii) any parking facilities; or (iii) subject to the terms of any agreement between the Club and the Metropolitan Council, any light rail lines or other rail lines, stations, circulation buildings, platforms, tracks, and other related facilities.

## Attachment D

“Operating Expenses” shall mean all necessary expenses incurred by the Club in connection with the Management and Maintenance of the Stadium and the performance of its duties hereunder.

“Other Events” shall mean the events in the Stadium held pursuant to Section 4.5 of this Agreement.

“Party” or “Parties” shall mean either or both of the City and the Club.

“Permits” shall mean any permit, license or approval to be issued by any Person, including Required Environmental Permits, required for the operation of the Stadium, the Appurtenant Areas and the Stadium Site or for the installation, alteration or repair of any improvements related in any manner to the Stadium, Appurtenant Areas or the Stadium Site.

“Person” shall mean any natural person, sole proprietorship, corporation, partnership, trust, limited liability company, limited liability association, unincorporated association, joint venture, joint-stock company, Governmental Authority, or any other entity.

“Plaza Area” shall mean the plaza area to the north of the Stadium and outside of the Stadium Footprint within the Stadium Site as shown in the Project Concept Design, and as finally determined in the Design Documents pursuant to the Development Agreement.

“Prime Rate” shall mean, for interest accruing during any month, the rate that is 300 basis points over the federal funds rate on the first Business Day of such calendar month.

“Prohibited Advertising” shall mean those limitations on Advertising and Naming Rights as set forth in Exhibit D.

“Project Concept Design” shall mean the conceptual design for the Stadium and other improvements on the Stadium Site prepared by the Architect (as defined in the Development Agreement) attached hereto as Exhibit C and as may be revised in accordance with the Development Agreement.

“Projection Tower” shall mean a tower to project light and other projections located in the Appurtenant Areas designed, constructed and maintained by the Club, and subject to City ordinances, for which the Club is granted hereunder the exclusive right to program the contents and projections therefrom.

“Promenade” shall mean the area outside of the Stadium Footprint within the Stadium Site other than the Plaza Area as shown in the Project Concept Design, and as finally determined in the Design Documents pursuant to the Development Agreement.

“Real or Personal Property Taxes” shall mean all real estate taxes, personal property taxes, assessments and other governmental levies and charges, general and special, ordinary and extraordinary, of any kind or nature, lawfully levied or assessed by federal, state, county or municipal government, upon or with respect to the Stadium and any and all other improvements hereafter constituting a part of the Stadium, any tax on the Club’s rights hereunder in the nature of a leasehold or use tax, or any taxes in lieu thereof.

## Attachment D

“Regulated Substances” shall mean any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a “hazardous substance,” “hazardous waste,” “toxic substance,” “extremely hazardous substance,” “toxic chemical,” “toxic waste,” “solid waste,” “industrial waste,” “residual waste,” “municipal waste,” “special handling waste,” “mixed waste,” “infectious waste,” “chemotherapeutic waste,” “medical waste,” “regulated substance,” “pollutant” or “contaminant” or any other substance, material or waste, regardless of its form or nature that otherwise is regulated by Environmental Laws.

“Rent Commencement Date” shall mean April 1, 2016.

“Required Environmental Permits” shall mean Permits, licenses, bonds, consents, programs, approvals or authorizations required under Environmental Laws for the construction of the Stadium and the Stadium Site, or required by the Club to conduct its operations or use the Stadium, the Appurtenant Areas and the Stadium Site or to construct, maintain, operate or use any Capital Improvements, Alterations, or other improvements, regardless of whether such Permits are required to be or have been obtained by the City or the Club.

“RK Midway” shall mean the owner of the real property outside of the Bus Barn Property within the Midway Development Site.

“Season” shall mean the pre-season, regular season and playoff and championship soccer games of the League each year.

“Stadium” shall mean the new soccer stadium at a location approved by and meeting the requirements of the MLS to be owned by the City for the use of the Club and other users, which will be constructed by the Team on the Stadium Site, with seating capacity of at least [\_\_\_\_\_] and a capacity for up to [\_\_\_\_\_] spectators at an aggregated cost of at least One Hundred Twenty Million Dollars (\$120,000,000). The Stadium is a municipal stadium as set forth in Minnesota Statutes Section 272.01, subdivision 2(b)(1).

“Stadium Final Design” shall mean the design of the Stadium reflected in the Design Documents (as defined in the Development Agreement).

“Stadium Footprint” shall mean the area within and including the exterior walls of the Stadium.

“Stadium Parking Areas” shall mean any parking areas on the Stadium Site for exclusive use by the Club and its invitees.

“Stadium Personalty” shall mean: (a) all improvements, fixtures, furnishings, equipment and other personal property constructed, installed or placed in or upon (and constituting part of) the Stadium or the Stadium Site in accordance with the Construction Documents and Change Orders (as such terms are defined in the Development Agreement) in connection with the construction of the Stadium on the Stadium Site pursuant to the Development Agreement; (b) repairs, modifications or replacements of or to any of the items described in clause (a), whether characterized as Maintenance, Capital Improvements, Alterations, Emergency Repairs, restoration under Section 10.13 or otherwise and regardless of the source of funds or source of payment therefor; (c) all improvements, fixtures, furnishings, equipment and other personal



## Attachment D

property constructed, installed or placed in or upon (and constituting part of) the Stadium or the Stadium Site and repairs, modifications or replacements thereof; and (d) all Alterations, including fixtures, furnishings, equipment and other personal property installed or placed in or upon the Stadium or the Stadium Site as part of an Alteration. For the avoidance of doubt, “Stadium Personalty” does not include the Club Personal Property or Concessionaire Personal Property.

“Stadium Site” shall have the meaning set forth in Recital D hereto and shall consist of the Bus Barn Property, minus the Sublease Property, plus the Team Acquired Property that are used for the Stadium and Appurtenant Areas.

“Stadium Site Green Spaces” means the green spaces within the Stadium Site.

“Stadium Site Infrastructure” means the streets, sidewalks, bikeways, public spaces, lighting of such streets, sidewalks, landscaping, bikeways and public spaces, ingress and egress points, all within the public right of way of the City, the storm water management system, and sewer and water, controlled by the City or in which the City has rights that are deemed necessary and desirable to facilitate the use and development of the Stadium and the Stadium Site as determined in the design, planning or construction of the Stadium and the Stadium Site, and as provided in the City Public Infrastructure Budget pursuant to the Development Agreement or as paid for from other sources. The Stadium Site Infrastructure includes the Plaza Area, Promenade, Stadium Site Green Spaces and Stadium Parking Areas.

“Sublease Property” shall mean the portion of the Bus Barn Property subleased by the City or leased by the Metropolitan Council to RK Midway for the term of the Ground Lease at the request of the Team to facilitate the Team’s acquisition of the Team Acquired Property as provided in Section 3.1 of the Development Agreement or in which the Team grants use rights to RK Midway to facilitate the Team’s acquisition of the Team Acquired Property as provided in Section 3.1 of the Development Agreement.

“Substantial Completion” shall mean that the work related to the construction of the Stadium is essentially and satisfactorily complete in accordance with the Stadium Final Design and related documents, such that the Stadium is ready for occupancy or use by the Club. A minor amount of work, as reasonably determined by and at the discretion of the Club, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, minor adjustment of controls or sound systems, or completion or correction of minor exterior work that cannot be completed due to weather conditions, will not delay determination of Substantial Completion. In no event shall Substantial Completion be deemed to have occurred unless such certificates required by all Laws for opening of the Stadium to the general public have been issued by the City.

“Suites” shall mean the private suites and the party suites to be constructed as part of the Stadium and identified in the Stadium Final Design.

“SUM” shall mean Soccer United Marketing, LLC, a Delaware limited liability company, that provides marketing and other services for the League and in which the Club will be a member team prior to the Commencement Date.

## Attachment D

“Team” shall mean MUSC Holdings, LLC, a Minnesota limited liability company, or its successors that owns the Club.

“Team Acquired Property” shall mean any property adjacent or contiguous to the Bus Barn Property acquired by the Team for the purpose of inclusion in the Stadium Site and transferred or assigned to the City pursuant to Section 3.1 of the Development Agreement.

“Term” shall mean the term of this Agreement, including the initial term pursuant to Section 2.2(a) hereof.

“Transportation and Parking Study” means the report prepared by SRF Consulting Group, Inc., engaged by the City at the City’s expense to perform a traffic and parking study.

“Untenantability Period” shall mean any period following the damage or destruction of the Stadium by fire or other casualty or other Force Majeure event during which the Stadium cannot be reasonably used for soccer.

“Utilities” shall mean heat, water and sewer, gas, electricity, telephone, cable communications and other utilities used in the Stadium or Appurtenant Areas.

“Work Stoppage” shall mean any strike, boycott, labor dispute or other work stoppage, including player labor stoppages, whether attributable to strikes or lockouts.

“Year” shall mean each calendar year (or portion thereof) occurring during the Term, commencing on the Commencement Date.

### Section 1.2 Construction of Terms.

As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word “including” or any variation thereof is used herein, it shall mean “including, without limitation” and shall be construed as a term of illustration, not a term of limitation. Wherever the word “or” is used herein, it shall mean “and/or.”

## **ARTICLE II TERM**

### Section 2.1 Grant.

(a) For and in consideration of the Annual Rent and the agreements of the Club contained herein and the construction of the Stadium by the Team pursuant to the Development Agreement, the City hereby grants to the Club, and the Club hereby accept from the City,

(i) The exclusive right to Manage, operate and maintain the Stadium and the Appurtenant Areas at all times, including the exclusive right to determine any programming in the Plaza Area, Promenade and Stadium Site Green Spaces;

## Attachment D

(ii) The exclusive right to use the Stadium and Stadium Parking Areas at all times;

(iii) The exclusive right to use the Appurtenant Areas in connection with League Events, Home Games, Club Events, tryouts and practices;

(iv) Subject to City ordinances, the exclusive right to Manage, use and operate the Appurtenant Areas Displays and the Projection Tower in the Appurtenant Areas; and

(v) The non-exclusive right to use the Appurtenant Areas (other than the Stadium Parking Areas) at times other than referred to in clause (iii), all subject to the terms, conditions and provisions of this Agreement, and subject to the regulatory authority of the City.

(b) The City and its agents shall have reasonable access to the Stadium and the Stadium Site as determined by the Director of Planning and Economic Development of the City. City personnel whose presence is reasonably necessary shall require no ticket for admission to Events, but shall be subject to credentialing for League Events. The Club will facilitate any necessary credentialing for such City staff.

(c) If and so long as there is not a Club Event of Default, the Club shall peaceably and quietly have, hold and enjoy the Stadium, the Stadium Parking Area and the Appurtenant Areas (during the periods of the Team's exclusive use as set forth in paragraph (a) above) for the Term, without hindrance or interruption by the City or any Person lawfully claiming rights to the Stadium, the Stadium Parking Area and the Appurtenant Areas during the periods of the Team's exclusive use, subject, nevertheless, to all of the provisions of this Agreement.

### Section 2.2 Term and Renewal.

(a) Initial Term. The Term shall commence on the Commencement Date and shall continue for a period through December 31 of the fiftieth full calendar year following the calendar year in which the Initial Rent Payment Date occurs, unless otherwise terminated in accordance with the provisions of this Agreement. When the Commencement Date is established, the Parties shall execute and deliver an Acknowledgment of Commencement Date in the form attached to this Agreement as Exhibit E.

(b) Pre-Expiration Meeting Regarding Purchase, Renewal and Return Condition. Unless this Agreement has been terminated in accordance with the provisions of this Agreement, the City and the Club will, commencing in the calendar year that is ten (10) years prior to the termination date of this Agreement, meet with Metropolitan Council, as lessor under the Ground Lease, to consider and negotiate as the parties deem appropriate, the purchase of the Bus Barn Property, an extension of the term of the Ground Lease and the terms of any such extension, and the return condition of the Bus Barn Property at the end of the term of the Ground Lease. Unless otherwise agreed by the Club in writing, the only obligations of the Club at the termination or expiration of the Term is set forth in Section 5.6(a) and (b).

(c) Renewal. **[SUBJECT TO FURTHER NEGOTIATION]**

**ARTICLE III  
FINANCIAL MATTERS**

Section 3.1 Annual Rent.

(a) The Annual Rent is Five Hundred Fifty Six Thousand Six Hundred Twenty Three Dollars and Ninety Six Cents (\$556,623.96). The schedule for payment of the Annual Rent is set forth in Exhibit K.

(b) The Annual Rent shall begin accruing as of the Rent Commencement Date.

(c) Within ten (10) Business Days after the Initial Rent Payment Date, the Club shall pay to the City all accrued Annual Rent, plus the Annual Rent for the calendar year in which the Initial Rent Payment Date occurs. Thereafter, within ten (10) Business Days after January 1 immediately following the Initial Rent Payment Date and each January 1 thereafter during the Term of this Agreement, the Club shall pay the Annual Rent to the City. If directed by the City, the Club will pay the Annual Rent directly to the Metropolitan Council to be applied to the obligations of the City to pay rental under the Ground Lease. The Club may, upon notice to the City and with the agreement of the Metropolitan Council, pay the Annual Rent directly to the Metropolitan Council to be applied against the obligations of the City to pay rental under the Ground Lease.

(d) Notwithstanding anything to the contrary contained herein, including Force Majeure, partial or total destruction of the Stadium, or otherwise, the Annual Rent shall be paid by the Club for so long as the Ground Lease is in force and the Annual Rent as defined in and pursuant to the Ground Lease is payable by the City to the Metropolitan Council.

Section 3.2 Interest.

All amounts which the Club is required to pay to the City under this Agreement, if not paid as and when due, shall bear interest from the date such amounts were due until the date actually paid at the Prime Rate plus two percent (2%).

Section 3.3 Financial Information.

(a) Inspection of Books and Records. Prior to execution, during the Term and for a period of six (6) years after the expiration or termination of this Agreement, the City shall be entitled to inspect (but not take copies of or any extracts from) all the books and records of the Club or Team pertaining to the expenses and capital expenditures of the Club or Team with respect to the operation, maintenance and management of the Stadium and Appurtenant Areas under this Agreement. If and only to the extent that the requirements of Minnesota Statutes Section 16C.05, subdivision 5, as such statute may be amended, modified or replaced from time to time is applicable to the Club, the Club shall maintain all books, documents, and records pertaining to this Agreement for a period of six (6) years from the expiration or termination of this Agreement, and, upon written request, shall make the same available to the City or State Auditor for inspection (but not copying or making any extracts therefrom). In the event of any such inspection, the Club may mark any data as “protected data” under the Minnesota Government Data Practices Act or its successor and the City shall notify the Club if it receives

## Attachment D

any request by a third party for any such protected data and provide the Club a reasonable opportunity to initiate action to prevent or limit the disclosure of such protected data.

(b) Materials Provided Upon Termination. Upon expiration or termination of this Agreement, regardless of whether such termination is based upon or constitutes a default, and regardless of whether such termination is by the City or the Club, the Club shall provide:

(i) The three (3) years most recent annual and current financial information pertaining to the expenses and capital expenditures of the Club or Team with respect to the operation, maintenance and management of the Stadium and Appurtenant Areas under this Agreement;

(ii) Existing projections pertaining to the expenses and capital expenditures of the Club or Team with respect to the operation, maintenance and management of the Stadium and Appurtenant Areas under this Agreement; and

(iii) A copy of all contracts and agreements entered into by the Club with respect to the operation, maintenance and management of the Stadium and Appurtenant Areas under this Agreement during the three (3) years preceding such expiration or termination.

(c) Request Upon Default or Material Breach. If (i) there is an Event of Default on the part of the Club that continues after the expiration of any cure period afforded to the Club under this Agreement, or (ii) there is a material breach of this Agreement by the Club (whether or not an Event of Default shall have occurred or is continuing), then the City shall have reasonable and necessary access to review the Club's books and records, and other financial information with respect to the operation, maintenance and management of the Stadium and Appurtenant Areas under this Agreement as the City reasonably deems necessary to enforce the terms of this Agreement.

### Section 3.4 Taxes.

The Club will pay any and all Real or Personal Property Taxes, income taxes, use taxes, sales taxes, assessments and any other tax of any kind or nature imposed against the Stadium or the use or revenues received by the Club therefrom.

### Section 3.5 Tax Compliance.

The Club shall be responsible for collecting, accounting for, and remitting any sales taxes, admissions and amusement taxes, or other taxes assessed on ticket sales, merchandise sales, concession sales, Advertising, or other operations and activities conducted by the Club at the Stadium or the Stadium Site. The City agrees not to create or impose any new tax or other levy (or extend any existing tax or levy) specific to the Stadium, the Stadium Site or the interest of the Club in or the use or operation by the Club of the Stadium, the Stadium Site or the Appurtenant Areas for new municipal revenue.

**ARTICLE IV  
USE AND OWNERSHIP OF THE STADIUM, THE STADIUM SITE AND  
APPURTENANT AREAS**

Section 4.1 Ownership of Stadium and Site.

The City shall own the Stadium, the Appurtenant Areas, and the Stadium Site, excluding however the Club Personalty, subject to the Ground Lease and any lease applicable to the Team Acquired Property.

Section 4.2 Suitability for Use.

Pursuant to the role of the Team under the Development Agreement in the construction of the Stadium and subject to the performance by the City of its obligations under the Development Agreement, the Club hereby stipulates and agrees that the Stadium, the Stadium Site and the Appurtenant Areas, will be, as of the Commencement Date, in all material respects fit for their intended purpose and suitable for use hereunder.

Section 4.3 Club's Permitted Use.

(a) Consistent with the grant set forth in Section 2.1(a), the Club shall have the exclusive right to (i) Manage, operate, maintain and use the Stadium and Stadium Parking Areas at all times, including all restaurants, bars and other food service establishments and meeting areas, and the right for any lawful purpose, including the operation of the retail areas, the playing and exhibition of League Events, Home Games, tryouts and practices, Club Events and any and all other activities and operations that are customarily associated with, or are conducted in connection with, the business of MLS, any sporting activities or events of any other nature, including concerts, other musical performances, theatrical presentations, religious gatherings, corporate events, business conferences, convention meetings, community festivals, cultural, athletic, educational, commercial and entertainment events and any other event or activity, whether similar or dissimilar to the foregoing, parking and other uses that may be ancillary or related to the operations of the Club or the use of the Stadium as set forth in this Agreement; (ii) Manage, operate and maintain the Stadium and the Appurtenant Areas at all times, including the exclusive right to determine any programming in the Plaza Area, Promenade and Stadium Site Green Spaces; (iii) exclusive right to use the Appurtenant Areas in connection with League Events, Home Games, Club Events, tryouts and practices; and (iv) subject to City ordinances, the exclusive right to Manage, use and operate the Appurtenant Areas Displays and the Projection Tower in the Appurtenant Areas.

(b) In conducting League Events, Home Games, tryouts and practices, and Club Events or with respect to any use or operation by another user of the Stadium, the Club shall not allow any activity that will damage or otherwise have a deleterious effect upon the Stadium, the Stadium Site or Appurtenant Areas or the reputation of the Stadium or the City.

(c) No part of the Stadium, the Stadium Site or Appurtenant Areas will be used by the Team or by other users in a manner which is unlawful, disreputable, or creates any nuisance or fire hazard.

## Attachment D

(d) No portion of the Stadium or the Stadium Site or, during its use by the Club, the Appurtenant Areas will be used for any of the following uses:

(i) For any gun shop or other store whose primary business is the sale of guns or other weapons;

(ii) For any adults-only use, such as the sale or display of adults-only books, periodicals, or tapes, adults-only motion pictures, and adult entertainment;

(iii) For any pawn shop; or

(iv) For any so-called head shop.

(e) The Club shall use the Stadium and the Stadium Site and, while used by the Club, the Appurtenant Areas in compliance with all applicable Laws.

### Section 4.4 Home Games Played at Stadium.

The Club agrees to play its Home Games at the Stadium, except games required to be played elsewhere because of inclement weather or where greater capacity is required such as may be required for international matches and playoff and championship games or during any Untenantability Period.

### Section 4.5 Public Uses and Scheduling.

(a) Public Uses. The Club will make the Stadium available, in the Club's reasonable discretion, for:

(i) Soccer matches involving non-professional organizations, including the Minnesota State High School championships, the MYSA championships and select recreational league and organized community games, and

(ii) Public and amateur sports, community and civic events and other public events; provided that the Club shall have the right to turn down any request for which the Club reasonably determines there is an unacceptable risk of damage to the playing field or other area of the Stadium or may interfere with the Club's use of the Stadium. Any such use of the Stadium is subject to the scheduling provisions of Section 4.5(b) below and must be scheduled at least sixty (60) days in advance of the Event. The user must reimburse the Club for the Club's direct costs for the use of the Stadium unless otherwise agreed by the Club, must provide insurance reasonably acceptable to the Club based on the proposed use of the Stadium and must agree to a customary use agreement.

(b) Scheduling. The Club shall be considered the Stadium's primary user, and the League Events, Home Games and Club Events shall have priority over any other uses of the Stadium. The Club will schedule all Events at the Stadium. The Club will reasonably consider any request for the use of the Stadium for public uses as set forth in Section 4.5(a) above. The Club shall inform the City by January 31 of each Year of its expected schedule of Home Games, tryouts and practices, and potential playoff schedule for the Season during such Year.

## Attachment D

### Section 4.6 City Access.

City staff shall have reasonable access as required to discharge its obligations regarding the Stadium and the Stadium Site to all areas of the Stadium other than the Club's and the visiting team's exclusive locker room spaces during League Events and Home Games. City personnel whose presence is reasonably necessary shall require no ticket for admission to League Events, Home Games or Club Events, but shall be subject to MLS Rules with respect to credentialing for League Events and Home Games. The Club will facilitate any necessary credentialing for such City staff.

### Section 4.7 Ground Lease and Non-Disturbance Agreement. **[SUBJECT TO FURTHER NEGOTIATION]**

The City and the Club hereby acknowledge the terms and conditions of the Ground Lease.

(a) During the Term of this Agreement, the City agrees to keep the Ground Lease in full force and effect and not to amend, modify or waive any provision of the Ground Lease without prior consent of the Club and no such amendment, modification or waiver shall adversely affect the rights of the Club under this Agreement. The Club shall not cause the City to be in violation of the Ground Lease.

(b) The City shall procure for the benefit of the Club a non-disturbance agreement in the form attached hereto as Exhibit H (the "Non-Disturbance Agreement") which shall be executed contemporaneous with the execution of this Agreement by the City and the Metropolitan Council, pursuant to which the Metropolitan Council as the lessor under the Ground Lease agrees not to disturb the rights of the Club under this Agreement so long as no Event of Default by Club has occurred and is continuing.

(c) All terms, covenants and provisions of this Agreement and all rights, remedies and options under this Agreement are and shall at all times remain fully subject and subordinate in all respects to the Ground Lease, and in the event of any conflict between the terms of this Agreement and the Ground Lease, the terms of the Ground Lease shall prevail.

(d) If the Ground Lease and the City's leasehold estate terminates, then this Agreement shall terminate; provided that, in that event, only at the option and written request of the Metropolitan Council, this Agreement shall attach to the Metropolitan Council and the Club shall recognize the Metropolitan Council as the Club's direct landlord under this Agreement.

### Section 4.8 O&M Agreement.

The City, Team and Club shall enter into an operations and maintenance agreement, which agreement will be comparable to the Minnesota Twins operations and maintenance agreement as applicable to the Stadium and Stadium Site, with the Metropolitan Council in accordance with the Net Ground Lease.



**ARTICLE V**  
**ASSIGNMENT, SUBLETTING;**  
**REMOVAL OF PROPERTY; SURRENDER**

Section 5.1 General Restrictions on Assignment and Subletting by the Club.

(a) Except for the Permitted Assignments under Section 5.2 below, the Club shall not sell, assign, transfer, mortgage, pledge, hypothecate, encumber, sublet, license or grant a security interest (collectively, “Assign” or an “Assignment”) in, upon or with respect to (i) this Agreement or the Club’s rights or obligations hereunder, or any part thereof or interest therein, or (ii) the Club’s use rights in the Stadium, the Stadium Site or the Appurtenant Areas or any part thereof, in each instance without the prior written consent of the City, which consent may be granted or withheld in the City’s sole discretion. Any other Assignment or attempted or purported Assignment shall be void.

(b) The foregoing prohibition on Assignment under Section 5.1(a) shall not limit the Club’s receipt of all revenues from or the right of the Club to:

- (i) Conduct, license or allow League Events, Home Games or Club Events;
- (ii) License Concessionaires, vendors or third party designees for purposes of providing Concessions or merchandise products and services and to provide access to those Concessionaires, vendors or designees to areas inside or within proximity of the Stadium, the Stadium Site and Appurtenant Areas for purposes of vending, selling or otherwise distributing Concessions or merchandise;
- (iii) License seating or private suites or other areas in the Stadium;
- (iv) License or lease areas in the Stadium for Advertising and Naming Rights on the exterior or interior of the Stadium;
- (v) License or lease the Appurtenant Areas Displays and, if constructed, the Projection Tower for Advertising and Naming Rights;
- (vi) License Naming Rights for the Plaza Area, the Stadium Site Green Spaces; or
- (vii) To lease any personal property or equipment for use in or on the Stadium.

Section 5.2 Permitted Assignments.

Notwithstanding the prohibitions on Assignments set forth in Section 5.1 or any other provision of this Agreement:

(a) Franchise Transfer. The Club may, with prior notice to but without the prior consent of the City, assign all of the Club’s right, title and interest in and to this Agreement and under the Development Agreement to any Person who acquires or as part of such Assignment will acquire the Franchise with the approval of the MLS. Upon any permitted Assignment of

## Attachment D

this Agreement under this Section 5.2(a), provided that the assignee assumes all of the obligations of the Club hereunder pursuant to an Assignment and Assumption Agreement or other documents in form and substance reasonably acceptable to the City, the Club shall be released from all obligations thereafter arising hereunder and thereunder. Approval of a franchise transfer by MLS under this Section 5.2(a) shall be deemed approval by the City.

(b) Assignment of Revenues. The Club may, with prior written notice to, but without the prior written consent of, the City, freely Assign in whole or in part, any or all revenues and rights to revenues of the Club arising out of this Agreement, or the Club's operation of the Stadium and the Stadium Site, provided that the exercise of such rights shall at all times be subject to the applicable terms and conditions of this Agreement and any such Assignment shall not operate to change, limit or otherwise affect the rights, obligations and liabilities of the Club to the City under this Agreement.

(c) Assignment of Agreement to Affiliates. The Club may, with prior written notice to, but without the prior written consent of, the City, freely Assign, in whole or in part, all of its rights and obligations under this Agreement to one or more Affiliates of the Club, which may in turn Assign, in whole or in part, such rights and obligations back to the Club, provided that the exercise of such rights and the performance of such obligations shall at all times be subject to the applicable terms and conditions of this Agreement and any such Assignment shall not operate to change, limit or otherwise affect the rights, obligations and liabilities of the Club to the City under this Agreement.

(d) Club Personal Property. The Club may, without prior notice to or the prior consent of the City, pledge, grant security interests in, enter into leases of, or enter into title retention agreements with respect to any of the Club Personal Property and any of the Club's trade fixtures.

(e) Permitted Users. The Club shall have the right, subject to the terms and conditions of this Agreement and notwithstanding Section 5.1 hereof, at any time during the Term without notice to or the consent of the City, sell or grant to Persons (whether on a long-term or a short-term, or continuing or periodic basis, but in no event longer than the Term) licenses, sublicenses or similar rights and otherwise grant such Persons (collectively "Users") rights to use and enjoy any part of the Stadium and the Stadium Site for any purpose related to the ordinary course of the use, operation, exploitation or management of the Stadium and the Stadium Site.

(f) Proceeds of any Permitted Assignment. The Club shall retain all proceeds and revenues from any Permitted Assignment.

### Section 5.3 Assignments; Procedure.

(a) Notice; Review. For any Assignment requiring the approval of the City, the Club shall forward to the City a written notice at least thirty (30) days prior to the consummation of any proposed Assignment disclosing all terms and conditions of the proposed Assignment and enclosing copies of all documents and agreements relating to such Assignment for the purposes

## Attachment D

of the City determining whether to grant or withhold approval and whether such Assignment complies with the terms and conditions of this Article V.

(b) Club to Remain Obligated. Notwithstanding anything contained in this Agreement to the contrary except as provided in the last sentence of this Section 5.3(b) or otherwise agreed by the City in its consent to an Assignment, any Assignment hereunder (notwithstanding any consent of the City) shall not:

(i) Operate to relieve the Club from any covenant or obligation hereunder; or

(ii) Be deemed to be a consent to or relieve the Club or any licensee, sublicensee or user permitted pursuant hereto from obtaining the City's prior written consent to any subsequent Assignment (pursuant to the terms of this Agreement) and the Club shall, notwithstanding any rights the City may have against third parties, continue to remain primarily liable and obligated to the City for any and all covenants and obligations of the Club hereunder. Any Assignment permitted under Section 5.2(a) shall operate to relieve the Club from any covenant or obligation hereunder arising after the date of such Assignment.

(c) Exculpatory Language. In addition to the foregoing, the Club shall cause each assignee of an Assignment permitted under this Section 5.3 to agree to the following exculpatory language, which language shall be included in each assignment, agreement, contract, license or sublease evidencing such Permitted Assignment:

[Assignee] acknowledges that the Club's interest in the Stadium arises from its interest as a user under a use agreement (the "Use Agreement") entered into with the City of Saint Paul (the "City") which is the fee owner of the Stadium and that any possessory or other rights with respect to the Stadium granted to [Assignee] by this agreement terminate upon the expiration or termination of the Use Agreement. In addition, [Assignee] acknowledges that this agreement imposes no contractual obligations upon the City, unless, until and only if the City expressly assumes in writing the obligations of the Club hereunder; that in the event of a default or breach under this agreement, of any kind or nature whatsoever, [Assignee] shall not look to the City at the time of the default or breach for a remedy or relief; that no council member, officer, employee, agent, independent contractor or consultant of the City shall be liable to [Assignee] or any successor in interest to [Assignee] in the event of any default or breach by the City under the Use Agreement or of any other obligation under the terms of this agreement; and that the Club is not and shall not act as an agent of the City or in any manner contract for or bind the City.

(d) Certification of Assignment Documents; Costs and Expenses. Contemporaneously with the consummation of each Assignment permitted by this Section 5.3, the Club shall provide a written certification to the City that such Assignment complies with this Article V. The Club shall pay reasonable attorneys' fees incurred by the City in connection with the City review and/or verification of the terms of any Assignment under this Section 5.3.

## Attachment D

### Section 5.4 Assignment by the City.

The City may assign or transfer this Agreement or any of its interests or obligations hereunder to any Governmental Authority or Person as may be authorized by applicable Laws.

### Section 5.5 Removal or Disposition of Stadium Personalty.

The Club shall not abandon, demolish, substantially alter, remove or permit to be removed from the Stadium, or sell, assign or transfer (or attempt or purport to so do), any Stadium Personalty, except with the prior written approval of the City to be granted or withheld by the City in its sole discretion, except in connection with any Maintenance, replacement, Capital Improvements thereof or thereto by the Club.

### Section 5.6 Surrender of the Stadium.

(a) General. Subject to any agreements in writing reached by the City, the Club and the Metropolitan Council pursuant to the meet and confer provisions under Section 2.2(b) above, upon the expiration or termination of this Agreement (by lapse of time or otherwise), the Club shall surrender the Stadium and Appurtenant Areas to the City with all alterations, installations, physical additions or improvements thereto in the condition that such improvements are required to be maintained in accordance with this Agreement, free of waste and debris and, if applicable, shall promptly surrender all keys for the Stadium to the City at the place then fixed for payment of the Annual Rent and shall inform the City of the combinations of any locks and safes in the Stadium.

(b) Club Personal Property. At all times prior to or upon the expiration or termination of this Agreement (by lapse of time or otherwise), the Club may remove the Club Personal Property and, in such event, repair any damage caused to the Stadium or the Stadium Site due to the removal of such property at the Club's expense. If the Club fails to remove the Club Personal Property within twenty-four (24) hours after the expiration or earlier termination of this Agreement, such property shall be deemed abandoned by the Club. The City may, at its option:

- (i) Cause the Club Personal Property to be removed at the Club's expense;
- (ii) Sell all or any part of such property at public or private sale, without notice to the Club; or
- (iii) Declare that title to such property shall be deemed to have passed to the City.

(c) Abandoning the Stadium. Subject to any Force Majeure events, the Club shall not vacate or abandon the Stadium at any time during the Term, but if the Club vacates or abandons the Stadium or is dispossessed by process of law, in breach of this Agreement, any property, including the Club Personal Property, owned by the Club that may be left in the Stadium or on or about the Stadium Site, following such abandonment or dispossession shall be deemed to have been abandoned by the Club, and in that event such property shall be disposed of by the City or otherwise handled as the City sees fit. The City agrees that the Club shall not be deemed to have

abandoned or vacated the Stadium during any period of non-use between Seasons or as a result of any event of Force Majeure.

**ARTICLE VI  
OPERATIONS**

Section 6.1 Operation and Management of the Stadium, the Stadium Site and Appurtenant Areas and Green Spaces.

(a) Overall. The Club shall operate and Manage the Stadium, the Appurtenant Areas and the Stadium Site in accordance with this Agreement. The Club shall be responsible for performing and paying for all operations, Maintenance, and Capital Improvements for the Stadium and Appurtenant Areas, except as provided in Section 6.1(c). The Club will pay all costs and expenses related to the Stadium and the Appurtenant Areas, including costs of Utilities, insurance, legal defense and security inside and around the Stadium, except as provided in Section 6.1(c) or Section 8.1(b). Without limiting the generality of the foregoing, the Club obligations and responsibilities shall include:

(i) Traffic control, security and crowd control inside and around the Stadium for Events; and

(ii) Arranging for personnel for security, ticket sellers, ticket takers, scorekeepers, ushers, public address system announcers, public restroom attendants (if any), locker room attendants (if any), trainers, field upkeep personnel, and such other necessary personnel. To the extent the City pays any such costs on behalf of the Club, the Club shall reimburse the City for same within thirty (30) days of the date the City bills the Club.

(b) Annual Maintenance Plan. Except as provided in Section 6.1(c), the Club shall maintain the Stadium and Appurtenant Areas in good condition, ordinary wear and tear excepted. So long as the Club elects to provide the Appurtenant Areas Displays and the Projection Tower, the Club agrees to maintain the Appurtenant Areas Displays and the Projection Tower Area in good condition, ordinary wear and tear excepted. The Club will prepare an initial and ongoing Annual Maintenance Plan for review by the City. On or before January 31 of each calendar year during the Term, the Club shall submit to the City the Annual Maintenance Plan for the City's review. Any review of the Annual Maintenance Plan by the City is solely for the City's benefit and without any representation or warranty to the Club with respect to the adequacy, correctness or efficiency thereof or its compliance with Laws or otherwise. The Club may, in its discretion, amend or prioritize Maintenance without the City's prior written approval if such amendment or prioritization does not unreasonably affect the condition or operation of the Stadium, the Appurtenant Area, the Appurtenant Areas Displays, or the Projection Tower; provided that the Club shall give notice to the City of any material amendments or prioritizations. In connection with the City's review of the Annual Maintenance Plan, the City shall be entitled to conduct a full inspection of the Stadium and the Stadium Site.

(c) City Responsibilities. The City shall be responsible for and pay the cost of the ongoing maintenance of the sanitary sewer service as shown in the Design Documents, sewer

## Attachment D

and water (domestic and fire) utilities to the footprint of the Stadium where the sewer and water utilities are connected to the Stadium, and the storm water management system. To the extent the Club pays any such costs on behalf of the City, the City shall reimburse the Club for same within thirty (30) days of the date the Club bills the City.

### Section 6.2 Use and Operation Covenants.

(a) Operations. The Club shall have sole control over the operation, direction, and supervision of its staff, subject to the terms of this Agreement. The Club shall have such Management rights and responsibilities and shall provide, perform and take, or cause to be provided, performed or taken, such Management services and actions, as may be reasonably necessary or advisable to operate and maintain the Stadium and Appurtenant Areas in good condition and repair and in a safe and clean manner consistent with and meeting the standards and specifications established by MLS for MLS stadiums, and in accordance with the terms and provisions of this Agreement.

(b) Duties of Club. The Club shall take all actions reasonably necessary or desirable for the operation of the Stadium and Appurtenant Areas in accordance with all Laws and the terms and conditions of this Agreement. In furtherance thereof, the Club shall:

(i) Pay all Operating Expenses;

(ii) Employ, train, pay, supervise and discharge all personnel or engage such independent contractors as the Club determines in its sole discretion to be necessary for operation of the Stadium, the Stadium Site and Appurtenant Areas for all Events, which may include staff, ticket sellers, ticket takers, ushers, attendants, security crowd control personnel, trained medical emergency personnel, maintenance crews and technical staff;

(iii) Sell, issue, market and establish the price of any rates, rentals, fees or other charges for goods, services, tickets, licenses or rights available at or with respect to the Stadium and the Stadium Site;

(iv) Identify and contract with any contractor, Concessionaire and vendor in connection with managing, coordinating and supervising all Stadium and Appurtenant Areas operations and Concession Operations;

(v) Provide and enter into contracts for furnishing Utilities; and

(vi) Obtain, maintain or cause to be maintained all necessary Permits for the operation of the Stadium.

(c) Maintenance and Repair. The Club shall perform all Maintenance to the Stadium, the Appurtenant Areas, the Appurtenant Areas Displays and the Projection Tower at its sole expense.

(d) Affordable Seating. The Club shall provide affordable access to the Home Games in a manner materially consistent with the affordable seating plan described in Exhibit I attached hereto.

## Attachment D

(e) Smoke-Free Facility. The Stadium shall be operated as a smoke-free facility.

(f) Stadium Transportation Management and Traffic Control. The City will, at its cost, cause the Saint Paul Police Department to develop a public safety and traffic plan for outside the Stadium. The Club will pay the cost of implementing that plan for League Events, Home Games and Club Events on terms comparable to those of other major league sports facilities in the Minneapolis/Saint Paul metropolitan area. The Event user will pay the cost of implementing that plan for other Events.

(g) Youth and Amateur Sports. The Club will engage in outreach programs and opportunities to support youth sports in the community, the State of Minnesota and in particular the City of Saint Paul Parks and Recreation center fields and services, with emphasis on non-profit soccer organizations and amateur soccer programs, such as youth soccer training camps and player appearances and affordable programming for soccer.

(h) Environmental. The Club shall not permit and will take precautions against the presence of Regulated Substances as the result of its use and occupancy of the Stadium and Appurtenant Areas after the Commencement Date, except to the extent specifically authorized by Governmental Authorities, any Required Environmental Permit, or pursuant to Environmental Laws from and after the Commencement Date. The Club shall comply with applicable Environmental Laws relating to its respective use or occupancy of the Stadium and Appurtenant Areas.

(i) Workforce. The Club shall list any vacant or new positions at the Stadium that it may have with state workforce centers under Minnesota Statutes Section 116L.66, as such statute may be amended, modified or replaced from time to time.

(j) Labor Peace Agreement. The Club agrees to encourage the Concessionaire for the Stadium to enter into a labor peace agreement solely covering the Concessionaire's non-management food service employees in a form substantially similar to the current agreement by the concessionaire at Target Field (the "Labor Peace Agreement").

### Section 6.3 Liquor Licenses.

(a) The Club and, at the Club's request, any Concessionaire, with the cooperation of the City, shall obtain and maintain all intoxicating liquor licenses that are reasonably required for the Stadium or the Stadium Site, and the City shall support reasonable legislative changes required in order for the Club or its Concessionaire to do so. The Club shall comply with the terms of all intoxicating liquor licenses that are reasonably required for the Stadium and the Stadium Site.

(b) The Club specifically agrees that it will take all steps required by the State of Minnesota to ensure that all persons involved in the sale, use, consumption or distribution of alcoholic beverages on or about the Stadium and the Stadium Site have received the required State of Minnesota training for serving and distributing alcohol. Such training shall include checking proper identification before selling alcohol, not serving to minors, recognizing the signs of excessive consumption, and how to refuse to serve someone. The Club also agrees to adhere to all Laws relating to or governing the sale, use, consumption or distribution of alcoholic

## Attachment D

beverages. Any failure or negligence on the part of the Club to comply with any rules, regulations or training relating to the sale, use, consumption or distribution of alcoholic beverages shall be the exclusive and sole liability of the Club, and in no way shall any liability be transferred to the City.

### Section 6.4 Naming Rights.

(a) The Club will have the exclusive right to market and sell Naming Rights for the interior and exterior areas of the Stadium, the Plaza Area, the Promenade, the Stadium Site Green Spaces, the Appurtenant Areas Displays and the Projection Tower. The Club will not seek or offer Naming Rights for the Stadium, the Plaza Area, the Promenade, the Stadium Site Green Spaces, the Appurtenant Areas Displays or the Projection Tower except in accordance with this Agreement and the guidelines attached hereto as Exhibit J. The Club will notify the City of the exercise of its Naming Rights for the Stadium, the Plaza Area, the Promenade, the Stadium Site Green Spaces, the Appurtenant Areas Displays or the Projection Tower and consider any recommendations or comments of the City in regard to such Naming Rights. With regard to all Naming Rights:

(i) The term during which any such name shall apply shall expire no later than the expiration of the Term (whether on its scheduled Expiration Date or by earlier exercise of any termination rights in this Agreement);

(ii) The Club shall not permit any name to be given to the Stadium or any portion thereof that would be in violation of any Law; and

(iii) The Club shall not permit any name of any entity that is in an industry that is part of any of the Prohibited Advertising.

(b) Reimbursement to the City. In the event that the name(s) given to the Stadium is changed, the Club shall reimburse the City for any and all costs incurred by it in connection with such name change, including the costs of replacing letterhead, envelopes, mailing labels, business cards, advertising and promotional materials, websites, telephone listings and advertising, not to exceed \$5,000.

### Section 6.5 Advertising.

The Club will have the exclusive right to market and sell Advertising Rights for the interior and exterior areas of the Stadium, the Appurtenant Areas Displays and the Projection Tower, and to receive all revenues therefrom. The Club shall pay all expenses and taxes associated with the exercise of such Advertising Rights and Advertising. All such Advertising Rights shall expire no later than expiration of the Term (whether on its scheduled Expiration Date or by earlier exercise of any termination rights in this Agreement). Any Advertising shall comply with all signage, zoning and similar Legal Requirements. The City will reasonably cooperate with the Club to maximize revenues from Advertising. In no event shall the Club display Prohibited Advertising on the exterior or interior of the Stadium or on the Appurtenant Areas Displays or the Projection Tower. Any Advertising requested to be placed by the City and supplied by the City in support of an Other Event sponsored by the City shall be placed, at the City's expense, in the Stadium during such event but without any further charge to the City so



## Attachment D

long as such Advertising does not conflict with or represent a competitive company or product from those licensed by the Club to display Advertising on or in the Stadium.

### Section 6.6 Broadcast Rights.

(a) The Club shall have the right to, and to authorize and license others to, exercise Broadcast Rights with respect to all League Events, Home Games and Club Events, and to retain all revenues derived therefrom. The Club shall pay all expenses and taxes associated with the exercise of such Broadcast Rights. The City hereby grants to the Club (if and then only to the extent that the City has rights therein or thereto) a royalty-free license, to include in any Broadcast Rights (or fixation thereof) exercised, with respect to any League Events, Home Games and Club Events, any likeness, image, sound or such other item visible or available in the Stadium or the Appurtenant Areas.

### Section 6.7 Communication System.

The Club shall have control of and over the Communication System at the Stadium with respect to all League Events, Home Games and Club Events; provided, however, that: (a) the Club shall not display information that is reasonably likely to be offensive to the general public; and (b) the City shall have access to and control of the Communication System to the extent necessary to protect public safety. The Club will furnish its own Communication System operator (or operators) for each League Event, Home Game and Club Event. A Communication System operator employed or contracted for by the City shall have access to the Communication System to the extent reasonable and necessary to use the Communication System as permitted by clause (b) above. The Club shall pay all electricity and maintenance costs for such use of the Communication System.

### Section 6.8 Royalty Free License.

The City hereby grants to the Club a non-exclusive royalty free license (subject to the rights of the City and others and the terms and conditions set forth in this Agreement) to make any lawful use of the name, identity and image of all or part or parts of the Stadium or the Appurtenant Areas and to retain all revenues therefrom. The Club hereby recognizes and agrees that the grant of a license contained herein shall not prevent the City from using or granting use of the name, identity or image of all or parts of the Stadium, the Stadium Site and Appurtenant Areas for its own purposes (but not for any commercial purposes).

### Section 6.9 Suites, Club Seats and Personal Seat Licenses.

(a) Club Rights to Suites. The Club shall have the sole and exclusive right to lease or license any or all of the Suites to third parties for all Events and to retain all revenues therefrom as the Club shall determine in return for the users' payment of licensing or use fees, upon such written terms and conditions as are determined by the Club (provided that any such license or use agreement shall not extend past the expiration of the Term). As between the City and the Club, the Club shall have the sole and exclusive responsibility for marketing, leasing, operating, maintaining and performing Maintenance and Capital Improvements to the Suites and the Suite equipment, furnishings and fixtures, and paying the costs of all Utilities used or consumed in

## Attachment D

connection with the use of the Suites; provided, however, that the Club may require the users of the Suites to pay all or any portion of the foregoing costs.

(b) Club Seats. The Club shall have the sole and exclusive right to sell licenses for the use of seating designated by the Club as “club seats” for all Events. All revenue generated by the licensing or rental of the club seats (other than the amusement tax or any other tax or imposition imposed upon the sale of an admission ticket to the Event) shall be paid to and retained by the Club.

(c) Charter Seats/Charter Memberships. The Club shall have the sole and exclusive right to sell charter seats and charter memberships to the Stadium for the use of seats for all Events. All revenue generated by the licensing or rental of the seats (other than the amusement tax or any other tax or imposition imposed upon the sale of an admission ticket to any Event) shall be paid to and retained by the Club.

### Section 6.10 Operation of Concessions.

(a) Rights. The Club shall have the sole and exclusive right and responsibility to exercise and retain all revenues from the exercise of Concession Rights and the sole and exclusive right and responsibility to manage:

(i) The Concession Operations within the Stadium for all Events in the Stadium and other uses of the Stadium, and

(ii) The Concession Operations in the Appurtenant Areas for League Events, Home Games, Club Events, tryouts and practices.

The Club’s rights shall include the right and responsibility to:

(iii) From time to time select and contract with, as set forth below, one or more Concession vendors (any such Person when so acting, being herein referred to as a “Concessionaire”) to operate and be responsible for all Concession Operations;

(iv) Administer any such Concession agreements and retain all associated revenue from all Events;

(v) Determine the types, brands and marketing of all products sold within the Stadium and in the Appurtenant Areas (during League Events, Home Games, Club Events, tryouts and practices) and the prices to be charged for such items; and

(vi) Determine the location of Concession Operations, all subject to the terms and conditions of this Agreement.

In exercising Concession Rights, the Club shall, and shall require any Concessionaire to, comply with the provisions of Minnesota Statutes Section 340A.909, as such statute may be amended, modified, or replaced from time to time. Due to the nature of certain Other Events, the user or sponsor of the Other Event has the right to prohibit beer sales at its Other Event. The

## Attachment D

Club will provide Concession Operations for all Other Events unless deemed unnecessary by the Club and the Club will retain all revenue from Concession Operations at Other Events.

(b) Concessionaire. Any Concession agreements entered into by the Club and any Concessionaire shall:

(i) Be for such duration as the Club shall determine (but which, in the aggregate, will ensure Concession Operations during the Term, but shall terminate not later than the termination of this Agreement); and

(ii) Comply with the Labor Peace Agreement, if applicable.

The Club's Concession agreement with any Concessionaire shall require that all employees and volunteers of the Concessionaire shall conduct themselves in a professional and courteous manner and shall not unreasonably disturb or interfere with Events.

(c) Concession Operations. The Club shall comply with all Laws and Legal Requirements which may now or hereafter be in force and effect and shall obtain any licenses necessary to conduct Concession Operations. This includes upgrading equipment, if necessary, to comply with rules and regulations for services the Club wishes to provide outside of traditional Concession Operations from stationary food stands which are part of the facilities.

(d) Novelty Items. The Club or its licensee shall have the right to sell non-consumable novelty items, including but not limited to soccer programs, soccer yearbooks, soccer pennants, soccer balls, glasses, cushions, umbrellas, parkas, jerseys, t-shirts, sweatshirts, scarfs, pins, buttons, and other novelty items customarily sold to patrons at professional soccer events. The Club shall pay all capital and operating costs of selling the above-listed novelties. All revenues from the sale of such novelties shall accrue to the Club.

(e) Local Ethnic Food Vendors. The Club will encourage the Concessionaire to include ethnic food from local community food vendors when food is sold at Events in the Stadium.

### Section 6.11 Parking.

Pursuant to the recommendations of the Transportation and Parking Study, the Parties shall develop a plan for use of surface parking and ramps to identify adequate convenient parking for those attending League Events, Home Games and Club Events and discounted rates shall be negotiated at City or HRA-owned parking facilities.

## ARTICLE VII OPERATIONS COVENANTS

### Section 7.1 Interference with Franchise.

At all times during the Term, the Club shall own and maintain the Franchise in good standing, and shall oppose any agreement or requirement, and not enter into or accept any

agreement or requirement, with or from the League or any other Person that is inconsistent with the Club's commitments under this Agreement.

Section 7.2 Corporate Existence.

At all times during the Term, the Club shall maintain its existence as an entity organized under the Laws of Minnesota and will not dissolve or liquidate, or change its form of existence, without the prior written consent of the City, except that the Club may merge, consolidate or combine with an Affiliate regardless of whether the Club or such Affiliate is the surviving entity.

**ARTICLE VIII  
CAPITAL IMPROVEMENTS AND ALTERATIONS**

Section 8.1 Capital Improvements.

(a) Team Responsibilities. Subject to the provisions of this Agreement and except as provided in Section 8.1(b), the Club will be responsible for performing and paying for all Capital Improvements for the Stadium the Plaza Areas, the Promenade, the Stadium Parking Areas and the Stadium Site Green Spaces, at its sole cost and expense and in accordance with this Article VIII.

(b) City Responsibilities. The City will be responsible for performing and paying for Capital Improvements with respect to, sewer and water (domestic and fire) utilities to the footprint of the Stadium where the sewer and water utilities are connected to the Stadium, and the storm water management system for the Stadium and the Stadium Site.

Section 8.2 Short Term and Long Term Capital Improvement Plan.

(a) The Club shall develop a Capital Improvement Plan to guide the future capital needs of the Stadium and Appurtenant Areas. The Club will meet annually with the City to present its annual Capital Improvement Plan for the Stadium and Appurtenant Areas and will reasonably consider the recommendations of the City. Any review of the Capital Improvement Plan by the City is solely for the City's benefit and without any representation or warranty to the Club with respect to the adequacy, correctness or efficiency thereof or its compliance with Laws or otherwise. The amendment or priority of any Capital Improvements will be determined in the Club's sole discretion if such amendment or prioritization does not unreasonably affect the condition or operation of the Stadium or the Appurtenant Areas; provided that the Club shall notify the City of any material amendment or prioritization.

(b) Notice of Conditions. If either the City or the Club knows of or discovers any Laws necessitating performance of Capital Improvements or any condition or defect in, damage to, or alteration of the physical structure, fixtures, appurtenances, machinery, equipment, systems, surfaces or any other capital component of the Stadium or Appurtenant Areas necessitating performance of Capital Improvements, or which, in such Party's reasonable opinion, makes such Capital Improvements necessary or advisable, such Party shall promptly notify the other of such matter.

## Attachment D

### Section 8.3 Performance of Capital Improvements.

(a) Capital Improvement Plans or Specifications. If deemed appropriate by the Club, the Club shall select an architect or engineer to prepare any necessary Capital Improvement plans or specifications. The architect or engineer's fees and expenses and all other costs associated with preparing the Capital Improvement plans or specifications shall be paid by the Club. The Club will provide any such plans or specifications or other relevant documentation with respect to any Capital Improvements to the City. The City shall own the Capital Improvement plans and specifications, including any as-built plans relating thereto, which shall be delivered to the City upon completion of the Capital Improvements.

#### (b) Construction of Capital Improvements.

(i) The Club shall perform or cause to be performed all Capital Improvements for which it is responsible and shall have the right to select and enter into contracts with any and all contractors, subcontractors, suppliers, vendors, architects, engineers, construction managers, project managers, consultants or other entities or individuals with respect to the completion of such Capital Improvements. The Club shall use reasonable efforts to ensure that the work performed by contractors and subcontractors is performed in a good and workmanlike manner and in compliance with Laws; provided that the Parties agree that the City's vendor outreach program and procurement policies do not apply to Capital Improvements or Alterations made by the Club pursuant to this Agreement.

(ii) Prior to the commencement of any work, the Club shall obtain and furnish copies to the City of all necessary governmental Permits and certificates for the commencement and performance of any Capital Improvements. The Club will require from any contractor performing any Capital Improvements evidence of workers' compensation insurance in statutory limits, and such other insurance as the Club deems appropriate that may include "all risk" or "special form" builder's risk property insurance and general liability insurance, with a completed operation endorsement, for any occurrence in or about the Stadium (or such other insurance which is then commercially available to cover such risks), under which the Club, the City and the Metropolitan Council shall be named as additional insured and loss payee, in such limits as the Club may determine, subject to City approval. The City shall be furnished with evidence of the insurance provided by the contractor before the commencement of any Capital Improvements and, on request, at reasonable intervals thereafter during the continuation of such work.

### Section 8.4 Alterations.

The Club may, at its expense, make any Alterations to the Stadium or Appurtenant Areas, that do not constitute Capital Improvements thereto and that the Club determines is desirable and consistent with the use of the Stadium or the Appurtenant Areas and preserve their functionality. If the Club desires to make any material Alterations to the Stadium or Appurtenant Areas, an accurate description shall first be submitted to the City and the Club shall reasonably consider the recommendations of the City. Any Alterations to the Appurtenant Areas are subject to

## Attachment D

applicable City ordinance. Upon its request, the Club will provide to the City any plans and specifications or other documentation with respect to any such alterations, additions, modifications or improvements. The Club shall use reasonable efforts to ensure that the work performed by contractors and subcontractors is performed in a good and workmanlike manner and in compliance with Laws.

### Section 8.5 Title to Capital Improvements and Alterations.

All Capital Improvements and all Alterations made to the Stadium and Appurtenant Areas shall become a part of the Stadium or Appurtenant Areas as the case may be and shall be the property of the City, and shall remain upon and be surrendered with the Stadium at the end of the Term.

### Section 8.6 Emergency Repairs.

Subject to the terms of this Section, Emergency Repairs shall be made by the Club. If the Club fails to make an Emergency Repair in a timely manner, the City may elect to make such Emergency Repairs, and the Club shall reimburse the City for all costs incurred by the City within thirty (30) days after submission of an invoice.

### Section 8.7 City's Access.

Nothing contained in this Agreement is intended to limit the right of the City when exercising a nonproprietary function (e.g., building and fire safety inspections, as applicable) to access to the Stadium through properly credentialed personnel.

### Section 8.8 Liens.

The Club shall keep the Stadium, the Stadium Site, and the Appurtenant Areas free from, and shall indemnify, defend and hold harmless the City with respect to, all liens filed in connection with work performed by contractors, subcontractors or suppliers under contract with the Club. If any such liens are filed, the Club shall, within five (5) Business Days after notice of such filing, notify the City and shall, within thirty (30) days after notice of such filing, either satisfy such lien or post a bond with the City in an amount equal to 150% of such lien or a larger amount if required by any court.

## **ARTICLE IX INDEMNIFICATION**

### Section 9.1 Indemnification by the Club.

(a) The Club shall indemnify, defend and hold harmless the City Indemnified Persons for and shall pay to the City Indemnified Persons the amount of any Damages, whether or not involving a third-party claim, arising, directly or indirectly, from or in connection with:

(i) any breach of any representation or warranty made by the Club in this Agreement or in any schedule or exhibit attached hereto or any other certificate or document delivered by the Club to the City pursuant to this Agreement;

## Attachment D

(ii) any breach by the Club of any covenant or obligation of the Club in this Agreement;

(iii) any claim by any Person for Damages in connection with the violation by the Club or the Club Agents of any Legal Requirements; and

(iv) any claim otherwise arising out of operations of the Club pursuant to this Agreement.

(b) Notwithstanding the foregoing, this Section 9.1 does not require the Club to indemnify and defend the City for Damages resulting from willful or negligent acts or omissions of the City.

(c) If the Club fails to make any payment of any sums payable by the Club to the City Indemnified Persons on the date due, which failure shall continue for thirty (30) days, then such payment shall bear interest at a rate of interest equal to the lesser of four percent (4%) above the Prime Rate or the highest rate permitted by Law, payable from the date such payment was due to the date of payment thereof.

### Section 9.2 Additional Indemnification by Club.

Due to the fact that the Club or its Concessionaire will be selling and distributing alcoholic beverages during Events, the Club specifically agrees to defend and hold harmless the City Indemnified Persons from any and all liability for claims for injury, death or property damage, relating to or resulting from the sale, use, consumption or distribution of alcoholic beverages on or about the Stadium during any Event or sponsored activity.

### Section 9.3 Indemnification by the City.

(a) The City shall indemnify, defend, and hold harmless the Club Indemnified Persons for, and shall pay to the Club Indemnified Persons, the amount of any Damages, whether or not involving a third-party claim arising, directly or indirectly, from or in connection with any Regulated Substances with respect to the Bus Barn Property existing as of the date the Bus Barn Property is made available to Team pursuant to the Development Agreement.

(b) If the City fails to make any payment of any sums payable by the City to the Club Indemnified Persons on the date due, which failure shall continue for thirty (30) days after written notice from the Club, then such payment shall bear interest at a rate of interest equal to the lesser of four percent (4%) above the Prime Rate or the highest rate permitted by Law, payable from the date such payment was due to the date of payment thereof.

## **ARTICLE X INSURANCE; RESTORATION**

### Section 10.1 Club's Insurance Coverage.

(a) Club's Required Insurance Coverage and Terms. From the Commencement Date through the end of the Term of this Agreement, Club shall, at its sole expense, maintain

## Attachment D

insurance with respect to the Club's use, operations, and maintenance thereof, in the amounts and on the terms described herein.

(i) The City and Metropolitan Council shall be additional insureds on all policies, except Workers' Compensation and Cyber, Privacy and Media Liability. The City and the Metropolitan Council shall be a 'Loss Payee' on all Property and Business Interruption policies insuring the Stadium. The City and Metropolitan Council includes their elected officials, officers, employees and agents.

(ii) The Commercial General Liability policy shall provide contractual liability coverage that is at least as broad as is included in a standard ISO CG 00 01 policy form. General Liability coverage shall include all Club use and operations at the Stadium and the Appurtenant Areas, all Club activities, including League Events, Home Game, Club Events and other Events, including all events where alcoholic beverages are sold.

(iii) The City reserves the right to review the Club's insurance policies at any time to ensure that the requirements have been met and satisfied.

(iv) All policies shall be written on an occurrence basis, or as acceptable to the City.

(v) If the Club has multiple claims or if there is a substantial change in activities held or sponsored by the Club, then the City reserves the right to require the Club to purchase and provide proof of additional insurance in reasonable amounts.

(vi) Satisfaction of policy, endorsement, per occurrence and aggregate limits can be met with the purchase of an umbrella or excess policy.

(vii) The Club shall provide certificates of insurance of all insurance policies annually to show evidence that all required insurance is in force. All insurance policies shall, to the extent possible, provide notice to the City of any policy cancellations or non-renewal.

(b) Insurance Coverage of Stadium. City shall, have the option, at all times during the Term of this Agreement, to keep all improvements which are now or hereafter part of the Stadium or Stadium Site (including all Stadium Personalty but excluding Club Equipment) insured against "all risks" (including boiler and machinery) for the full insurable value thereof with standard fire and extended coverage; all of such insurance to be on a replacement cost basis and to include a demolition and removal endorsement.

(i) Club shall pay, no less than thirty (30) days before the premium is owed to City's insurance carrier, the entire amount of the premium owed by City to its insurance carrier on account of the insurance coverage described in the immediately preceding sentence.

(ii) The initial value of the insurance on the Stadium shall be the total value of the project cost. City will agree to have an appraisal once every five years to evaluate the



## Attachment D

cost of the Stadium; the cost of such appraisal shall be shared equally between City and Club.

(iii) In lieu of City purchasing the foregoing insurance and being reimbursed therefor by Club, Club shall have the right, with the prior written consent of the City, to obtain comparable insurance coverage from an insurance company reasonably acceptable to City provided such insurance coverage meets all other requirements of this Article X.

(c) Commercial General Liability Insurance Agreement. Club shall maintain at all times during the term of this Agreement, commercial general liability insurance covering the Stadium, its Appurtenant Areas and the Stadium Personality in the amount of at least One Million Dollars combined single limit. Such insurance shall:

- (i) Be primary with respect to City's insurance or self-insurance;
- (ii) Not exclude explosion, collapse and underground property damage;
- (iii) Be written on an "Occurrence" Form policy basis; and
- (iv) Contain an "aggregate" policy limit of at least Two Million Dollars per policy period.

(v) Such insurance shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Injury, Advertising Injury, Contractual Liability (applying to this Agreement), Independent Contractors Liability, and Products-Completed Operations Liability.

(d) Automobile Liability Agreement. Club shall maintain at all times during the Term of this Agreement, Automobile Liability Insurance covering liability arising out of the ownership, use, maintenance or operation of all owned, non-owned and hired vehicles, with a combined Bodily Injury and/or Property Damage limit of at least \$1,000,000 per accident.

(e) Excess or Umbrella Liability Insurance. Club shall maintain at all times during the Term of this Agreement, Excess (or Umbrella) Liability Insurance covering the excess of the above described Commercial General Liability, Automobile Liability, Employers Liability and Liquor Liability Insurance with a limit of not less than \$20,000,000 for Each Occurrence and an aggregate limit of not less than \$20,000,000 per annual policy period.

(f) Cyber, Privacy, and Media Liability. Club shall maintain at all times during the Term of this Agreement, Cyber, Privacy and Media Liability Insurance, with a limit of at least \$2,000,000 for each claim using a "claims made" policy.

(g) Workers' Compensation Insurance. Club shall maintain at all times during the Term of this Agreement, Workers' Compensation Insurance with not less than statutory minimum limits; and Employers' Liability Insurance with minimum limits of at least \$500,000 per accident and with an all states endorsement.

## Attachment D

(h) Business Interruption/Rent Loss. Club shall maintain all times during the Term of this Agreement, Business Interruption Insurance or Rent Loss Insurance sufficient to enable Club to meet its obligation to pay all rents and impositions which it is required to pay pursuant to this Agreement for a period of casualty, Force Majeure or other interruption in Club's business, without regard to such casualty, Force Majeure or other interruption, of at least twelve (12) months which policy shall have a qualifying period of no greater than thirty (30) days.

(i) Liquor Liability Insurance. Liquor Liability should be in the following amounts: Liquor Liability Insurance affording coverage in at least the following amounts. "\$2,000,000 per occurrence for, Bodily Injury and Property Damage In the event that the Liquor Liability Insurance is provided under the same policy as the insured's Commercial General Liability Insurance, with a combined aggregate limit applying to both types of coverage, then such combined aggregate limit shall be at least \$5,000,000."

(j) Other Insurance. Club shall maintain such additional and other insurance coverages as City may reasonably require, or as may be required by the Net Ground Lease, throughout the Term of this Agreement. Club may also maintain additional insurance as it finds necessary for Club's business operations.

### Section 10.2 Event License Agreements / Insurance Requirements.

Except as otherwise agreed in writing by City, Club shall include in all subleases, licenses and other Stadium use agreements a requirement that the user cause City, its officers, employees and agents to 'be included as additional insureds under any general liability, automobile liability and umbrella (and/or excess) liability insurance to be maintained by or on behalf of the user with respect to the event. Further, Club shall cause City, the Metropolitan Council, and their officers, employees and agents to be indemnitees or to otherwise receive the same contractual protection as is received by Club under any indemnification, hold harmless, exculpatory or similar provision between Club and the user. Club shall be responsible for monitoring the event per user's compliance with applicable insurance requirements.

### Section 10.3 Stadium Restaurants / Insurance Requirements.

With respect to any sublease or other occupancy agreement between Club and any person who uses a portion of the Stadium for operation of a restaurant or the provision of food and/or beverages (alcoholic or otherwise) to the public, Club shall require the restaurant user to maintain workers' compensation/employer's liability, commercial general liability, liquor liability and automobile liability insurance, with reasonable policy limits and from financially responsible insurance companies. Club shall, in such sublease or other occupancy agreement, also (a) require the restaurant user to include City, and Metropolitan Council and their officers, employees and agents as additional insureds under its commercial general liability, liquor liability and automobile liability policies, and (b) cause City, the Metropolitan Council and their officers, employees and agents to be indemnitees or to otherwise receive the same contractual protection as is received by Club under any indemnification, hold harmless, exculpatory or similar provision between Club and the restaurant user. Club shall be responsible for monitoring the restaurant user's compliance with applicable insurance requirements.

## Attachment D

### Section 10.4 Governmental Immunity.

Notwithstanding anything to the contrary in this Agreement, City and Metropolitan Council do not waive any statutory immunity from municipal tort liability available to it under Minnesota Statutes, Chapter 466 or any other Minnesota laws or Rules.

### Section 10.5 Increase in Coverage.

The insurance required to be maintained pursuant to this Agreement (both types and limits of coverage) shall be subject to review as to its adequacy by an Independent Insurance Consultant once every three years beginning in the year 2019. Club shall cause such review to be conducted and shall cause such Consultant to prepare a written report regarding such review containing such Consultant's recommendations, if any, for increases in such insurance. Club shall cause copies of such report to be delivered promptly to City's Risk Management Section and City Attorney's Office and agrees to follow the recommendations for increases, if any, in types and limits of coverage and limits of coverage, of such Independent Insurance Consultant to the extent practicable. For purposes of this Section 10.5, the term "Independent Insurance Consultant" means any person who is not an employee or officer of Club, appointed by Club, qualified to survey risks and to recommend insurance coverage for organizations engaged in like operations to those of the Club and having a favorable reputation for skill and experience in such surveys and such recommendations, and who may be a broker or agent with whom Club transacts business, and reasonably acceptable to City.

### Section 10.6 Deductibles.

The liability insurance (including workers' compensation insurance) to be maintained by Club may be subject to reasonable deductibles, which deductibles shall be the sole responsibility of Club. The property insurance to be maintained by Club may be subject to reasonable deductibles, which deductibles shall not exceed \$50,000 for each loss; provided, however, that such maximum deductible amount may be increased as is reasonable and appropriate in view of then prevailing insurance market conditions and Stadium exposure and loss experience considerations; and provided further that such maximum deductible amount shall not be increased to exceed \$100,000 (increased or decreased by a percentage equal to the percentage increase or decrease in the CPI since the Commencement Date) for each loss without the written consent of City. Notwithstanding the foregoing, it is understood and agreed that coverage against direct property damage loss from certain exposures including, by way of example, flood and earthquake, is often underwritten subject to higher dollar deductibles, or subject to other forms of deductible, such as a percentage to be coinsured by the insured, and further, that coverage for indirect loss, such as business interruption, is often underwritten subject to a "waiting period" or other form of deductible other than a stated dollar amount deductible. In the event that it is reasonable or necessary to insure one or more exposures subject to such other form of deductible, such deductible shall not exceed that which is reasonable and appropriate in view of then prevailing insurance market conditions and Stadium exposure and loss experience considerations. Club shall be responsible for the risk of loss within such property insurance deductibles. For purposes of this Section 10.6, the term "property insurance" shall include both "all risk" and boiler and machinery insurance.

## Attachment D

### Section 10.7 Payment for Covered Losses.

Except to the extent that this provision may conflict with the terms of the insurance policy(ies), payment for all covered losses shall be made to City, which shall have the right to negotiate and settle any “all risk” property, builders risk and boiler and machinery and the business interruption and/or rent loss insurance claims. Club shall have the sole opportunity to participate in claims negotiations and settlements to the extent that they solely involve Club’s interests. Claims which involve both parties’ interests shall involve both parties.

### Section 10.8 Cooperation Regarding Risk Management.

Each party agrees to cooperate fully with the other in promptly providing such insurance underwriting and other information as may be necessary or appropriate to obtain and maintain the insurance described herein. The parties further agree to cooperate with the insurance companies and agents by responding promptly to their reasonable requests. Club agrees to respond promptly to City’s reasonable requests for evidence of such insurance and copies of all pertinent insurance policies. If requested by City, Club will request the insurers to certify copies of the policies.

### Section 10.9 Requests for Underwriting Information.

Club acknowledges and agrees that the insurance companies that provide “all-risk” property insurance and boiler and machinery insurance described herein may request or require certain underwriting information concerning any restaurant operations that may occupy or use the Stadium, its operations and exposures, including information regarding the financial condition of the restaurant operations. Club agrees to use its best efforts to negotiate provisions in the restaurant use agreement that require the restaurant owner to provide promptly such information as the insurers may from time to time request for Stadium underwriting or loss control purposes. Club acknowledges that this cooperation may extend to inspection of the property and premises by insurance company personnel and Club agrees to cooperate with reasonable requests for such inspections.

### Section 10.10 Club Interests.

Club shall be entirely responsible for maintaining, at its sole expense, such insurance coverage as it determines to be appropriate to protect Team Equipment and any other personal property of Club (other than Stadium Personalty). Subject to the following sentence, Club, City and Port Authority (“Releasing Parties”) hereby release and discharge each other, and the other’s officers, partners, officials, employees, others acting on the other their behalf (collectively, the “Released Parties”) from any and all claims, and all liability or responsibility to the Releasing Party and to anyone claiming through or under the Releasing Party, by way of subrogation or otherwise, for any loss or damage to the Releasing Party’s business, personal property or real property caused by fire or other peril, even if such fire or peril was caused in whole or in part by the negligence or other act or omission of one or more of the Released Parties. Notwithstanding the foregoing, the release and waiver of subrogation provided for under this Section shall: (i) only be effective to the extent that the loss or damage to the Releasing Party’s business, personal property or real property is covered by insurance; (ii) not apply to the extent of any

## Attachment D

deductible (or deductibles) applying under such insurance; and (iii) only apply if such insurance includes a full release from liability and waiver of subrogation privilege permitting the release and waiver contemplated by this provision without jeopardizing the rights of the Releasing Party to recover under such insurance. Each party agrees to exercise every reasonable effort to negotiate a full release from liability and waiver of subrogation privilege in its property insurance (including its Boiler and Machinery Insurance) policies, and to promptly notify the other in the event such privilege cannot be negotiated notwithstanding such effort.

### Section 10.11 Loss Information.

At the request of City, Club shall promptly furnish loss information concerning all liability claims brought against Club (or any other Insured under Club's required policies), that may affect the amount of liability insurance available for the benefit and protection of City and others under this section, or which, in City's sole opinion, might affect the interests of the public. Such loss information shall include such specifics and be in such form as City may reasonably require. To the extent permitted by Section 16.27, City agrees to keep any such information confidential. Club shall not be required to disclose loss information that would materially disadvantage Club in any threatened or ongoing litigation if there is a significant risk that such information would become public.

### Section 10.12 Insurance Terms.

Insurance terms not otherwise defined in this Agreement shall be interpreted consistent with insurance industry usage.

### Section 10.13 Restoration.

(a) The City shall have no liability to the Club if the Stadium, the Stadium Site or Appurtenant Areas are partially or wholly destroyed, or if the Stadium or Appurtenant Areas cannot be used because of a valid governmental order prohibiting the use of the Stadium or Appurtenant Areas.

(b) In the event of partial destruction of the Stadium, the Stadium shall be deemed suitable for playing League Events and Home Games if (i) the athletic playing field can be used, (ii) eighty percent (80%) of the Stadium seats can be used, (iii) access to the Stadium is not obstructed, (iv) use is deemed safe by competent authority, and (v) use is approved by the MLS. In such event, this Agreement shall continue in full force and effect with no reduction in Annual Rent or in the other payments due from the Club to the City or in any payments due from the City to the Club. The Club shall restore the Stadium to an equivalent condition as before the event of partial destruction within two (2) years. Any proceeds of insurance maintained by the Club that is not used to restore the Stadium shall be retained by or paid to the Club.

(c) In the event of total or partial destruction rendering the Stadium not suitable for playing League Events and Home Games or of a valid governmental order prohibiting use of the Stadium for League Events or Home Games, this Agreement will be suspended immediately, with the exception of payment of Annual Rent, as to playing League Events and Home Games in the Stadium until the governmental order ceases to prohibit use for League Events or Home Games or the Stadium is repaired. The Team shall notify the City, within ninety (90) days from

## Attachment D

the date the Stadium is no longer suitable for playing League Events or Home Games, whether the Club will rebuild or repair the Stadium. If the Club decides to rebuild or repair the Stadium, this Agreement will continue to be suspended until the Stadium is suitable for playing League Events and Home Games, and the Club shall notify the City of the Club's best estimate of when the Stadium will be suitable for playing League Events and Home Games again. For each Season or part of Season while this Agreement is suspended, the Term shall be extended by one (1) Season. During the period of time while the Stadium is not suitable for playing League Events or Home Games, finding a substitute location for playing Home Games shall be the Club's sole responsibility and expense, provided the City shall provide such assistance as the Club may reasonably request. If the Club decides not to rebuild or repair the Stadium, this Agreement shall terminate and the Club shall be entitled to retain all proceeds from any insurance carried by the Club with respect to the damage or destruction of the Stadium.

### **ARTICLE XI EMINENT DOMAIN**

#### Section 11.1 Termination for Condemnation.

In the event that a Condemnation with respect to any material part of the Stadium, the Stadium Site or Appurtenant Areas shall occur, this Agreement shall, at the Club's option, terminate (except as hereinafter provided below), on the date on which possession is required to be delivered to the condemning authority. As used herein, "material part" shall mean any of the following:

(a) Any part of the Stadium, the Stadium Site or Appurtenant Areas that, in the reasonable determination of the Club, would cause the Club to become unable to make use of the Stadium for its intended operations or to experience a material loss of revenue; or

(b) Any part of the area between the Stadium and a public street, highway, green space and plazas, including the Stadium Site Infrastructure, the Stadium Site and Appurtenant Areas, the Condemnation of which, in the reasonable determination of the Club, would cause the Club to become unable to provide sufficient access to the Stadium;

provided, however, that the Club may elect, in its sole discretion, not to treat any of the foregoing as a "material part" of the Stadium, in which event this Agreement shall not terminate. If this Agreement terminates pursuant to the provisions of this Section, all rights, obligations and liabilities of the Parties shall end as of the effective date of such termination, without prejudice to any rights that have accrued prior to such termination, except for the allocation of the condemnation award pursuant to Section 11.2 shall survive any such termination.

#### Section 11.2 Allocation of Award.

If this Agreement is terminated pursuant to Section 11.1 hereof, then the proceeds of any and all awards with respect to the Condemnation shall belong solely by the Team, except for the value of any land (but not the improvements thereon) taken in such Condemnation which shall belong to the City.

## Attachment D

### Section 11.3 Performance of Work.

If there shall be a Condemnation and this Agreement shall not terminate as a result thereof, the amount of any award for or on account of any Condemnation of the Stadium or the Stadium Site shall be used to pay for the performance of any and all work necessary to restore the Stadium and the Stadium Site to a complete architectural unit suitable for the Club's use, which work the Club shall cause to be performed in as expeditious a manner as possible and any award not so used by the Club shall be equitably allocated between the Club and the City.

### Section 11.4 Temporary Taking.

This Agreement shall not terminate by reason of a temporary taking of the Stadium, the Stadium Site or any portion thereof for public use, except as provided in this Section. In the event of such a temporary taking, the rights and obligations of the Parties under this Agreement shall continue in full force and effect, except that:

(a) any award for such temporary taking for lost profits, loss of business or use, or relocation benefits shall be paid to the Club;

(b) any award for such temporary taking for restoring the Stadium or the Stadium Site to a state equivalent to that which the Stadium was in immediately prior to such temporary taking shall be paid to the Club;

(c) upon the termination of such temporary taking, the Club shall use reasonable efforts to restore the Stadium and the Stadium Site to a state equivalent to that which the Stadium was in immediately prior to such temporary taking;

(d) during any period of a temporary taking that creates an Untenantability Period (or such longer period as is reasonably necessary to allow the Club to make suitable alternate arrangements), the Club shall be entitled to make arrangements for an alternate site for the League Events and the Home Games and no Annual Rent shall be due and payable to the City during the Untenantability Period; and

(e) notwithstanding the foregoing, the Club shall have the right to terminate this Agreement as of the end of any Season if the remaining period of such temporary taking will be for a period of more than two (2) Seasons as evidenced by the issuance of any written statement by a duly authorized official of the condemning authority to the effect that such temporary taking will be for such period of time.

## **ARTICLE XII ENVIRONMENTAL MATTERS**

### Section 12.1 Covenants of Club.

The Club hereby covenants and agrees that the Club shall:

## Attachment D

(a) cause all Required Environmental Permits in connection with the operation of the Stadium and the Stadium Site to be maintained in full force and effect and comply with the terms and conditions thereof;

(b) not permit and take reasonable precautions against the presence of Regulated Substances as the result of the use and occupancy of the Stadium by the Club or the Club Agents, except to the extent specifically authorized by Governmental Authorities, any Required Environmental Permit or pursuant to Environmental Laws;

(c) comply with applicable Environmental Laws relating to the Club's or the Club Agents' use, maintenance, operation or occupancy of the Stadium and the Stadium Site; and

(d) immediately, upon obtaining actual knowledge of any of the following, notify the City in writing, including a detailed description, of:

(i) The presence of Regulated Substances;

(ii) The receipt by the Club or any of the Club Agents of an actual or threatened Environmental Complaint;

(iii) A notice from a Governmental Authority that it has, will or intends to revoke or suspend, in whole or in part, a Required Environmental Permit; and

(iv) Any violation of Environmental Laws or Required Environmental Permits.

### Section 12.2 Club's Indemnity of City.

(a) The Club shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the City Indemnified Persons from and against any and all Claims or Damages directly imposed upon, threatened against, incurred by, awarded or asserted against the City Indemnified Persons, and arising out of, from or in any way relating to:

(i) The failure of the Club to comply with any terms, conditions or provisions of Section 12.1 hereof;

(ii) Any actual or alleged violation of Environmental Laws or Required Environmental Permits by the Club or any of the Club Agents affecting the Stadium or the Stadium Site;

(iii) To the extent caused by any act or omission by the Club or any of the Club Agents, the presence of any Regulated Substance on, in, at or under the Stadium or the Stadium Site (or any portion thereof) or the migration of any Regulated Substances to any surrounding areas or other property; or

(iv) Environmental Complaints based on or relating or pertaining to Regulated Substances on, in, at or under the Stadium or the Stadium Site (or any portion thereof) which is caused by the Club or any of the Club Agents.



## Attachment D

(b) The obligations of the Club under this Section shall be in effect and enforceable regardless of whether such obligation arises before or after expiration of the Term or the Club taking possession of all or any portion of the Stadium or the Stadium Site; provided, however, that the Club shall have no obligation to indemnify, defend, protect, save and hold harmless the City Indemnified Persons for any Claims to the extent proportionately caused by the negligence, willful misconduct or gross negligence of the City Indemnified Persons.

(c) Any City Indemnified Person, after the receipt (whether after termination of this Agreement or otherwise) of a written notice of any demand or Claim or the commencement of any suit, action or proceeding concerning the Club, the Stadium, the Stadium Site, or the City Indemnified Persons, and related in any manner to the matters set forth in this Article XII, shall provide the Club with written notice of the same within ten (10) Business Days of receipt of such notice; provided, however, that the failure of any City Indemnified Person to provide such notice shall not relieve the Club of any liability to any City Indemnified Persons hereunder, except to the extent such failure actually prejudices the rights and remedies of the Club.

### **ARTICLE XIII DEFAULT AND REMEDIES**

#### Section 13.1 Event of Default.

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

(a) Club’s Events of Default.

(i) the Club’s failure to make any payment of any sums payable by the Club under this Agreement, which failure shall continue for thirty (30) days after receipt of written notice to the Club by the City;

(ii) the Club’s violation or failure to perform or observe any obligation, covenant or condition of this Agreement, which failure or violation shall continue for thirty (30) days after receipt of written notice to the Club by the City identifying with particularity the failure or violation; provided, however, that so long as such failure or violation is of a non-monetary nature susceptible to cure, but is not reasonably capable of being cured within such thirty (30) day period, there shall exist no Event of Default if the Club promptly advises the City of the Club’s intention to duly institute all steps necessary to cure such default and the Club promptly commences cure of such failure or violation within such thirty (30) day period and diligently pursues such cure to completion;

(iii) (A) the Club shall institute voluntary proceedings in bankruptcy, (B) involuntary proceedings in bankruptcy shall be instituted against the Club that are not discharged within ninety (90) days thereafter, (C) any proceedings shall be instituted by or against the Club under any Law relating to insolvency or bankruptcy reorganization, and in the case of an involuntary proceeding, that is not discharged within ninety (90) days after filing, (D) a trustee or receiver shall be appointed for the Club by any court of competent jurisdiction, or (E) the Club shall make a general assignment for the benefit of its creditors; and

## Attachment D

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

(b) City's Events of Default.

(i) the City's failure to make any payment of any sums payable by the City under this Agreement, which failure shall continue for thirty (30) days after receipt of written notice to the City by the Club;

(ii) the City's violation or failure to perform or observe any obligation covenant or condition of this Agreement, which failure or violation shall continue for thirty (30) days after receipt of written notice to the City by the Club identifying with particularity the failure or violation; provided, however, that so long as such failure or violation is of a non-monetary nature susceptible to cure, but is not reasonably capable of being cured within such thirty (30) day period, there shall exist no Event of Default if the City promptly advises the Club of the City's intention to duly institute all steps necessary to cure such default and the City promptly commences cure of such failure or violation within such thirty (30) day period and diligently pursues such cure to completion; and

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

### Section 13.2 Remedies upon Club Event of Default.

Upon the occurrence of an Event of Default by the Club, the City will have the right to exercise any of the following remedies:

(a) Terminate this Agreement and lease to or allow use of the Stadium by another Person;

(b) Re-enter and take possession of the Stadium and lease to or allow use of the Stadium by another Person or managed by the City;

(c) Terminate this Agreement, sell the Stadium, and apply the sale proceeds as determined by the City in its sole discretion;

(d) Seek specific performance or other equitable relief; or

(e) Seek Damages suffered or incurred by the City as a result of such Event of Default by the Club.

### Section 13.3 Remedies upon City Event of Default.

Upon the occurrence of an Event of Default by the City, the Club will have the right to exercise any of the following remedies:

(a) Terminate this Agreement;

## Attachment D

- (b) Seek specific performance or other equitable relief; or
- (c) Seek Damages suffered or incurred by the Club as a result of such Event of Default by the City.

### Section 13.4 Injunctive Relief; Specific Performance.

The Parties acknowledge that the rights conveyed by this Agreement and the covenants of the Parties are of a unique and special nature and that any violation of this Agreement shall result in immediate and irreparable harm to the non-breaching Party and that in the event of any actual or threatened breach or violation of any of the provisions of this Agreement, the non-breaching Party shall be entitled as a matter of right to an injunction or a decree of specific performance from any equity court of competent jurisdiction. The Parties acknowledge, approve and adopt the conclusive determination that specific performance of this Agreement by the other Party is made for adequate consideration and upon terms which are otherwise fair and reasonable, has not been included through sharp practice, misrepresentation or mistake, does not cause unreasonable or disproportionate hardship or loss to the non-breaching Party or to third parties, and involves performance in a manner and the rendering of services of a nature and under such circumstances that the non-breaching Party cannot be adequately compensated in damages. Each Party waives the right to assert the defense that such breach or violation can be compensated adequately in damages in an action at law. Each Party further agrees and stipulates that the nature of this Agreement shall not be a defense or otherwise a factor and hereby waives the right to assert such in any dispute over the use of specific performance or injunctive relief as a remedy under this Agreement. In addition, each Party agrees and stipulates that where specific performance or injunctive relief is sought against the breaching Party, such dispute shall be conclusively resolved in accordance with the declarations and determinations in favor of the non-breaching Party regarding the inadequacy of compensation in damages and otherwise regarding and requiring specific performance.

### Section 13.5 Remedies Cumulative; Waiver; No Consequential or Incidental Damages.

All rights and remedies set forth in this Agreement are cumulative and in addition to the Parties' rights and remedies at law or in equity. A Party's exercise of any right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies or obligations. No Party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such Party. If a Party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement, except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other Party may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy. In no event shall a Party be entitled to Consequential Damages or incidental damages against the other Party and in no event shall a Party have any liability or responsibility for Consequential Damages or incidental damages to any Person. In no event shall a Party be entitled to damages or attorney's fees or

## Attachment D

court costs by reason of any failure, refusal or delay on the part of the other Party to consent or approve any matter requested by a Party.

### Section 13.6 Notice of Material Breach.

Until the Expiration Date, the Club shall promptly provide written notice to the City as soon as the Club has knowledge of any event, condition or state of affairs which evidence or which could result in a material breach of this Agreement on the part of the Club or otherwise materially and adversely affect the ability of the Club to timely and completely satisfy and fulfill its obligations under this Agreement. The notice shall include information as to the nature of such event, condition or state of affairs and what steps, if any, the Club is taking or considering taking to prevent any material, adverse outcome.

### Section 13.7 City Officials, Employees, Agents, Members and Officers Not Liable.

(a) Notwithstanding and prevailing over any contrary provision or implication of is Agreement other than as provided in the exception at the end of this sentence, there is no recourse against the City or any public official, employee, or agent of the City for any and all duties, liabilities, performance, and obligations of the City under this Agreement, and no duties, liabilities, performance, or obligations of the City with respect to this Agreement shall be required to be satisfied from any funds, revenues or reserves of the City except:

(i) The rights of the Club to specific performance and injunctive relief under Sections 13.3 and 13.4 of this Agreement; and

(ii) The obligations of the City under Sections 4.7, 6.1(c) and 8.1(b) of this Agreement.

(b) All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the City and not of any member, director, officer, employee, or agent of the City in his or her individual capacity or any other Governmental Authority, and no recourse shall be had for any Claim hereunder against any member, director, officer, employee, or agent of the City or any other Governmental Authority in such capacity.

(c) All covenants, stipulations, promises, agreements, and obligations of the Club contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the Club and not of any member, partner, owner, manager, officer, employee, or agent of the Club in his or her individual capacity, and no recourse shall be had for any Claim hereunder against any member, partner, owner, manager, officer, employee, or agent of the Club in such capacity.

**ARTICLE XIV**  
**REPRESENTATIONS AND WARRANTIES**

Section 14.1 Representations and Warranties of City.

The City hereby represents and warrants to the Club the following as of the date of execution of this Agreement:

(a) Organization. The City is a municipal corporation, duly organized, validly existing, and in good standing under the Laws of the State of Minnesota.

(b) Authorization, Validity and Enforceability. The City has all requisite power and authority to enter into this Agreement and to carry out the actions contemplated hereby. The execution, delivery, and performance of all obligations of the City under this Agreement have been duly authorized and approved by all necessary City action. This Agreement, when executed, shall constitute the valid and legally binding obligations of the City, enforceable against it in accordance with its terms.

(c) No Conflicts. The execution, delivery and performance of this Agreement shall not result in a violation of, in any material respect, any provision of any other agreements, charters, instruments, contracts, judgments or decrees to which the City is a party or by which the City or its assets may be bound or affected.

(d) No Violation of Laws. The City has complied in all material respects with all Legal Requirements, has not received written notice as of the date of execution of this Agreement asserting any noncompliance in any material respect by the City with Legal Requirements, and is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement.

(e) Litigation. There is no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Authority now pending or, to the actual knowledge of the City, threatened against or which affects the City seeking to restrain or prohibit, or seeking damages or other relief in connection with, the execution of this Agreement and the performance of the transactions contemplated herein or that might materially and adversely affect the use and operation of the Stadium as contemplated in and by this Agreement or the performance of the City hereunder, except as may be set forth on Exhibit F attached hereto.

Section 14.2 Representations and Warranties of Club.

The Club hereby represents and warrants to the City the following as of the date of execution of this Agreement unless expressly stated to be as of another date:

(a) Organization. The Club is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Minnesota.

(b) Authorization, Validity and Enforceability. The Club has all requisite power and authority to enter into this Agreement and to carry out the actions contemplated hereby. The

## Attachment D

execution, delivery and performance of all obligations of the Club under this Agreement have been duly authorized and approved by all necessary Club action. All corporate action necessary for the authorization, execution, delivery and performance of all obligations of the Club under this Agreement has been taken. All consents and approvals of any Person required in connection with the execution of this Agreement have been obtained. This Agreement, when executed, shall constitute the valid and legally binding obligations of the Club, enforceable against it in accordance with its terms.

(c) No Conflicts. The execution, delivery and performance of this Agreement shall not result in a violation of, in any material respect, any provision of any other agreements, charters, instruments, contracts, judgments or decrees to which the Club is a party or by which the Club or its assets may be bound or affected, including MLS Rules, nor shall the execution, delivery and performance of this Agreement result in the breach of or constitute a default under any agreement or instrument to which the Club is a party or by which the Club or its assets may be bound or affected, including MLS Rules.

(d) No Violations of Laws. The Club has complied in all material respects with all Legal Requirements, have not received written notice as of the date of execution of this Agreement asserting any noncompliance in any material respect by the Club with Legal Requirements, and is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement.

(e) Litigation. There is no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Authority now pending or, to the actual knowledge of the Club, threatened against or which affects the Club seeking to restrain or prohibit, or seeking damages or other relief in connection with, the execution of this Agreement and the performance of the transactions contemplated herein or that might materially and adversely affect the use and operation of the Stadium as contemplated in and by this Agreement or the performance of the Club hereunder, except as may be set forth on Exhibit F attached hereto.

(f) League Good Standing. As of the Commencement Date, the Club will be a member of MLS and be and covenants to remain in good standing with the League and under MLS Rules.

### **ARTICLE XV DISPUTE RESOLUTION**

With respect to the matters covered by this Agreement, the Parties agree to the following expedited dispute resolution process:

#### Section 15.1 Application.

This Section shall apply to any dispute or controversy that occurs after the Commencement Date. In the event that any dispute is of such a nature that the aggrieved Party believes it will suffer immediate irreparable injury unless immediate injunctive relief or specific performance is granted, the aggrieved Party may proceed immediately to seek appropriate

## Attachment D

judicial resolution of such dispute without first exhausting such Party's remedies under this Article XV.

### Section 15.2 Dispute Resolution Process.

Any Party may invoke the provisions of this Section 15.2 by giving notice to the other Parties in accordance with Section 16.5 outlining in reasonable detail the subject and nature of the dispute (the "Dispute Notice"). Within two (2) Business Days after the date of the Dispute Notice, authorized representatives of the Parties shall meet in person and negotiate in good faith to resolve the dispute. If the Parties' authorized representatives are unsuccessful in resolving the dispute, then the dispute shall be submitted to non-binding mediation administered in accordance with the procedures of the American Arbitration Association (AAA) then in effect. Unless the Parties otherwise agree, within seven (7) days after the selection of the mediator, the Parties in dispute and the mediator shall participate in a pre-mediation conference to determine the time and place of the mediation and the procedures that will govern the mediation. The cost and expense of the mediator shall be equally shared by the Parties in dispute and each such Party shall submit to the mediator any information or position papers that the mediator may request to assist in resolving the dispute.

## **ARTICLE XVI MISCELLANEOUS**

### Section 16.1 Recording of this Agreement.

This Agreement shall not be recorded, but at the request of either the City or the Club, the Parties shall promptly execute, acknowledge and deliver to each other a memorandum of agreement in the form of Exhibit G (and a memorandum of modification of agreement in respect of any modification of this Agreement) sufficient for recording. Such memoranda shall not be deemed to change or otherwise affect any of the obligations or provisions of this Agreement.

### Section 16.2 Further Actions.

The Parties, whenever and as often as each shall be reasonably requested to do so by the other Party, shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement. Furthermore, the Parties shall take all actions and proceedings reasonably necessary or appropriate to remedy any apparent invalidity, lack or defect in authorization, or illegality, or to cure any other defect that has been asserted or threatened. The Parties further covenant and agree to cooperate and assist each other in the creation, establishment, granting or conveying, either by easement, declaration, license or any other instrument or agreements (whether recorded or unrecorded) as may necessary or reasonably advisable, to provide for the continued and uninterrupted use of Utilities, ingress/egress, and other easements necessary for the operation of the Stadium, the Stadium Site and Appurtenant Areas.

## Attachment D

### Section 16.3 Good Faith; Approvals or Consents, Regulatory Approvals.

(a) In exercising its rights and fulfilling its obligations under this Agreement, each of the Parties shall act in good faith. Notwithstanding the foregoing, each Party acknowledges that in each instance under this Agreement where a Party is obligated to exercise good faith or to use good faith, diligent or other similar efforts, such Party shall not be required to expend any funds or grant any other consideration of any kind in the performance of such undertaking, and each Party further acknowledges that the obligation of any Party to act in good faith or undertake good faith, diligent or other similar efforts does not constitute a warranty, representation or other guaranty that the result that the Parties are attempting to achieve shall be successfully achieved and no Party shall be liable for any failure to achieve the result or results intended so long as the Party has complied with its obligation to act in good faith.

(b) In each instance in this Agreement where the approval or consent of a Party may be sought or is required, except as otherwise indicated in this Agreement, such approval or consent shall not be unreasonably withheld, conditioned or delayed.

(c) Notwithstanding any provision of this Agreement to the contrary, any consent or approval by the City pursuant to its regulatory authority is governed by Law, and not this Agreement.

### Section 16.4 Notice of Matters.

In the event that any Party receives knowledge about any matter that may constitute a breach of any of its warranties or covenants set forth in this Agreement that arises after the date of this Agreement, it shall promptly notify the other Party of the same in writing.

### Section 16.5 Form of Notices; Addresses.

All notices, requests, consents or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the Parties as follows (or at such other address as a Party may from time to time designate by notice given pursuant to this Section):

To the Club: c/o MUSC Holdings, LLC  
4050 Olson Memorial Highway, Suite 295  
Golden Valley, MN 55422  
Attn: William W. McGuire, Managing Member

with a copy to: Kaplan, Strangis and Kaplan, P.A.  
90 South Seventh Street, Suite 5500  
Minneapolis, MN 55402  
Attn: Ralph Strangis



## Attachment D

To the City: City of Saint Paul  
City Hall Annex  
25 West 4<sup>th</sup> Street, Suite 1300  
Saint Paul, MN 55102  
Attn: Director of Planning and Economic Development

with a copy to: Saint Paul City Attorney  
400 City Hall and Courthouse  
15 Kellogg Boulevard West  
Saint Paul, MN 55102  
Attn: City Attorney

and a copy to: City of Saint Paul  
700 City Hall and Courthouse  
15 Kellogg Boulevard West  
Saint Paul, MN 55012  
Attn: Finance Director

and a copy to: McGrann Shea Carnival  
Straughn & Lamb, Chartered  
800 Nicollet Mall, Suite 2600  
Minneapolis, MN 55402  
Attn: Kathleen M. Lamb

Each notice shall be deemed given and received on the date delivered if served personally or by overnight delivery service or, if sent by United States registered or certified mail, then one (1) Business Day after its delivery to the address of the respective Party, as provided in this Article, except that with respect to the notices pertaining to matters that are to be accomplished within less than three (3) Business Days (e.g., requests for consent when the Person whose consent is sought has one (1) Business Day to respond in the granting or denying of such consent), notice shall be deemed given simultaneously with its delivery. Notices sent by a Party's counsel shall be deemed notices sent by such Party.

### Section 16.6 Force Majeure.

The non-occurrence of any condition under this Agreement shall not give rise to any right otherwise provided in this Agreement when such failure or non-occurrence is due to the occurrence of a Force Majeure condition and without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause, if any, shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause; provided, however, that if notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. Times of performance under this Agreement also may be extended as mutually agreed upon in writing by the City and the Club. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default under this Agreement.

## Attachment D

### Section 16.7 Calculation of Time.

Unless otherwise stated, all references to “day” or “days” shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

### Section 16.8 Time is of the Essence.

Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement to which time is a factor.

### Section 16.9 Incorporation by Reference.

All exhibits, schedules, or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and are deemed to be an integral part of this Agreement.

### Section 16.10 Entire Agreement.

Except as otherwise provided in this Agreement, or the Development Agreement, this Agreement contains the sole and entire agreement between the Parties with respect to its subject matter and supersedes any and all other prior written or oral agreements between them with respect to such subject matter. The provisions of the Development Agreement which differ from those in this Agreement shall be interpreted as complementing those in this Agreement where they do not conflict and as superseding those in this Agreement where they do conflict.

### Section 16.11 Amendment.

No amendment, modification, or termination of this Agreement shall be valid unless in writing and duly executed by the Parties.

### Section 16.12 Binding Effect; Assignment.

This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the City, and the permitted successors and assigns of the Club. Any assignment by the Club shall be subject to the terms and conditions of Article V hereof.

### Section 16.13 Headings.

The headings contained in this Agreement are for convenience of reference only and shall not limit, extend, or otherwise affect the meaning hereof.

### Section 16.14 No Presumption Against Drafter.

This Agreement has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be

## Attachment D

interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

### Section 16.15 Severability.

If any term or provision of this Agreement or the application thereof to any Person or circumstance shall, to any extent, be inconsistent with, invalid or unenforceable under any Laws or Legal Requirements, the remainder of this Agreement or the application of such term or provision to Persons or circumstances, other than those as to which it was held invalid or unenforceable, shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by any Laws or Legal Requirements.

### Section 16.16 Third Party Beneficiaries.

Other than the rights granted to MLS, nothing in this Agreement, express or implied, is intended to:

(a) Confer upon any Person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement; or

(b) Authorize anyone not a Party to this Agreement to maintain an action pursuant to or based upon this Agreement.

### Section 16.17 Governing Law; Venue.

This Agreement shall be governed by and construed in accordance with the Laws of the State of Minnesota, notwithstanding its conflicts of law or choice of law provisions. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and determined in accordance with the laws of the State of Minnesota, and the Club agrees that all legal actions initiated by the Club with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in the State of Minnesota, Ramsey County, District Court and shall not be removed therefrom to any other federal or state court.

### Section 16.18 Counterparts.

This Agreement may be executed and delivered in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement.

### Section 16.19 Relationship of Parties.

It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture among the Parties.

## Attachment D

### Section 16.20 Nondiscrimination.

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

### Section 16.21 Estoppel Certificate.

Each of the City and the Club, respectively, agrees that at any time and from time to time within fourteen (14) Business Days after receipt of a written request by the other Party, the Club or the City, as the case may be, shall execute, acknowledge and deliver to the other Party a statement in writing certifying:

(a) That this Agreement is unmodified and in full force and effect or, if there have been modifications, that the same is in full force and effect as modified and identifying the modifications;

(b) That the City or the Club, as the case may be, are not, to knowledge of the City or the Club, as case may be, in default under any provisions of this Agreement or, if there has been a default, the nature of such default;

(c) That all work with respect to the Stadium to be performed by the City or the Club, as the case may be, under this Agreement has been performed or, if not so performed, specifying the work to be performed; and

(d) Any other matter that the City or the Club, as the case may be, or such prospective mortgagee or other lender shall reasonably request. It is intended that any such statement may be relied upon by any Person.

### Section 16.22 Approval of League.

The Club represents that it has obtained all necessary consents and approvals of the League to the Club's execution and delivery of this Agreement.

### Section 16.23 MLS Termination Clause.

It is acknowledged and agreed by all parties to this Agreement that:

(a) The Club has not yet been granted the right to operate a MLS team and such right is subject to the terms and conditions of a confidential Expansion Agreement with MLS, and

(b) If the right to operate an MLS team is not granted to the Club, or if the Expansion Agreement is (or the rights granted to the Club under the Expansion Agreement are) terminated

## Attachment D

for any reason, no Party to or beneficiary of this Agreement shall have any right of recourse to MLS, any of its members or SUM, which claims are hereby irrevocably waived and released.

### Section 16.24 MLS Required Provisions.

MLS shall have the right to retain (subject to the terms of the MLS Operating Agreement) all national revenues (e.g., broadcast, national sponsorship) arising from or relating to the use of the Stadium for League Events and otherwise permit MLS national partners to activate all commercial rights at the Stadium during all League Events without limitation. Notwithstanding the provisions of Section 16.16 hereof, MLS is designated as an intended third party beneficiary of this Agreement. Notwithstanding any provisions in this Agreement, MLS shall have the right to assume and assign this Agreement to any Person if there is an Event of Default on the part of the Club.

### Section 16.25 Termination Prior to Commencement Date.

Prior to the Commencement Date, this Agreement shall automatically terminate in the event of a termination of the Development Agreement. After the Commencement Date, this Section 16.25 shall have no further force or effect.

### Section 16.26 No Waiver of City Immunity or Liability.

Nothing contained in this Agreement, including any provisions regarding the City obtaining insurance or otherwise being insured, shall in any way affect or impair the City's immunity or the immunity of the City's employees, consultants, or independent contractors, whether on account of official immunity, legislative immunity, statutory immunity, discretionary immunity, or otherwise. Nothing contained in this Agreement, including any provisions regarding the City obtaining insurance or otherwise being insured, shall in any way affect or impair the limitations on the City's liability or the liability of the City's employees, consultants, or independent contractors set forth in Minnesota Statutes Chapter 466, as such statute may be amended, modified, or replaced from time to time. By entering into this Agreement, the City does not waive any rights, protections, or limitations provided for the City or its employees, consultants, or independent contractors under the various rules of governmental immunity or under Minnesota Statutes Chapter 466, as such statute may be amended, modified, or replaced from time to time.

### Section 16.27 Data Practices Act.

The Club acknowledges that the City is subject to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (the "Act"), including but not limited to Minnesota Statutes Section 13.05, subdivision 11. To the extent required by law, the Club shall abide by the provisions of the Act. The Club agrees to promptly notify the City if it becomes aware of any potential claims, or facts giving rise to potential claims, under the Act. The terms of this provision shall survive the cancellation or termination of this Agreement.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

Attachment D

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date set out at its head.

**CLUB:**

**MINNESOTA UNITED SOCCER CLUB, LLC**  
a Minnesota limited liability company

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

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

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

Attachment D

**CITY OF SAINT PAUL,**  
a municipal corporation of the State of Minnesota

---

Christopher B. Coleman, Mayor  
City of Saint Paul

---

Director of Parks and Recreation

---

Director of Financial Services

---

Director of Human Rights and Equal Economic  
Opportunity

---

City Clerk

Approved as to form:

---

City Attorney

820244.DOC

**EXHIBIT A**

**ANNUAL MAINTENANCE PLAN**

**INFORMATION FOR AND FORM OF ANNUAL MAINTENANCE PLAN**

The Annual Maintenance Plan will include a narrative report summarizing the repairs and Maintenance performed in the previous twelve (12) month period (January-December) along with an outline of plans for the upcoming twelve (12) month period. It will also include a detailed schedule of planned activities pursuant to the definition of Maintenance in this Agreement and an outline of changes to any previous related procedures that will be modified in order to accomplish the responsibilities of the Club pursuant to Section 6.1(a) and (b) of this Agreement. The report will not include Capital Improvements.

The Annual Maintenance Plan shall identify:

- (a) any new equipment or machinery added to the Stadium, any modifications to existing maintenance plans, etc.;
- (b) stipulated or recommended procedures provided by suppliers and manufacturers in operating manuals or warranties for Stadium components;
- (c) contracted maintenance of any operating systems or equipment; and
- (d) winterizing plans and timetable.

In addition to the narrative report, the Annual Maintenance Plan shall be in substantially the form attached hereto and shall include a computerized/spreadsheet summary also in substantially the form attached hereto.

*[See attached]*



**Form of Annual Maintenance Plan  
Provided Pursuant to Section 6.1 of the Playing and Use Agreement**

The following is the Annual Maintenance Plan for [insert year] submitted by Minnesota United Soccer Club, LLC (the “Club”) pursuant to Section 6.1 of the Playing and Use Agreement by and between the City of Saint Paul and the Club dated as of \_\_\_\_\_, 2016:

(a) The items of Maintenance (as defined in the Playing and Use Agreement) proposed to be performed are shown behind Tab \_\_\_\_\_;

(b) The Maintenance that has been performed in the 12 months preceding this year are shown behind Tab \_\_\_\_\_; and

(c) The items of Maintenance planned to be performed for the next 12 months are shown at Tab \_\_\_\_\_.

In addition to the foregoing, the attachments show needed repairs that have been identified, their status and timetable for completion.

**EXHIBIT B**

**LEGAL DESCRIPTION FOR BUS BARN PROPERTY**

That part of the West Half of the Southwest Quarter (W1/2 of SW1/4) of Section 34, Township 29, North, Range 23 West of the Fourth Principal Meridian, Ramsey County, Minnesota, described as follows: Starting at a point on the easterly line of Snelling Avenue which is 703.46 feet south of the south line of University Avenue; thence north on the east line of Snelling Avenue 6.08 feet to the point of beginning; thence easterly at an included angle of 90 degrees 1 minute to the point of intersection with a line 820.35 feet east of and parallel to the east line of Snelling Avenue; thence southerly along said last described line to its intersection with the north line of St. Anthony Avenue; thence northwesterly along the north line of St. Anthony Avenue to its intersection with the east line of Snelling Avenue; thence north on the east line of Snelling Avenue 525.21 feet to the point of beginning; except that part taken by the State of Minnesota by Final Certificate filed as Document No. 1677103.

Abstract Property

400 Snelling Avenue North, St. Paul, MN

**EXHIBIT C**

**PROJECT CONCEPT DESIGN**

**EXHIBIT D**

**PROHIBITED ADVERTISING**

“Prohibited Advertising” shall mean advertising which:

- (a) is contrary to law or promotes any unlawful activity or purpose;
- (b) does not meet national network television broadcasting standards;
- (c) is reasonably likely to be offensive to the general public; or
- (d) contains advertising related to tobacco products.

**EXHIBIT E**

**FORM OF ACKNOWLEDGMENT OF COMMENCEMENT DATE**

**THIS ACKNOWLEDGMENT OF COMMENCEMENT DATE** (this “Acknowledgement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) by and between the City of Saint Paul, a municipal corporation of the State of Minnesota (the “City”), and Minnesota United Soccer Club, LLC, a Minnesota limited liability company (the “Club”).

**RECITALS**

A. The City and the Club have entered into that certain Stadium Use Agreement, dated \_\_\_\_\_, 2016 (the “Use Agreement”) and pursuant to Section 2.2 thereof, the Club and the City are to acknowledge the Commencement Date.

**NOW, THEREFORE**, the City and the Club covenant and agree as follows:

1. The Commencement Date of the Use Agreement shall be \_\_\_\_\_.

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

**CLUB:**

**MINNESOTA UNITED SOCCER CLUB, LLC,**  
a Minnesota limited liability company

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

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

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

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of Minnesota United Soccer Club, LLC, a Minnesota limited liability company, on behalf of said company.

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

Attachment D

**CITY OF SAINT PAUL,**  
a municipal corporation of the State of Minnesota

\_\_\_\_\_  
Christopher B. Coleman, Mayor  
City of Saint Paul

\_\_\_\_\_  
Director of Parks and Recreation

\_\_\_\_\_  
Director of Financial Services

\_\_\_\_\_  
City Clerk

Approved as to form:

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

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Christopher B. Coleman, the Mayor, and \_\_\_\_\_, the Director of Parks and Recreation, and \_\_\_\_\_, the City Clerk, of the City of Saint Paul, a municipal corporation of the State of Minnesota, on behalf of said public body.

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

This instrument was drafted by:

McGrann Shea Carnival  
Straughn & Lamb, Chartered (cjp)  
800 Nicollet Mall, Suite 2600  
Minneapolis, MN 55402  
(612) 338-2525

**EXHIBIT F**  
**LITIGATION**

Section 14.1(e) [City Litigation] – None.

Section 14.2(e) [Club Litigation] - \_\_\_\_\_

**EXHIBIT G**

**FORM OF MEMORANDUM OF AGREEMENT**

**MEMORANDUM OF AGREEMENT**

**THIS MEMORANDUM OF AGREEMENT**, is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Saint Paul, a municipal corporation of the State of Minnesota (the “City”), and Minnesota United Soccer Club, LLC, a Minnesota limited liability company (the “Club”).

**WITNESSTH:**

**WHEREAS**, the City and the Club have entered into that certain Stadium Use Agreement dated \_\_\_\_\_, 2016 (the “Use Agreement”), whereby the City granted to the Club the right to use certain facilities in Ramsey County, Minnesota, on land legally described on Exhibit A attached hereto (the “Use Area”); and

**WHEREAS**, the City and the Club desire to give record notice of said Use Agreement;

**NOW, THEREFORE**, in consideration of the Use Area, the City and the Club agree as follows:

1. **Use Area.** The City, in consideration of the rent agreed to be paid by the Club under the Use Agreement and the other conditions, agreements and stipulations of the Use Agreement to be performed by the Club, grants to the Club the right to use the Use Area.
2. **Term.** The term of the Use Agreement shall be for a period commencing on the Commencement Date (as defined in the Use Agreement), and ending on December 31<sup>st</sup> of the fiftieth (50<sup>th</sup>) calendar year following the calendar year in which the Commencement Date occurs, unless extended or terminated earlier as provided in said Use Agreement.
3. **Other Terms and Conditions.** All other covenants, terms and provisions set forth in the Use Agreement are incorporated by reference and made a part hereof.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

*[Signatures appear on the following page.]*







**Exhibit A**

**EXHIBIT H**  
**FORM OF NON-DISTURBANCE AGREEMENT**

**EXHIBIT I**  
**AFFORDABLE SEATING PLAN**

**EXHIBIT J**  
**GUIDELINES FOR NAMING PROPOSALS**

“Advertising and Naming Rights Standards” shall mean the standards set forth below which shall apply to all Advertising, Advertising Rights and Naming Rights:

- (a) the term during which any such Advertising, Advertising Rights and Naming Rights shall apply shall, at the option of and upon notice from the City, expire no later than the expiration of the Term (whether on its scheduled Expiration Date or by earlier exercise of any termination rights in this Agreement);
- (b) any exercise of Advertising Rights and Naming Rights by the Club shall be in compliance with all Laws;
- (c) the Club shall not permit any name to be given to the Stadium, Appurtenant Area, or any portion thereof that would be in violation of any Law;
- (d) the Club shall not permit any name of any entity that is in an industry that is part of any of the Prohibited Advertising;
- (e) all Advertising shall comply with all signage, zoning and similar Legal Requirements and Laws;
- (f) in no event shall the Club display Prohibited Advertising on the Stadium or Appurtenant Area;
- (g) signage must at all times comply with the requirements contained in Chapter 64 of the Saint Paul Legislative Code and any other applicable City codes; and
- (h) the Club shall not permit any name to be given to the Stadium, Appurtenant Area, or any portion thereof that is the name of or a tribute to a living person.

**EXHIBIT K**  
**ANNUAL RENT SCHEDULE**

**EXHIBIT L**  
**[INTENTIONALLY DELETED]**



**EXHIBIT M**  
**GROUND LEASE**