



### **Commission Members:**

Jaime Parker, Chair - Jon Kachmar, Vice Chair - Cheri Musgrave - Kristen Fulmer - Elenor Sears - Beth Rabbitt- Marie Gray - Zack Anchors - Stephen Bentsen - Katie Mears - William Elting - Donna Gartland - Alison Mehlsak - City Councilor Victoria Pelletier

**City of Portland**  
**Parks Commission Agenda**  
**June 1, 2023 at 5:00 PM**  
**Portland City Hall, Room #24**

*The Mission of the Portland Parks Commission is to advocate for the enhancement and stewardship of our parks and open spaces. Review and propose projects that impact parks and open spaces and recommend action.  
Foster collaboration among park users and the City. Promotes public access and enjoyment.  
Advocate for public and private funding for parks and open spaces. Enjoy Portland for Life.*

To submit written public comment on an agenda item, email [ParksCommission@Portlandmaine.gov](mailto:ParksCommission@Portlandmaine.gov). Submissions must be received by 12:00 pm the day before the Parks Commission meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the name of the agenda item (see below).

### **REMOTE ACCESS INFORMATION**

The Parks Commission will conduct this meeting remotely via Zoom and in-person at City Hall, room number 24, pursuant to the Hybrid Meeting Policy adopted by the Portland Parks Commission. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit \*9. You will be unmuted by the host when it is time for public comment.

Please use the link below to join the webinar:

<https://zoom.us/j/91710859101?pwd=MUVLWTVFRG5jUFNxSHIEcTFISk8wZz09>

Passcode: **P3pperm1nt**

Or Telephone:

US: +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099

Webinar ID: 917 1085 9101

Passcode: **480730**

- I. Call to Order
- II. General Citizen Comment Period
  - a. Emailed Citizen Comment
- III. Agenda Items
  - a. Acceptance of Meeting Minutes: 05/04/2023

- b. New Business
    - i. Chair and Vice Chair Annual Elections
    - ii. Back Cove South Storage Project Presentation & Update by Brad Roland (20 minutes)
  - c. Old Business
    - i. Green Space Gathering Updates: Finalize date to be held
    - ii. Bayside Trail and Encampment Update by Alex Marshall (5 minutes)
  - d. Communications and Updates
    - i. Parks Division Report
    - ii. Land Bank Commission Report
    - iii. Dougherty Field Playground Ribbon Cutting Ceremony
    - iv. Commissioner Roles and Committee Updates
  - e. Commissioner requests for Agenda Items
  - f. Sub Committee Meetings
- IV. Adjournment

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## Veranda Street DOT Space

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**Cheryl Juniewicz** <juniewicz@westbrookschoools.org>  
Reply-To: juniewicz@westbrookschoools.org  
To: parkscommission@portlandmaine.gov

Mon, May 29, 2023 at 7:15 PM

Hello Parks Commission Members,

The other evening after the Bike/Ped meeting I had a brief conversation with Jaime Parker about the vacant space on Veranda Street left from the reconfiguration of the replacement of the 295 bridge. Sounds like there will be a couple of years at least before the city can do something with that space. In the meantime would it be okay if a couple of neighbors and I spread and raked in some native wild flower seeds to get something growing. Not thinking shrubs or trees but maybe some asters, milkweed etc. We could consult with Andrew Tufts from Audobon and Wild Seed Project. We could fund it ourselves. Should I present the idea at the Thursday meeting?

Thank You, Cheri Juniewicz      [38 Bismark St.](#)    [cj@maine.rr.com](mailto:cj@maine.rr.com)    (207) 756-0717

2/11/08

REVISED AND RESTATED LEASE AGREEMENT

BETWEEN

THE CITY OF PORTLAND

AND

PORTLAND MAINE BASEBALL, INC.

FOR

PREMISES KNOWN AS

HADLOCK FIELD AND RELATED FACILITIES

LOCATED AT

PARK AVENUE, PORTLAND, MAINE

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REVISED AND RESTATED LEASE AGREEMENT

BETWEEN

THE CITY OF PORTLAND, MAINE,

AND

PORTLAND MAINE BASEBALL, INC.

This is a Revised and Restated Lease and Use Agreement made as of the \_\_\_\_\_ day of \_\_\_\_\_ between the **CITY OF PORTLAND**, a municipal corporation, having its offices at Portland City Hall, 389 Congress Street, Portland, Maine 04101, (hereinafter the **CITY**), and Portland Maine Baseball, Inc. a Maine corporation and owner of the Eastern League AA Franchise known as the Portland Seadogs with a principal office located at Hadlock Field, 271 Park Avenue, Portland, ME, and with a mailing address of P.O. Box 636, Portland, ME 04104 (hereinafter the "**CLUB**").

**W.I.T.N.E.S.S.E.T.H**

**WHEREAS**, the **CITY** has developed, constructed, operated and maintained, in conformity with minor league AA baseball standards, an outdoor stadium and sports facility on property owned by the **CITY** and located at 271 Park Avenue within the City of Portland (hereinafter the "**Premises**") and has made provisions for the necessary financing of said facility; and

**WHEREAS**, Daniel B. Burke was awarded a franchise by the Eastern Baseball League of the Professional Baseball Association to operate a AA baseball team in said league and assigned said franchise to **CLUB**;

**WHEREAS**, **CLUB** agreed to locate and maintain such team in the

CITY;

WHEREAS, the City and the Club entered into a Lease Agreement dated November 18, 1993, pursuant to which the Club leased baseball facilities from the City known as Hadlock Field and located on Park Avenue, and the City and the Club amended and extended that Lease Agreement by an Amendment #1 to Lease Agreement dated June 14, 1999;

WHEREAS, the Club has operated successfully at this site for over 13 years and wishes to extend its Lease Agreement with the City, and the City wishes to have such an extension, and the Club and the City wish to revise certain provisions of the Lease in ways that are beneficial to both the Club and the City;

WHEREAS, the Sea Dogs have committed to expending \$1,7000,000 to construct a clubhouse for the CLUB'S exclusive use during the term of this agreement; and

NOW, THEREFORE, the CITY hereby leases to CLUB and CLUB hereby leases from CITY the subject outdoor stadium and sports facility (the "**Premises**") for baseball and related uses upon the terms and conditions of this Revised and Restated Lease Agreement (the "Revised and Restated Lease" or "Lease") as hereinafter set forth.

#### ARTICLE 1. DEFINITIONS

The following words and terms, when used in this Lease, shall, whether used in the singular or in plural, have the following meanings.

1.1 **Baseball Occupancy Period** - The period from the 1st day of April through September 30 of the year in question, both dates included.

1.2 **Baseball Rules** - All rules, regulations, contracts and arrangements, which at the time in question, govern the rights and duties and privileges and obligations of **CLUB** as a member of the Eastern League or the National Association of Professional Baseball Leagues, Inc.

1.3 **Charity Game** - Any baseball game other than an All Star game, the net proceeds of which are paid to a not-for-profit organization and which includes **CLUB's Club** as one of the participants and, under the baseball rules, is scheduled or required to be played on the **Premises**.

1.4 **Concession** -The business of selling, renting or furnishing goods or services of any type or kind, including but not limited to food, drink, merchandise, souvenirs and cushions, but excluding the sale of parking privileges.

1.5 **Concession Contract** - Any written agreement entered into between **CLUB** and any person or entity by which there is granted to such person or entity the whole or any part of the rights of **CLUB** to operate concessions in and about the stadium.

1.6 **Concession Facilities** - The facilities for the preparation and service of food and drink and for the sale or rental of other goods and services, including all equipment and fixtures affixed or attached to any part of the concession space

and all improvements, additions, alterations, equipment, fixtures and installations constructed, provided or added in or to said space at any time.

1.7 **Date Of Readiness** - The date designated by **CITY** in a notice served on **CLUB** as the date on which the **Premises** is ready to be used for the purposes of this Lease, which date shall be no later than April 1, 1994; provided, however, that exterior landscaping and similar work which does not materially interfere with beneficial occupancy of the Premises may be completed later. Based upon the availability of asphalt and to the extent reasonable, parking surfaces, sidewalks and other similar areas of access to the Premises shall be paved upon beneficial occupancy or as soon thereafter as feasible.

1.8 **Eastern League** - Any minor league professional baseball League of which **CLUB** is a member **CLUB** any time during the term of this Lease regardless of the name by which such minor league is known or denominated.

1.9 **Eastern League Schedule** - The listing which is officially promulgated by the Eastern League each year setting forth the games to be played by Eastern League teams and the All star game or games for such year, and the dates on which all such games are scheduled to be played.

1.10 **Entity** - An individual, partnership, firm, company, association, joint stock association, public or private corporation or other like organization and any unit or branch of

government or public department, agency or board including but not limited to any department, agency or board of **CITY**.

1.11 **Exhibition Game** - Any baseball game other than a regular home game, charity game, playoff game, interdivisional championship game or inter-league championship game between **CLUB** and any other team which is sanctioned or permitted by the baseball rules and or by the authorities of minor league baseball having jurisdiction to authorize the playing of such game and which is scheduled to be played in the **Premises**.

1.12 **Force Majeure** - (1) act of God, (2) fire, floods, earthquake, blizzard, storm or other casualty, (3) strike, lockout or other labor dispute, (4) riot, insurrection, civil commotion, sabotage, vandalism or enemy or hostile government action, (5) inability to procure labor, materials or supplies (6) law, statute, ordinance, order, rule or regulation or requirement of any superior governmental authority or any appropriate agency, office or department, board or commission thereof whether now or hereafter in force including, without limitation, rationing restriction in respect of any construction work for the use of labor or materials (7) judicial or other legal restriction or order affecting the performance of any covenant to be performed hereunder, (8) any other condition beyond the reasonable control of a party required to perform hereunder.

1.13 **Home Game** - Any regular home game, all star game, exhibition game, charity game, interdivisional championship game,

playoff game or inter-league series game which under the baseball rules, is scheduled, required, or authorized by the CITY, to be played in the Premises.

1.14 **Minor League** - The Eastern League or its successor as now or hereafter constituted or organized and recognized as a minor league by the baseball rules and any other leagues existing during the term of this Lease which shall be generally known and recognized as minor leagues and the members of which shall be authorized by the baseball rules to play professional baseball and regularly scheduled competition culminating in a world series.

1.15 **Night Game** - Any home game or event the scheduled starting time of which is 6:00 P.M. or later.

1.16 **Other User** - CITY or any entity to whom or which CITY has granted a use authorization.

1.17 **Playoff Game** - Any baseball game which is scheduled to be played between CLUB and another Eastern League team at the conclusion of the regular baseball season and which, under the baseball rules is scheduled, required, authorized or permitted to be played in the stadium.

1.18 **Related Activity** - An event or activity which is scheduled or arranged by CLUB to be held or take place on the day of any home game or immediately following any home game for the purpose of increasing attendance at home games. If any proposed event or activity is of a kind or character not previously

conducted by a minor league team in conjunction with a baseball game, the prior written approval of the **CITY** shall be required.

1.19 Road Trip Period - Each period during a baseball occupancy period when **CLUB** is scheduled to play one or more successive games anywhere other than in the Premises

1.20 Use Authorization - Any grant by contract, lease, rental agreement, license, permit or other authorization, not including this Lease, entered into or issued by **CITY** with any entity whereby a right is conferred to use the Premises for an event.

## **ARTICLE 2. SUBJECT PREMISES**

2.1. **CITY** grants to **CLUB**, and **CLUB** hereby accepts from **CITY**, the right to use (for the uses described herein) an outdoor stadium and sports facility and related facilities, i.e. the Premises.

2.2 The **Premises** include the stadium, Hadlock Baseball field, (including proper batting cage and fielding safety screens), clubhouse facilities, enclosed picnic area, office space, press box, restrooms, the shell for concession stands and concession storage, indoor area for additional batting cage and/or pitching area, visitor shower and locker facilities in the adjacent Exposition Building (hereinafter the "Expo"), all space and area, enclosed or unenclosed, within or under the stadium structure, all improvements, fixtures and equipment and exterior ticket booths and other installations owned by **CITY** and used in

connection with the operation of the stadium and all permanent additions, alterations, fixtures, equipment and installations constructed, provided or added thereto at any time by **CITY, CLUB** or any other entity and such other space or structures as agreed upon and required to meet the League standards and requirements.

Field equipment as described in Exhibit B to this Revised and Restated Lease hereby becomes the property of the Club.

2.3. The Premises shall be available as provided herein for the use of the Club from April 1 through September 30 of each year of this Lease; EXCEPT that the following areas of the Premises shall be available on a year-round basis for the Club's exclusive use:

A) Office space, concession stands, concession storage space and other storage space in the Stadium identified as 'Club space' in the "Master Plan" describing the Premises attached to this Revised and Restated Lease as Exhibit C;

B) Sea Dogs clubhouse

C) Private skyboxes; and

D) Private lounge.

2.4 **CITY** has developed and provided the **Premises** in accordance with the minimum mandatory requirements for minor league AA baseball at **CITY's** cost and expense; EXCEPT that **CITY** provided only the shell for concession stands, with utility hookups available, and **CLUB** equipped said stands at its own cost and expense, and **CLUB** shall provide any indoor batting cages. All

indoor facilities shall be located at the stadium, Hadlock Baseball Field, or in the Expo. A copy of the mandatory minimum requirements for minor league AA baseball is attached hereto and incorporated herein as Exhibit A.

### **ARTICLE 3.      MUTUAL REPRESENTATIONS: GUARANTY**

3.1 **CITY** hereby represents and warrants that it has the exclusive ownership of the Premises and that it has full authority to enter into this Lease for the use of said Premises. Notwithstanding the foregoing, **CLUB** understands and agrees that the **CITY** leases the Expo to the Portland School Department, and that **CLUB's** use of the Expo shall be coordinated with said School Department and the Expo's manager.

3.2 In the event that ownership of the Franchise should, for any reason, during the term of this Lease be assumed or transferred to any entity other than the **CLUB**, said transfer shall be subject to assumption by such entity of all of the rights and obligations under this Lease. In the event that the Controlling Group, as defined below, shall cease to own in the aggregate, beneficially and of record, at least 51% of the voting equity of (a) the **CLUB**(before any such transfer), or (b) any entity to which the Franchise or the Lease has been transferred, the **CITY** shall have a one year option (beginning on the date on which the Controlling Group ceases to own such 51%) to purchase, or arrange for the local purchase, of the Franchise at its then appraised value, subject to the provisions of Major League

Rule 36. Said appraisal process shall include two appraisals, one selected and paid for by each party, and a review appraisal, the cost of which shall be shared equally, unless **CLUB** and **CITY** otherwise mutually agree upon another process. The **CLUB** agrees to execute such additional documents as may be necessary to implement the foregoing, said documents to be in a form reasonably satisfactory to **CITY**. Copies of any such documents shall be provided to **CITY**. In exercising its option, **CITY** will comply with all provisions of Major League Rule 36. For purposes of this paragraph, the term "Controlling Group" shall mean any combination of (a) any or all of Daniel B. Burke, his wife, his children, the spouses of such children, and the lineal descendants of any of the foregoing (all of the foregoing defined as "Burke Family Members"); (b) any trusts or trustees of trusts of which the beneficiaries are one or more Burke Family Members; (c) any guardians, conservators, custodians or nominees for anyone or more Burke Family Members; and (d) any individual Retirement Account, S.E.P., Keogh or similar plan or trust benefiting one or more Burke Family Members.

#### **ARTICLE 4. TERM**

4.1 The term of this Lease shall commence at 12:01 a.m. October 1, 1993 and expire at midnight on September 30, 2003, unless sooner terminated as hereinafter provided.

4.2 The term of this lease was extended in Amendment #1, signed June 14, 1999, through September 30, 2008, with an option to renew through September 30, 2013.

4.3. The term of this Lease is hereby extended for an additional fifteen (15) years beyond the option provided for in Amendment #1, through and including September 30, 2028, on the terms and conditions provided herein.

**ARTICLE 5. RENT**

5.1. Effective April 1, 2007, and each April 1 thereafter through and including April 1, 2008, **CLUB** shall pay to **CITY** an annual payment of One Hundred and Fifteen Thousand Dollars (\$115,000). 5.2 In acknowledgement of the Sea Dogs commitment to finance and construct a new club house, the City shall credit \$50,000 against the annual rent payment due and owing each April 1 beginning in 2009 through the term of the lease.

5.3 Effective April 1, 2009 through and including April 1, 2013, CLUB shall pay to CITY an annual payment based on the following schedule:

- (a) One Hundred and Fifty Thousand Dollars (\$150,000) for every year attendance for the prior season was 325,000 or above;
- (b) One Hundred and Twenty-Five Thousand Dollars (\$125,000) for every year attendance for the prior season was below 325,000 but was 275,000 or above;
- (c) One Hundred Thousand Dollars (\$100,000) for every year

attendance for the prior season was below 275,000.

5.4 Effective April 1, 20014 through and including April 1, 2018, CLUB shall pay to CITY an annual payment based upon the following schedule:

(a) One Hundred and Seventy-Five Thousand Dollars (\$175,000) for every year attendance for the prior season was 325,000 or above;

(b) One Hundred and Fifty Thousand Dollars (\$150,000) for every year attendance for the prior season was below 325,000 but was 275,000 or above;

(c) One Hundred Thousand Dollars (\$125,000) for every year attendance for the prior season was below 275,000.

5.5 Effective April 1, 20019 through and including April 1, 2023, CLUB shall pay to CITY an annual payment based upon the following schedule:

(a) Two Hundred Thousand Dollars (\$200,000) for every year attendance for the prior season was 325,000 or above;

(b) One Hundred and Seventy-Five Thousand Dollars (\$175,000) for every year attendance for the prior season was below 325,000 but was 275,000 or above;

(c) One Hundred Thousand Dollars (\$150,000) for every year attendance for the prior season was below 275,000.

5.6 Effective April 1, 20024 through and including April 1, 2028, CLUB shall pay to CITY an annual payment based upon the following schedule:

(a) Two Hundred and Twenty-Five Thousand (\$225,000) for every year attendance for the prior season was 325,000 or above;

(b) Two Hundred Thousand Dollars (\$200,000) for every year attendance for the prior season was below 325,000 but was 275,000 or above;

(c) One Hundred and Seventy-Five Thousand Dollars (\$175,000) for every year attendance for the prior season was below 275,000.

5.7 The forgoing payments shall be made in legal tender, said payments to be made at the offices of CITY'S chief fiscal officer or at such other place as CITY may from time to time designate.

5.8 When payment is based upon attendance of 325,000 or above, **CITY** agrees that Fifty Thousand Dollars (\$50,000) of the foregoing payments shall be set-aside each year by **CITY** in a separate account designated for Hadlock Stadium maintenance and **CITY** agrees, through its annual budget process, to match the \$50,000 set-aside each year. As long as the terms of this Agreement are in force, the \$50,000 paid by the team will not be

diverted for any other purpose by the **CITY**, regardless of budgetary circumstances.

When payment is based on attendance below 325,000 but at 275,000 or above, as provided in section 5.3, 5.4, 5.5 and 5.6, the set-aside will be reduced to Twenty-Five Thousand Dollars (\$25,000) with a \$25,000 match. When payment is based upon attendance below 275,000, there will not be a set-aside and match, but the CITY and CLUB agree to discuss the issue of ballfield maintenance and the cost-sharing thereof reasonably in advance of the baseball season. "Attendance" as used herein shall be calculated in the same manner as Total Attendance is calculated under the Eastern League Rules and Regulations, as they may be amended from time to time, or under the Rules and Regulations of any other similar successor baseball league of which the CLUB is a member. Attendance for each Baseball Occupancy season shall be reported within sixty (60) days of the close of each season, and shall be the basis for the payment due on the following April.

#### **ARTICLE 6. CLUB'S USE OF LEASED PREMISES**

6.1 During each Baseball Occupancy Period, **CLUB** shall have the exclusive right to use and occupy the Premises (in addition to **CLUB's** year-round exclusive use space) in connection with the exhibition to the public of home games and for three (3) non-Eastern League baseball events for six (6) hours before the game or the special event time until one (1)

hour after the end of said game or event.

6.2 Within ten (10) days after the official Eastern League Schedule is established for each year, **CLUB** shall give written notice to **CITY** or its designee of all home games on said schedule and shall specify not more than three (3) dates (other than dates of home games reserved by **CLUB**) for non-Eastern League baseball events within the Baseball Occupancy period. A copy of the 1994 Eastern League schedule will be provided to **CITY**. The **CLUB** will make provision during the home game schedule for rescheduling of postponed games or events. If any game or event is rescheduled, **CLUB** shall promptly give notice to **CITY** of such rescheduling.

6.3 During the Baseball Occupancy period, **CLUB** shall have the right to use the playing field for baseball practice, except on days when the Portland or Deering High School Baseball team has scheduled use of the field; provided, however, that such use by the Portland or Deering High School Baseball team shall not interfere with **CLUB's** exclusive use of the field six (6) hours before the start time of a home game.

6.4 **CLUB** shall schedule and play all of its home games at the **Premises**, unless transfer of such games to other locations is necessitated by postponements, the unplayable condition of the playing field or Force Majeure. If **CLUB** is required by the Eastern League schedule to play any baseball game where **CLUB** is designated as the home team elsewhere than in the **Premises**, **CLUB** may do so provided:

A) no more than five (5) such baseball games are scheduled in any Baseball Occupancy period,

B) no such games shall be played within fifty (50) miles of the Premises, unless approved by the **CITY**, and

C) such arrangement equally affects all baseball teams in the division.

6.5 **CLUB** shall have the right to transmit and to license or to authorize others to transmit by any means of communication, including but not limited to radio and television, all or any part of home games and related activities played or conducted in the Premises and any information or data relating thereto, including, without limitation, so called "pre-game" and "post-game" shows.

6.6. The Club is authorized to postpone home games due to inclement weather, in accordance with Eastern League rules, policies and procedures.

6.7. The Club is authorized to provide no more than five fireworks displays per season at the Premises, provided the following conditions are met:

A) The Club's use of fireworks conforms to all relevant local, state and federal regulation;

B) The Club arranges for inspection or other oversight by the State Fire Marshal prior to its use of fireworks;

C) The club agrees to defend and indemnify the City

against any claims related to the fireworks, carries appropriate insurance for the fireworks and names the City as additional insured on the relevant insurance policy.

#### **ARTICLE 7. CITY USE OF LEASED PREMISES**

7.1 Except as provided in section 2.3 for **CLUB's** exclusive use storage and office space, **CITY** shall have the right to use, or to permit use of, the Premises without prior notice to or consent by **CLUB** for any date from October 1 through March 31 of each year of this Lease.

7.2 During the Baseball Occupancy Period, **CITY** shall have the right to use, or to permit use of, the Premises for the regular home game and practice schedule of the Portland or Deering High School Baseball Team, and/or for any amateur baseball Tournament game. Any such uses shall not, however, conflict with the requirement that the premises be available for the use of the **CLUB** at least six (6) hours before any home game or scheduled event.

7.3 **CITY** shall have the right to charge and to retain permit and/or user fees for all use of the Premises by non-**CLUB** entities. **CITY**, or the sponsoring agency, shall further have the right to charge admission fees for such non-**CLUB** events, and all such fees shall be the property of the **CITY** or the sponsoring agency, as may be agreed between them. **CITY**, or **CITY** and the sponsoring agency, as applicable, shall be responsible for

parking, security and clean-up during non-**CLUB** events. **CLUB** agrees, upon request of **CITY** or the sponsoring agency, to provide some or all of its personnel, to the extent that they are reasonably available, (e.g. ticket takers, security, ushers, groundskeepers etc.) to work at such non-**CLUB** events, at a fee and upon terms to be negotiated between the **CLUB** and the **CITY** or sponsoring agency, as applicable.

7.4 **CITY** shall have the exclusive right to authorize, and to receive all revenue from, the placing and operation of public telephone booths in and upon any and all parts of the Premises but no such booths shall be placed in **CLUB'S** exclusive use year-round space without **CLUB'S** consent.

7.5 **CITY** shall provide reasonable notice to **CLUB** of the name of other users of the Premises and the schedule of their use during the Baseball Occupancy period.

7.6. The City is authorized to postpone games scheduled to be played on the Premises by the Portland or Deering High School Baseball Teams, or any other non-Club event, due to inclement weather.

7.7. Subject to the provisions of Article 6 of this Lease concerning the Club's priority for use of the Premises for Eastern League games, the City shall have the right to use certain rest rooms within the US Cellular Pavilion and Hadlock Field Concourse as follows:

A) The City may provide public access to the rest rooms

within the US Cellular Pavilion in conjunction with any event held at Fitzpatrick Stadium. The City shall be responsible for cleaning and maintaining these rest rooms after each such event at the City's sole cost and expense.

B) The City may provide public access to the rest rooms within the Hadlock Field Concourse in conjunction with the following events held at Fitzpatrick Stadium or the Expo: any Maine Principals' Association tournament event; any Maine Band Directors' Association tournament event; any NCAA event; the annual Thanksgiving football game between Portland and Deering High Schools; any event at Fitzpatrick Stadium for which the City projects total attendance to exceed 3,000; and any event at the Expo for which the City projects total attendance to exceed 2,500. The City shall be responsible for cleaning and maintaining these rest rooms after each such event at the City's sole cost and expense.

## **ARTICLE 8. CONCESSIONS**

8.1 **CLUB** shall have the exclusive right to sell, rent or furnish concessions in any part of the Premises during home games or events by means of portable or mobile vending devices, by vendors carrying concessions, or automatic vending machines or at stands or booths. The installation of any such machines, stands or booths in any part of the Premises shall be subject to the prior written approval of **CITY**.

8.2 **CITY** shall not permit any other person or entity to

operate any concession in the Premises during home games without the prior written approval of **CLUB**.

8.3 All concessions sold, rented or furnished under the rights granted herein shall conform to Federal, state and local laws and regulation, and shall be appropriate items to be sold at league baseball games.

8.4 **CLUB** shall have the right to exercise directly, or through a subcontractor, any and all concession rights granted hereunder, subject to the prior written approval of **CITY** of any subcontractor(s). Any subcontract or any such exercise of rights or performance of duties or obligations by any concessionaire or concessionaires shall not relieve **CLUB** of any of its duties or obligations to **CITY** under this Lease or from any liability to **CITY** for any breach thereof.

8.5 **CLUB** shall be entitled to receive and retain all revenues from the operation of all concessions, except as provided in section 8.8 below.

8.6 Concession facilities must be operated for all home games and related activities, except that not all of the stands or booths for said facilities need be operated during a given home game and related activity. Determination of the number and location of those facilities to be operated for such home game and related activity shall be made by **CLUB** on the basis of the advance sale of admission tickets, or other reasonable determination of attendance.

8.7 **CLUB** will operate a minimum of one (1) concession facility for all non-**CLUB** events for which a use authorization has been granted by **CITY**. Determination of the number and location of facilities to be operated for such activity shall be made by **CLUB** on the basis of the advance sale of admission tickets, if any, or on actual attendance at the event.

8.8. **CLUB** agrees to pay **CITY** ten percent (10%) of its gross concession receipts for food from all of its food concessions at any non-**CLUB** event. Said payment shall be made within thirty (30) days of the event and shall be in addition to any other payments due to **CITY** hereunder. "Gross concession receipts" for purposes of this section shall mean the total of all amounts received by **CLUB**, or its subcontractors, from the sale or furnishing of food from or on the Premises in connection with a non-**CLUB** event. Gross concession receipts shall not include sales tax paid or payable on such sales, rentals or furnishings. **CLUB** shall transmit a certified statement of the total of said Gross concession receipts for food with its payment to **CITY**.

8.9 Every user of the **Premises** shall have the right to print or arrange for the printing of such score cards, programs and other literature at its sole cost and expense.

## **ARTICLE 9.      PARKING**

9.1. Unless the **CLUB** and **CITY** agree otherwise in writing, **CLUB** shall operate, control and manage all Premises' public

parking areas and the employee and team reserved parking designated on said parking shall be managed in conformity with standards approved by the **CITY** and any fees for parking shall be charged only with the prior written approval of the **CITY**.

9.2 **CLUB** at its own expense shall keep all Premises' parking areas and improvements thereon clean during all hours of any home game and related activity and shall do debris cleanup after said activity.

9.3 **CLUB** shall at its own expense provide all personnel required for the operation of all the Premises' parking areas during or for all home games and related activities. **CLUB** agrees to provide personnel when necessary to assist in enforcing parking regulations in surrounding residential areas during home games and related activities.

9.4 **CLUB** will receive the parking revenue related to Sea Dogs games, minus CITY expenses for staffing the lots.

#### **ARTICLE 10. OPERATION, MAINTENANCE AND REPAIR OF THE PREMISES**

10.1 Unless otherwise expressly set forth in this Lease, **CITY** is responsible for the operation, maintenance, and repair of the Premises at **CITY** cost and expense, other than **CLUB**'s year-round exclusive use space, which shall be **CLUB**'s responsibility. **CITY**'s responsibility shall be to maintain the Premises at no less than the minimum standards required for AA minor league

baseball.

10.2. Effective January 1, 2008, unless otherwise expressly set forth in this Revised and Restated Lease, the Club is responsible for field operation and maintenance, including winterizing and repairing the field as necessary due to winter conditions. The Club's responsibility shall be to operate, maintain and repair the field at no less than the minimum standards required for AA minor league baseball and required by applicable local, state or federal regulation.

10.3. The City shall have the right, pursuant to Article 22 of this Lease, to enter and inspect the Premises for the purpose of determining whether the Premises are being operated, maintained and repaired in accordance with section 10.1. If the City finds that the Premises are being operated, maintained or repaired in violation of that section, the City may order the Club to correct these violations within a reasonable time, or may perform whatever work is required to correct these violations and charge to the Club the costs of such work.

10.4. If the Premises, or any portion thereof, during the term of this Lease are damaged (otherwise than by causes ordinarily covered by "all-risk" fire and extended coverage insurance and excluding normal wear and tear), by the act, default or negligence of the Club, or of the Club's officers, agents, employees, players, invitees, guests, contractors or subcontractors, or any person admitted to the Premises by the

Club, the Club will restore the Premises to their present condition at the Club's cost and expense.

10.5. The Club hereby assumes full responsibility for the character, acts and conduct of all persons admitted to the Premises or to any portion of the Premises by the consent of the Club, or by or with the consent of any person action for or on behalf of the Club, and the Club agrees to provide sufficient security force to maintain order and protect persons and property during and for any club event.

#### **ARTICLE 11. OPERATING PERSONNEL TO BE SUPPLIED BY CLUB**

11.0 On the day of each home game **CLUB** shall at its expense:

11.1 Provide adequate police for the Premises to maintain order and protect property therein

11.2 Provide such trained personnel as may be necessary for the orderly admission, seating and handling of patrons and for the proper use and occupancy of the Premises, and to insure the adequate flow of traffic in and around the Premises for one (1) hour before and after the game or event; such personnel shall include, but are not limited to, uniformed special police officers, guards, ticket sellers, ticket takers, ushers, attendants, announcers and first aid station personnel;

11.3 Provide such trained personnel as may be necessary to operate the electronic scoreboard;

11.4. Provide such other personnel as may be necessary to

maintain the grounds and facilities within the stadium fence in a reasonably clean and neat condition throughout the home game, and to perform litter cleanup in the Premises and the immediate area thereof during and after any home game; and to assist the City groundskeeper in laying and removing of tarp during rain delays; and

11.5 Provide such trained personnel as are necessary to adequately staff and operate the concessions.

11.6 The Club agrees to provide groundskeepers at authorized practices and home games.

11.7. In addition, the CLUB shall provide at the CLUB's cost and expense such personnel throughout any Portland or Deering High School Baseball Team game played on the Premises as may be necessary to maintain the grounds and facilities within the stadium fence in a reasonably clean and neat condition, to perform litter cleanup in the Premises and the immediate area thereof during and after the game, and to lay or remove tarp during rain delays. The CLUB shall provide these personnel for these purposes throughout any CITY game other than a Portland or Deering High School Baseball Team game held on the Premises at a rate to be charged to the CITY which is mutually determined by the CLUB and the CITY.

## **ARTICLE 12. UTILITIES**

12.1 CLUB shall pay, or cause to be paid, the costs of all

utilities necessary for its operations hereunder, including without limitation all water and sewer charges attributable to its use of the Premises.

12.2 **CITY** will make a reasonable effort, at its expense, to install meters to measure the consumption of electricity used in connection with the ballfield lighting in order to permit separate billing of any use of the ballfield other than by **CLUB**.

12.3 The sharing of utility costs arising out of and related to **CLUB**'s use of the Expo shall be mutually agreed upon by **CITY**, **CLUB** and the School Department in a separate document.

#### **ARTICLE 13. SCOREBOARDS. SIGNS AND ADVERTISING**

13.1 Any sign or other advertising matter may be erected or displayed by **CLUB**, or any of its contractors or subcontractors, on or in the **Premises** only in accordance with this Article.

13.2 Advertising shall be permitted on the inside of that outside out-field fence enclosing the playing field, the electronic scoreboard or its programmable message center, the concourse and such other areas as may be designated in writing by **CITY**. No advertising, other than the **CLUB** logo, shall be permitted on the team dugouts. **CITY** shall not be entitled to any part of advertising revenues received by **CLUB** from the sale of advertising.

13.3 **CLUB** shall be responsible for procuring, installing, and maintaining said advertising matter for the duration of the Baseball Occupancy period and for its maintenance and storage

during the off-season period. The content, structural make-up, location and size of said advertising shall be subject to the prior approval of **CITY**. All on-field advertising shall, at **CLUB**'s option, either be removed or covered in a manner acceptable to **CITY**, during the off-season from October 1 through March 30 of each year of the Lease.

13.4 The sale of advertising for any period other than a Baseball Occupancy period shall be under the exclusive control of **CITY** to the extent such advertising space is available without removal of any existing advertising. **CLUB** may, subject to **CITY**'s prior written approval, procure and sell such advertising on such terms and conditions as **CITY** and **CLUB** may mutually agree upon.

13.5 **CLUB** shall be solely responsible for the operation, maintenance, and use of any electronic scoreboard provided at **CLUB** expense, but shall permit **CITY** and other stadium users to use the same in connection with events sponsored by them.

13.6 **CLUB** and its subcontractors, if any, may display such signs, billboards, price lists and other advertising material as are calculated to inform patrons of the food, drink, articles of merchandise and admission tickets being offered for sale in the stadium, such inside advertising to be in a size and quantity as is approved by **CITY**.

13.7 **CLUB** and its subcontractors shall have the right to display advertising on scorecards, program and other printed material sold in any part of the Premises by **CLUB** or its

subcontractors.

13.8 It is the intent of **CITY** and **CLUB** that all advertising must be in keeping with the character and dignity of the Premises and that **CITY** is the final determiner of what is appropriate within those guidelines. All billboards, signs, electronic message boards and other advertising or notices must comply with all applicable local, state or federal law and regulations in regard to same, including without limitation the state and federal "Billboard" laws, and **CLUB** shall be responsible for such compliance.

#### **ARTICLE 14. ALTERATIONS BY CLUB**

14.1 **CLUB** shall not make any alterations of the premises, except upon written approval of **CITY** of the plans and specifications setting forth the proposed alteration. No such consent shall render **CITY** liable with respect to any contract or undertaking by **CLUB** for any alteration work which shall be performed at **CLUB'S** sole expense.

14.2 **CITY** shall not unreasonably withhold its consent to any alteration by **CLUB**, at **CLUB'S** expense, of the playing field, the walls or fences enclosing the playing field and any structures in whole or part on or over such walls and fences such as screens and foul poles, or any other alteration to the stadium required by minor league rules and applicable to all stadia where minor league baseball is regularly played.

14.3 **CLUB** may, at its own cost and expense, install an

electronic scoreboard and sound system upgraded from that required by the minor league baseball standards in Exhibit A, so long as there is no cost or expense to **CITY** for such upgrade.

14.4 To the extent reasonable, all alterations and work performed by or on behalf of **CLUB** shall be performed in such a manner and at such time as not to interfere substantially with the use of the Premises by any other authorized user or by **CITY**.

14.5 Materials, fixtures and equipment and other property which are so affixed or annexed to the Premises that they become a part of the real property, other than an upgraded scoreboard and sound system installed at **CLUB**'s sole cost and expense, shall immediately upon the installation thereof, become the property of and title thereto shall vest in **CITY**. Such materials, fixtures, equipment or other property, title to which vests in **CITY** under the preceding sentence, shall not be subject to any agreements of conditional sale, nor to any chattel mortgage, trust receipt, or other form of security transaction in which title is reserved or conveyed to the seller or any other entity. **CLUB** shall have the right to remove any such materials, fixtures, equipment or other property if it promptly replaces the same with new or other materials, fixtures, equipment or other property of like kind in like or better quality and repairs any damage caused by such removal, in which event **CLUB** shall have the right to dispose of and/or sell the materials, fixtures, equipment and other property so removed and replaced and to retain the proceeds of such

disposition and/or sale. Prior written notice of any such removal shall be given to the **CITY**. **CLUB** shall have the right to remove any upgraded electronic scoreboard and sound system installed by **CLUB** at its sole cost and expense but shall reinstall a scoreboard and sound system required to meet the League minimum standards then in effect and to restore the Premises to their original condition, reasonable wear and tear excepted.

#### **ARTICLE 15. COVENANT AGAINST LIENS**

15.1 If, as a result of **CLUB**'s activities on the Premises, any mechanics' lien or other lien, charge or order for payment of money, shall be filed against **CITY**, or any portion of the premises, **CLUB** shall at its own cost and expense cause the same to be discharged of record or secure such payment by posting a bond with **CITY** in reasonable form and amount satisfactory to **CITY** within thirty (30) days after written notice to **CLUB** of the filing of such lien, charge or order.

15.2 If at any time any chattel mortgage, conditional sales agreement, trust receipt or other similar instrument shall be filed with respect to any property purchases by **CLUB**, any of its subcontractors or the contractors or subcontractors of any of them, which property by the terms of this Lease becomes or will become the property of **CITY**~ **CLUB** at its expense shall cause the same to be discharged, vacated, cancelled or satisfied within thirty (30) days.

15.3 In default of **CLUB** so doing, **CITY** may after five (5)

days notice to **CLUB** and without thereby waiving such default of **CLUB**, procure the discharge or satisfaction of any or all said liens, chattel mortgages, conditional bills of sale, trust receipts or other similar instruments by bonding or payment or otherwise and **CLUB** shall defend, indemnify, and save harmless **CITY** against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom.

15.4 In the event **CLUB** shall not cause such lien, mortgage, bill of sale, trust receipt or order to be discharged of record or bonded within said thirty (30) day period, **CITY** may thereafter cause the same to be discharged and the cost and expense thereof, including reasonable counsel fees, shall be immediately paid to **CITY** by **CLUB** as additional rent. 15.5 Except as specifically provided in other articles of this Lease, **CITY** shall not be liable for any work, labor or services rendered for materials or equipment furnished to, or for the account of, **CLUB** upon or in connection with the Premises and no mechanics or other lien for work, labor or services rendered for or material furnished to or for the account of **CLUB** shall attach to or affect the interests of **CITY**, **CLUB** or any of its subcontractors in and to the Premises or in and to any alterations, repairs, replacements, or improvements in or about the Premises.

## ARTICLE 16.     DEFAULT

16.1 The **CITY**, in addition to any other rights given herein or to which it may be entitled by law or equity, may declare this Agreement terminated in its entirety, subject to and in the manner provided in this Article, upon or after the happening of anyone or more of the following events and may exercise all rights of entry and re-entry, with or without process of law, upon the Premises:

A. To the extent permitted by law, the filing by **CLUB** of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of **CLUB**'s assets;

B. To the extent permitted by law, the adjudication of **CLUB** as a bankrupt pursuant to any involuntary bankruptcy proceedings;

C. To the extent permitted by law, the taking of jurisdiction by a court of competent jurisdiction of **CLUB** or its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;

D. To the extent permitted by law, the appointment of a receiver or trustee of **CLUB**'s assets by a court of competent jurisdiction or a voluntary agreement with **CLUB**'s creditors;

E. The material breach by **CLUB** of any of the terms, conditions, covenants or provisions herein contained and the failure of **CLUB** to remedy such breach as provided below. A material breach shall include, but not be limited to, the failure of **CLUB** to pay any rental, fee, charge, final judgment or bond

when the same is due and payable.

16.2 In addition to any other rights given to it herein, or to which it may be entitled by law or equity, **CLUB** may cancel this Agreement and terminate all or any of its obligations hereunder at any time, upon or after the happening of anyone of the following events:

A. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Premises, or of any part thereof, for baseball purposes and the remaining in force of such injunction for a period of at least one hundred and eighty (180) days;

B. Any action of any governmental authority, board, agency or officer having jurisdiction thereof preventing **CLUB** from conducting its operations at the Premises by taking, through the process of eminent domain, in whole or a substantial part, of the leased Premises; and

C. The material breach by **CITY** of any of the terms, conditions, or covenants or provisions herein contained and the failure of **CITY** to remedy such breach as provided below.

16.3 No termination declared by either party under sections 16.1 or 16.2 above shall be effective and the **CITY** shall not take possession of the premises unless and until not less than thirty (30) days have elapsed after notice by the party not in default to the other specifying the date upon which such termination will take effect, and the cause or causes for which this Lease is

being terminated. During said thirty (30) days, the defaulting party shall have the right to cure said default, unless such default(s) by its nature cannot be cured within such thirty (30) day period and if the party in default commences to correct such default within said thirty (30) days, and proceeds diligently to correct the same as promptly as reasonably practicable, this Lease shall not terminate.

16.4 Notice of default shall be sent by certified mail, postage prepaid, return receipt requested, or by hand-delivery.

16.5 If the notice provided for in Section 16.4 has been served and the term of this Lease has ended as aforesaid, **CITY** may, without further notice, re-enter and repossess the Premises with or without legal process and remove all persons and property therefrom and **CLUB** hereby waives any further notice provided by law or otherwise to be given in connection therewith. Any and all property belonging to **CLUB** or to anyone claiming by, through, or under **CLUB** which may be found in the Premises by **CITY** upon such reentry may be handled, removed, stored or otherwise disposed of by **CITY** at the risk and expense of **CLUB** and **CITY** shall not be responsible for the preservation or the safekeeping thereof. **CLUB** shall pay to **CITY** upon demand any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in **CITY**'s possession or under **CITY**'s control. If any such property shall not be retaken by **CLUB** within a period of thirty (30) days from and after the

effective date of any such termination of this Lease, such property shall conclusively be deemed to have been forever abandoned by **CLUB**. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning.

16.6 In the event of any termination of this Lease by **CITY** and re-entry or repossession of the **Premises**, by summary proceedings or otherwise, **CITY** may relet the **Premises** or any part or parts thereof, either separately or in conjunction with any other space in the Premises, to any other person or entity, and may re-grant to any other person or entity any and all the rights granted to **CLUB** under this Lease, for such term, which may be shorter or longer than the term which would otherwise have constituted the remainder of the term of this Lease, and/or such other terms, covenants and conditions including rent, concessions or free rent, and may make such repairs, alterations, additions, replacements and/or decorations in and to the **Premises** which **CITY**, in its sole discretion, may deem advisable for the purpose of re-letting the **Premises**, all without in any way releasing **CLUB** from liability hereunder. **CLUB** shall upon demand, pay the costs of all such repairs, alterations, additions, replacements and/or decorations together with **CITY**'s other expenses of such reletting or re-granting, including without limitation reasonable legal expenses and brokers commissions. If the rent or other payments collected by **CITY** upon any such re-letting or re-granting are not

sufficient to pay monthly the full amount of the rent (determined as hereinafter in this section provided) and all other amounts which **CLUB** would have been obligated to pay under this lease to **CITY** during the balance of the term of this Lease, **CLUB** shall pay monthly to **CITY** the amount of each monthly deficiency. **CITY** shall not be liable for failure to re-let the **Premises** or re-grant the rights granted to **CLUB** by this Lease; or, if the Premises are re-let or such rights are re-granted, for reasonable failure to collect the rent and other payments under such re-letting or re-granting.

16.7 Notwithstanding the foregoing, in the event of a breach or a threatened breach by any party of any of the terms, covenants, conditions, or provisions hereof, the other party shall have the right of injunction to restrain the same and the right to invoke any other remedy allowed by law or equity, including without limitation, the right to specific performance or the right to money damages, as if specific remedies, indemnity or reimbursement were not herein provided for.

16.8 The rights and remedies given to any party in this Lease are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by the other party, shall be deemed to be in exclusion of any others herein or by law or equity provided.

#### **ARTICLE 17. INDEMNIFICATION**

17.1 **CLUB** shall defend, indemnify and hold **CITY**, its

officers, agents and employees, harmless from any and all claims, suits and judgments, just or unjust, and all costs and expenses in connection therewith, which arise out of or result from **CLUB's** use of the Premises hereunder or which arise out of or result from the actor omission of **CLUB**, its officers, agents, employees, players, invitees, its contractors or subcontractors, and their officers, agents, employees or invitees; the officers, agents, employees, invitees, contractors or subcontractors of **CLUB's** minor league franchise, or anyone for whose act **CLUB** may be legally liable. The liability of **CLUB** under this Article shall not be limited to the insurance amounts specified in Article 18.

17.2 Notwithstanding the foregoing, **CLUB** shall not be liable under this Article with respect to any particular claim, suit or judgment if (a) any settlement of such claim has not been approved in writing by **CLUB**, or (b) in any such suit, **CLUB** has neither been permitted to defend against such suits by counsel selected by **CLUB** or (c) **CITY** on request fails to execute all assignments and other documents to subrogate **CLUB** or its insurer, insurers or designee to all rights of **CITY** against third parties with respect to any such death, personal injury or property damage and cooperate reasonably in the enforcement of such rights by **CLUB** or its insurer, insurers or designee. Defense by the insurer by its counsel shall be deemed to be defense by **CLUB** by its counsel.

17.3 Nothing herein is intended, nor shall it be deemed to

waive or modify any defense, immunity or limitation of liability which **CITY** may have under the Maine Tort Claims Act or other similar statute.

#### **ARTICLE 18. INSURANCE**

18.1 **CLUB** shall at its own cost and expense obtain and maintain throughout the term of this Lease and, if applicable, cause its subcontractors to obtain and maintain for the life of their subcontracts, insurance as follows:

A) **CLUB** shall insure its property and the personal property of **CITY** which is in **CLUB**'s care, custody and/ or control against loss or damage from "all risks" of physical loss or damage, with **CITY** property to be insured at replacement value. Such policy shall name as insureds and provide for payment of proceeds of any loss to **CITY** and **CLUB** as their interests may appear.

B) Comprehensive General Liability, Liquor Liability and Automobile Liability Insurance, naming **CITY** as insured therein and covering the obligation of indemnification hereunder, against claims, suits and judgments against **CITY** and/or **CLUB** for death, bodily injury, personal injuries and property damage arising out of or occurring during the operation, occupancy, maintenance or use of, or resulting from the acts or omissions of **CITY** and/or **CLUB** and/or any officer, employee or agent of either of them and/or any subcontractor of either of them in or with respect to any part of the Premises. The Comprehensive General Liability insurance coverage must include clauses providing for Fire Legal

Liability and for Blanket Hold Harmless coverages.

C) Insurance commonly known as product liability insurance, naming **CITY** as additional insured therein, for claims, suits and judgments against **CITY** and/or **CLUB** and/or its subcontractors for death, bodily injuries and property damage arising out of the sale, handling or other distribution of food, goods or other products by **CLUB** and/or its subcontractors.

18.2 The liability insurances required by section 18.1(B) and 18.1(C) shall each provide limits of liability of not less than:

A) One million dollars (\$1,000,000.00) for injuries to or death of one person.

B) Three million dollars (\$3,000,000.00) for injuries to or death of more than one person injured or killed in anyone occurrence.

C) One million dollars (\$1,000,000.00) for property damage resulting from anyone occurrence with an aggregate limit of three million dollars (\$3,000,000.00) per annum for property damage.

18.3 Statutory workers' compensation and employer's liability insurance in the amounts prescribed by law in the State of Maine.

18.4 All insurances required by this Article shall be carried with a financially sound insurance company or companies licensed to do business in the state of Maine to the extent that such insurance is obtainable from such company or companies. The

policy or policies for all required liability insurances shall be on an occurrence basis.

18.5 All insurances required under this Lease shall be maintained in the coverages and amounts specified or the amount required by state law throughout the term of this Lease, whichever is greater.

18.6 Certificates of insurance together with the duplicate originals of every policy of insurance required by any of the foregoing provisions of this Article and any and all renewals, endorsements, additions, modifications and changes thereto shall be deposited with **CITY** as soon as they have been procured. All such policies, duplicates, or certificates shall, prior to such deposit, be marked "premium paid" and shall contain a provision that the same shall not be altered, cancelled or not renewed before **CITY** has received thirty (30) days written notice of the insurance carriers' intent to so alter, cancel or not renew.

18.7 **CLUB** shall faithfully perform and comply with, subject to the provisions of the Lease, all of the terms and conditions of the policies of insurance required by the foregoing provisions of this Article, except those terms and conditions which by the terms of this Lease or the policy in question are required to be performed or complied with by **CITY**, which terms and conditions **CITY** shall perform and comply without limitation of the foregoing, both **CLUB** and **CITY** shall give prompt notice to the insurers and to each other of all claims covered by any of said policies. **CLUB** shall payor cause to be paid the premiums on all of said policies at the times and in the amounts required to maintain in full force and effect the insurance required to be

maintained hereunder and **CLUB** shall not be entitled to any reimbursement by **CITY** for such premiums.

18.8 All policies and insurance required by this Article 18 to be furnished shall be endorsed or otherwise be in such form that the insurers will have no right of subrogation against any officer, employee, director or stockholder of any party hereto.

18.9 "**CITY**" as used in this Article and in Article 17 shall include, without limitation, the officers, agents, employees and contractors of the City of Portland, its boards and commissions, and of the Portland Superintending School Committee.

#### **ARTICLE 19.     DAMAGE TO THE PREMISES**

19.1 **CITY** shall, at its own cost and expense, insure or self-insure the Premises against loss or damage from "all risks" of physical loss or damage; said insurance or self-insurance be for the full insurable value of the Premises at replacement cost, and shall contain only the standard exclusions.

19.2 If the Premises shall be partially or totally damaged or destroyed by fire or other casualty, **CITY** shall repair the damage so as to restore the same to its condition immediately prior to such fire or other such casualty, EXCEPT that **CITY** shall not be required to repair any such damage unless:

A) The casualty is of a kind covered by the insurance provided by section 19.1; or

B) **CITY** has a collectible claim for the entire cost of such repair against a third party; or

C) **CLUB** agrees to pay the entire cost of such repair or the difference between such entire cost in the amount of any

collectible claim which **CITY** has against a third party. In the event of any such damage as to which neither clause A) nor B) nor C) is applicable and the failure to repair such damage interferes significantly with **CLUB'S** use of the Premises in accordance with the terms of this Lease, either party shall have the right to terminate this Lease as of the date of the occurrence of the damage; EXCEPT that if **CITY** elects to repair such damage and so notifies **CLUB** within 30 days after such occurrence, no party shall have the right to terminate. **CITY** shall not be required to repair or replace any property owned by **CLUB** or its subcontractors and **CITY** shall not be liable for any damage to any such property caused by any fire or other casualty.

19.3 In the event of any damage or destruction which **CITY** is required to repair pursuant to section 19.2 hereof, **CITY** shall proceed promptly with the work of repair and restoration and shall proceed diligently to completion, subject to force majeure. If **CITY** has not completed the work of repair and restoration within a reasonable time after such fire or other casualty and if the non-completion in question interferes significantly with **CLUB'S** use of the Premises in accordance with the terms of this Lease, **CLUB** shall have the right to terminate this Lease. In determining what constitutes a "reasonable time" for the completion of such restoration within the meaning of the immediately preceding sentence there shall be taken into consideration the nature, character and extent of damage, and the delays, if any, due to force majeure, provided

however, that in any event **CLUB** shall have the right to terminate this Lease if such restoration has not been completed sufficiently to permit use of the Premises within fifteen (15) months after the date of such fire or other casualty.

19.4 Any period beginning with the occurrence of any damage or destruction by fire or other casualty which renders any part of the Premises untenable or unusable for the purposes for which the same is designed and intended and ending upon completion of the work or repair and restoration or an earlier termination of this Lease as hereinabove permitted, is called a "Force Majeure Period". During any "Force Majeure Period"

A) **CLUB** shall pay a reasonable rent for any part of the Premises used by **CLUB** during such force majeure period.

B) The other obligations of the parties under this Lease shall abate and shall be limited to the extent of the part, if any, of the Premises being used by **CLUB**.

## **ARTICLE 20.     SUSPENSION OF BASEBALL**

20.1 During any period of one month or more when by reason of force majeure **CLUB** is unable, exercising due diligence, to exhibit professional baseball games or is prevented with substantially complying with the Eastern League Schedule, (any such period herein being called a "baseball suspension period"), the rights of the parties hereto shall be as follows:

A) The terms of this Lease shall be suspended and the

rights, obligations, and liabilities of the parties hereunder, including without limitation, the obligation to pay rent with respect to such Baseball Suspension Period, shall abate and be suspended. If such Baseball Suspension Period is less than a full baseball occupancy period, the minimum rent shall be pro-rated on a monthly basis by dividing the annual rent by 12.

B) **CITY** shall have the right to use the Premises or any part thereof for any purpose during any Baseball Suspension Period. All revenues received by **CITY** from such use shall be retained by **CITY** and **CLUB** shall not be entitled to any part thereof.

C) **CLUB** may upon the written consent of **CITY** elect by notice to **CITY** to continue to occupy any or all of the Premises during any Baseball Suspension Period at a fair and reasonable rent to then be determined.

## **ARTICLE 21. COMPLIANCE WITH LAWS**

21.1 **CLUB** shall comply with and observe any and all present and future Federal, State and local Laws and regulations affecting or applicable to **CLUB** and/or any of its contractors or subcontractor's operations in the Premises, and all regulations, and all departments, the Federal, state or orders, directives and requirements of any bureaus, boards, commissions and agencies of local Governments issued or made pursuant to such laws.

## **ARTICLE 22. INSPECTION**

22.1 **CITY** and its agents and representatives shall, at all

times during which **CLUB** has the right to use and occupy the Premises or any part thereof, have the right to enter into and upon any and all parts of the Premises for the purpose of examining the same for any legitimate reason; provided, however, that if such entry is to any part of **CLUB'S** year-round space at any time during the year then it shall be made only after notice in writing (or without notice in the case of an emergency or if the person making such inspection is accompanied by an executive or administrative employee of **CLUB**, or in the case of concession areas, of its subcontractors) served on **CLUB** and setting forth the time and/or times of entry which shall be such reasonable time or times.

22.2 The rights reserved by this Article shall not impose upon **CITY** nor does **CITY** assume by reason hereof, any responsibility, obligation or liability for the care, maintenance, supervision, repair or replacement of the Premises or any part thereof or any duty to comply with any law, ordinance, rule, order or regulation other than those responsibilities, obligations, liabilities and duties assumed by **CITY** pursuant to the provisions of other Articles of this Lease.

## **ARTICLE 23. ASSIGNMENT AND SUBLETTING**

23.1 Except as expressly permitted by any provision of this Lease, **CLUB** shall not, without the written consent of **CITY**:

A) assign or mortgage this Lease or in any way transfer or

encumber the rights granted hereby, or B) sublet or grant any permit or license to use the Premises or any part thereof. The terms and conditions of any such assignment, mortgage, transfer, encumbrance, subletting, permit or licensing shall be subject to the prior written approval of **CITY**. No such consent by **CITY** shall relieve **CLUB** of any of its obligations under this Lease. The granting by **CITY** of consent to anyone of the foregoing in one or more instances shall not dispense with the necessity for the consent of **CITY** to further assignment, mortgage, transfer, encumbrance, sublease, permit or license.

#### **ARTICLE 24. NO SURRENDER**

24.1 No act done by **CITY**, or its officers, employees or agents during the term of this Lease shall be deemed an acceptance of a surrender of **CLUB**'s interests hereunder, and no agreement of surrender of said interests shall be valid unless the same shall be duly authorized by the legislative body of **CITY**.

#### **ARTICLE 25. WAIVER OF REDEMPTION**

25.1 **CLUB** for itself and on behalf of any and all persons claiming through or under **CLUB**, including creditors of all kinds, does hereby waive and surrender any and all rights and privileges which they or any of them might have under or by reason of any present or future law or decision (other than a decision in an action or proceeding in which the rights of the parties under

this Lease are adjudicated) to redeem its interest under this Lease or to have a continuance of this Lease with the terms hereby granted after being dispossessed, removed or ejected according to law, or the provisions of this Lease.

## **ARTICLE 26. NOTICES**

26.1 All notices, consents, approvals, demands and submissions(hereinafter in this Article collectively called a "Notice") shall be in writing and shall be served by certified mail (return receipt requested) or hand delivered and addressed to:

City Manager, City of Portland  
389 Congress Street  
Portland, ME 04101  
cc: Superintendent of Recreation  
cc: Corporation Counsel

or at such other address as **CITY** may specify at any time or from time to time by Notice to **CLUB**.

26.2 Any Notice to **CLUB** shall be deemed properly given if in writing and served by certified mail (return receipt requested) or hand delivered and addressed to:

Charles Eshbach, President  
Portland Sea Dogs  
P.O. Box 636  
Portland, ME 04104

with a copy to:

William B. Troubh, Esq.  
RICHARDSON & TROUBH  
465 Congress Street  
P.O. Box 9732  
Portland, ME 04104-5032

or at such other address as **CLUB** may specify at any time or from time to time by Notice to **CITY**. **CLUB** shall notify **CITY** of the

name of the individual in charge of the office of **CLUB** at the Premises and Notices may thereafter be delivered to such individual until **CITY** has been notified by the **CLUB** of the name of the different individual in charge such office and authorized to receive Notices.

#### **ARTICLE 27. OBLIGATIONS TO MAINTAIN FRANCHISE**

27.1 **CLUB** represents that it is at the time of execution of this Lease a member in good standing of the Eastern League and agrees that through the term of this Lease it will A) maintain its membership and franchise in the Eastern League in good standing, B) hold and maintain its right in franchise to play minor league professional baseball in the City of Portland in accordance with the baseball rules and not do or suffer to be done anything which will cause such right or franchise to be lost or impaired or diminished in any respect or transferred to any other city or location or modified to permit **CLUB** to play home games in any such other city or location; and C) maintain its team as an Eastern League (or successor comparable league) baseball team of the character and standing required by the baseball rules for the conduct of professional minor league baseball games and use its best efforts within the limits of sound business judgment to insure the maximum receipts therefrom.

#### **ARTICLE 28. QUIET ENJOYMENT**

28.1 **CITY** agrees, covenants, and warrants that as long as

**CLUB** faithfully performs the agreements, terms covenants, and conditions of this Lease within the grace periods and extended periods for any unavoidable delays, **CLUB**, shall peaceably and quietly have, hold, and enjoy the use of the Premises upon the terms and conditions herein granted without molestations or disturbance by or from **CITY**.

#### **ARTICLE 29. NO WAIVER**

29.1 No waiver of any term, provision, covenant, or condition contained in this Lease or of any breach of any such term, provision, covenant or condition shall constitute a waiver of any subsequent breach of such term, provision, covenant or condition by either party, or justify or authorize the nonobservance on any other occasion of the same or any other term, provision, covenant or condition hereof.

#### **ARTICLE 30. INTERPRETATION**

30.1 This Lease shall be construed in accordance with the law of the state of Maine. Whenever the contents of any provision shall require it, the singular number shall be held to include the plural number, and vice versa. The neuter gender includes the masculine and the feminine. **CITY** includes its officers, agents, employees, and contractors or subcontractors, and the Portland Superintending School Committee and its officers, agents, employees and contractors or subcontractors. **CLUB** includes its officers, agents, employees, players, contractors and subcontractors.

#### **ARTICLE 31. ENTIRE AGREEMENT**

31.1 This Lease with its attachments contains the entire agreement of the parties hereto with respect to the lease of the Premises described herein and this Lease may not be amended, modified, released, or discharged, in whole or in part, except by an instrument in writing signed by the parties hereto, or their duly authorized respective successors or assigns.

#### **ARTICLE 32. SUCCESSORS BOUND**

32.1 Except as otherwise provided in this Lease, all terms, provisions, covenants and conditions of this Lease shall be binding on and inure to the benefit of the parties hereto, their duly authorized respective personal representatives, successors and assigns. No modification or termination of this Lease shall be binding unless evidenced by an agreement in writing signed by CITY and CLUB.

#### **ARTICLE 33. CAPTIONS**

33.1 The captions of the Articles of this instrument are solely for convenience and shall not be deemed a part of this instrument for the purpose of construing the meaning thereof, or for any other purpose.

#### **ARTICLE 34. PARTIAL INVALIDITY**

34.1 If any term, covenant, condition, or provision of this Lease or the application thereof to any person or circumstances

shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or its application to other persons or circumstances, shall not be affected thereby, and each term, covenant, condition, and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

#### **ARTICLE 35. NO MERGER**

35.1 The fee title of the Premises and the leasehold estate granted by this Lease shall not merge, but shall always remain separate and distinct notwithstanding the union of said estates in whole or in part in **CLUB** or in a third party by purchase or otherwise.

#### **ARTICLE 36. APPROVAL OF CITY**

36.1 Approval of the **CITY**, wherever used in this Lease, shall mean the approval of the City Manager of the City of Portland, unless another party is specifically designated. "Approval" wherever required herein by either party, shall not be unreasonably withheld, conditioned or delayed.

#### **ARTICLE 37. MEMORANDUM OF LEASE**

37.1 The parties agree to execute a Memorandum of Lease in form appropriate for recording in the Cumberland County Registry of Deeds.

IN WITNESS WHEREOF, the **CITY** and the **CLUB** have caused this Lease Agreement to be duly executed by their duly authorized representatives the day and year first above written.

WITNESS:

CITY OF PORTLAND

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Joseph E. Gray, Jr.  
City Manager

Then personally appeared the above named Joseph E. Gray, Jr. as City Manager of the City of Portland and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said City.

WITNESS:

PORTLAND MAINE BASEBALL, INC.

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Daniel B. Burke, Chairman  
Portland Maine Baseball, Inc.

Then personally appeared the above named Daniel B. Burke in his capacity as Chairman of Portland Maine Baseball, Inc. and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the Eastern League AA franchise.



**EXHIBIT B:**

Equipment Transferred to Sea Dogs

Tri-plex Reel Mower 2005

Infield Groomer 1995

Groomer drags 2004

Sod Cutter 2006



### **Commission Members:**

Jaime Parker, Chair - Jon Kachmar, Vice Chair - Cheri Musgrave - Kristen Fulmer - Elenor Sears - Beth Rabbitt - Marie Gray - Zack Anchors - Stephen Bentsen - Katie Mears - William Elting - Donna Gartland - Alison Mehlsak - City Councilor Victoria Pelletier

### **City of Portland** **Parks Commission Agenda** **May 4, 2023 at 5:00 PM** **Room 24, City Hall**

*The Mission of the Portland Parks Commission is to advocate for the enhancement and stewardship of our parks and open spaces. Review and propose projects that impact parks and open spaces and recommend action.  
Foster collaboration among park users and the City. Promotes public access and enjoyment.  
Advocate for public and private funding for parks and open spaces. Enjoy Portland for Life.*

To submit written public comment on an agenda item, email [ParksCommission@Portlandmaine.gov](mailto:ParksCommission@Portlandmaine.gov). Submissions must be received by 12:00 pm the day before the Parks Commission meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the name of the agenda item (see below).

### **REMOTE ACCESS INFORMATION**

The Parks Commission will conduct this meeting remotely via Zoom and in-person, pursuant to the Hybrid Meeting Policy adopted by the Portland Parks Commission. This meeting will take place in Room 24 of Portland City Hall, at the designated time. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the [Agenda Center](#) following meeting.

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit \*9. You will be unmuted by the host when it is time for public comment.

Please use the link below to join the webinar:

<https://zoom.us/j/91710859101?pwd=MUVLWTVFRG5jUFNxSHIEcTFISk8wZz09>

Passcode: **P3pperm1nt**

Or Telephone:

US: +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099

Webinar ID: 917 1085 9101

Passcode: **480730**

- I. Call to Order
- II. General Citizen Comment Period
  - a. Emailed Citizen Comment~George Rhault wants to reiterate the importance of making sure all the recording are working so the public can access these meeting.
  - b. Evergreen cemetery is being considered a Park. There fore the Parks Commission should be involved

in a expansion. What is the capacity of the Evergreen Cemetery? A smaller project in the western prom to develop a storage facility. If there are big this happening in the Parks the Park Commission should be involved.

- c. Comments around the usage of Sea Dogs and our contract agreement. What is the city receiving from this venue? Alex will provide the links so commission members can review the lease with Sea Dogs.

### III. Agenda Items:

Stephen did not vote on the last meeting minutes. His vote needs to be addressed.

Acceptance of Meeting Minutes: 4/6/2023

All meeting minutes were approved. Motion passes.

#### a. New Business

- i. Bayside Trail Cleanup Update~ We are still in a state of flux with the Bayside Trail encampments and others. We have presented many options to council:
- ii. Leave as is.
- iii. Clean area and move to a different location.
- iv. Waite until emergency operation task force is set up and able to engage and support the encampment to offer services and assistance to relocate. The city will provide transportation out of state or in state if they have somewhere to go.
- v. As a Parks Commission we need to take a stronger stance with our Governor. Heart felt thanks out to all city employees involved.
- vi. What can the Parks Commission to help address this situation? Discussion of writing a letter as a group. Should the commission collaborate with other organization already planning to advocate.
- vii. Union Branch Pathway Presentation by Bruce Hyman (15 min)
- viii. This project started in 2017 but was put on hold until a land swap occurred. A slide presentation was shared while Bruce reviews the details.
- ix. A city council order occurred for additional federal funding.
- x. The tracks will most likely stay due to being considered historic items.

Questions: Were the Deering Oaks Friends involved? Yes.

Any improvements to the Franklin Arterial crossing?

Any plans to improve access over Tukies Bridge connection? Nothing in the works yet.

Are there plans to extend bike paths out to North Deering and Westbrook? Yes, eventually. Nothing immediate.

#### b. Old Business

- i. CIP process discussion: Update on this is listed in the packet. Such as timeline and other specifics. Jamie's reviewed CIP process and timeline in general. Will we be helping under represented neighborhoods groups participate in this process? The information is sent to all of the neighborhood groups. However, we don't get a lot of feedback from these smaller groups. Groups can be formalized and ideas can be submitted.
- c. Alex will share the list which is sent to all Friends/Neighborhood groups with the Parks commission group. Commission members will help to weed out groups that are not active and invite groups that are less engaged.
  - i. Greenspace Gathering Planning~ The timing of the event is important. June is difficult with school ending and summer vacations beginning. Early fall may be a better time to do the event (September). Prior to school starting up. Saturday or Sunday is being discussed for

event day. Find a venue that may have outdoor and indoor spaces. “Choose your own adventure.” The teaching of the CIP process may be a great teaching topic. Bridge family activities to education the community. Two weekends after Labor Day. How do people feel about doing event on a weekend day? This would take the place of that month meeting. New friends group formed at Allen’s Corner. Maybe they would like to participate. Considering Lyseth.

ii. Other Committee Work Updates~ No updates. The report is in packet.

d. Communications and Updates

i. Parks Division Report~ No discussion

ii. Land Bank Commission Report~ No discussion

e. Commissioner requests for Agenda Items~No items were discussed.

f. Sub Committee meetings~ A google Facebook was formed for the

IV. Adjournment



**CITY OF PORTLAND**  
**Parks, Recreation & Facilities Department**  
**Ethan Hipple, Director**

**CITY OF PORTLAND**  
**Parks, Recreation & Facilities Department**  
**Alex Marshall, Parks Director**

### **Memorandum**

**TO:** Parks Commission and Land Bank Commission

**FROM:** Alex Marshall, Parks Director, Parks, Recreation and Facilities Department

**SUBJECT:** Parks Division Update

**DATE:** June 2023

#### **Parks Division Staffing**

- Total Budgeted positions in Parks Division: 33
- Vacancy: City Arborist. We continue to have this position advertised
- Seasonal Positions: Park Maintenance, Ballfields, Playgrounds

#### **Congress Square Park Update**

Congress Square Redesign project includes completing construction of a redesigned intersection and public open spaces at High Street, Free Street, and Congress Square. The project has two construction phases. Phase A, includes roadway and intersection improvements. Phase A construction began in April 2022 and will continue through the summer of 2023. Construction Documentation for phase B, which includes the public open spaces, was completed in June 2022, partial CIP funding for construction of the Phase B Congress Square redesign in the amount of \$700,000 and \$900,000 was awarded in 2022 and 2023, respectively. This project will involve significant community fundraising. The City will begin bidding for the construction of the square once all funding for the project has been secured.

#### **Dougherty Field Playground Ribbon Cutting Ceremony**

The Dougherty Field Playground construction has finally come to a close. After six years of fundraising through neighborhood efforts via a Community Development Block Grant and City Capital Improvement Project funding, this project is at the finish line and we are inviting everyone to the ribbon cutting event on June 14th from 3pm-4pm.

#### **Deering Oaks Ravine is OPEN**

Memorial Day has come and gone and the Deering Oaks Wading Ravine was, once again, open for business. This feature is such a staple for the community during the Summer months and we had some incredible weather over the weekend to really showcase the need for it. The Playgrounds Crew pours hours into cleaning and keeping this feature open for all to use from Memorial Day to Labor Day. Our Ranger Team will also pitch in by assisting with the opening and closing of it every day, which allows for the bottom to be cleaned and fresh water added each morning.

#### **Encampment Update**

To date we have 132 encampments documented citywide. This number fluctuates each week as folks move from one place to another or are able to get into the shelter. Our Park Ranger Team has been keeping up with this tally so Staff know the areas in which outreach and services should be focused. A



**CITY OF PORTLAND**  
**Parks, Recreation & Facilities Department**  
**Ethan Hipple, Director**

**CITY OF PORTLAND**  
**Parks, Recreation & Facilities Department**  
**Alex Marshall, Parks Director**

City Encampment Crisis Response Team has been established and will be focusing on some of the larger encampments shortly.

### **Park Projects and Department Updates**

Staff are working on the following Park Improvement projects:

- Park ADA Walkway improvements: Phase 3 of 3 at Deering Oaks Park has begun and all new walkway base work has been completed. The contractor is mobilizing their team to Deering Oaks to complete the project.
- Fitzpatrick Drainage Improvements: Drawings are complete. An RFP is ready to be advertised.
- Talbot School Basketball Court Reconstruction: The bid documents have been advertised.
- Preble Street Field & Stormwater Project: Final design and landscaping plans are being finalized. There have been some construction delays that will push the installation of the field back to the Fall of 2023 with field play to begin in the late Spring or Summer of 2024.
- Riverton Preserve: Recreation improvement plans are in progress and will consist primarily of a trail network with other improvements. This project is intended to fulfill LWCF conversion requirements, and final approval of the improvement plan rests with the state and National Park Service, which has a public engagement process.
- Riverton Trolley Park: The Bicycle Skills Course RFP has been advertised and staff are working on the next phase of the improvements
- Lower Western Prom Park Improvements: Final design improvements have been made and we have secured the additional funding via CDBG to execute the project later in 2023 or beginning of 2024
- Dougherty Field Skatepark Expansion: Construction has begun. The Contractor will be working on site for the next 10-12 weeks with the anticipation of finishing the project around July 4th
- Community Garden Fence and Shed Replacement: All new sheds and planting soil have been installed. Fence installations have begun
- North Deering Park acquisition is in progress and closing is scheduled for June. This project will result in 24 new acres of park and open space, including an athletic field, woods, ponds and future trails.