

**USE AGREEMENT BETWEEN THE CITY OF MADISON, MADISON MALLARDS
LLC AND NORTHWOOD LEAGUE, INC. FOR THE USE OF WARNER PARK
STADIUM DURING THE 2011-2020 BASEBALL SEASONS**

This Use Agreement (“Agreement”), made and entered into by and between the City of Madison, a Wisconsin municipal corporation (“City”), the Madison Mallards LLC, a Wisconsin limited liability company (“Mallards”), and Northwoods League, Inc., a for profit corporation created and existing under the laws of the State of Florida (“League”), is effective as of the date by which all parties have signed hereunder.

WHEREAS, Mallards have participated in the League’s summer collegiate baseball league since 2001, playing its home games at the City’s Warner Park Stadium (the “Ballpark”), pursuant to the terms and conditions of the March 23, 2006 Use Agreement between the City, the Mallards, and the League (the “Parties”). The current Use Agreement between the Parties expires on December 31, 2010; and

WHEREAS, Mallards desires to continue operating a baseball team in Madison, Wisconsin, and for that purpose desires to enter into a new Use Agreement for nonexclusive use of the Ballpark; and

WHEREAS, City believes it is in the public’s interest to afford the citizens of the City an opportunity to attend and view baseball games; and

WHEREAS, the Parties wish to formalize the terms and conditions under which the Mallards and the League is authorized to use the Ballpark; and

WHEREAS, concurrently with the execution of this Use Agreement, the City and Mallards are executing and delivering the Agreement to Undertake Improvements to Warner Park Stadium (the “Improvement Agreement”); and

WHEREAS, the Improvement Agreement sets forth the rights and obligations of the City and Mallards with respect to the funding and construction of improvements to the Ballpark over the course of this Use Agreement’s duration; and

WHEREAS, because of the anticipated improvements to Ballpark, the Parties wish to enter into a new Use Agreement superseding the existing Agreement; and

WHEREAS, the League is entering into this Agreement to undertake the same obligations and have the same duties as those undertaken and assumed by the Mallards.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, it is agreed that the Mallards is granted nonexclusive use of the Ballpark subject to the following terms and conditions:

1. Definitions.

- a. Game. A game is a baseball game which shall be considered played when one pitch is thrown in the first inning.
 - b. Gross Concessions Sales. Gross concessions sales means revenues from sales of all food, beverages, novelties and any other items sold at the Ballpark.
 - c. Regular Season. Specific dates may vary, but a regular season shall mean ballgames, other than playoff games, played between May and August.
 - d. Substantial Damage. The term shall mean any damage to any portion of the Ballpark which would reasonably interfere with Mallards' use of the Ballpark for the use described herein.
2. Term. This Agreement, unless earlier terminated as provided for herein, shall be effective for the period of time that includes the next ten League seasons, commencing January 1, 2011, and terminating December 31, 2020.
3. Renewal. This Agreement may be renewed for three one (1) year term(s) upon written notice from the Mallards to the City. Except as set forth in this paragraph, the renewal shall be on the same terms and conditions of this Agreement. If Mallards desires to renew this Agreement, Mallards must give notice in writing to the City a minimum of one year prior to the expiration of the initial term of this Agreement, and a minimum of six months prior to the expiration of any renewal term of this Agreement, by the mailing of a notice by certified mail, return receipt requested, or by personal delivery to the Superintendent of Parks at the address specified in Paragraph 18. The notice shall contain an unequivocal and unconditional agreement to renew the lease for the renewal term, which shall be effective to renew the lease for one (1) year.
- a. Changes in Terms of Lease. If Mallards desire any changes in the terms and conditions of the lease, the changes shall be proposed at the time of providing the notice of renewal. The City may accept such changes, decline to accept such changes, or negotiate the changes. If Mallards and City do not agree upon any changes in the terms and conditions of a renewal of this Agreement at least three (3) months before the renewal term begins, the Agreement will be renewed on the same terms and conditions of this Agreement.
 - b. Change in Annual Game Rental Fee. If Mallards renew this Agreement, the annual Game Rental Fee set forth in Paragraph 8.a. of this Agreement for each renewal period shall be as follows:

2021: \$67,195
2022: \$69,211
2023: \$71,288
4. Ballpark Use. Mallards shall have nonexclusive use of Ballpark for the operation of a baseball team. The entirety of the Ballpark is as set forth in Attachment A, which is herein incorporated by reference. Mallards has expressed an interest in producing concert events in the Ballpark. Authority to produce such events is not granted by this Agreement. In the event Mallards wishes to produce such additional events, Mallards shall submit a written

proposal detailing the event to the Superintendent of Parks or designee at least seven (7) days prior to the date of the proposed event, subject to the schedule provided in Paragraph 5 and delivered to the address specified in Paragraph 18. The Superintendent or designee will review each proposed event in the same manner that it reviews all requests for the use of the Ballpark.

5. Scheduling and Use of the Ballpark.

a. Scheduling of Baseball Events at the Ballpark. The Parties agree to the following time table for scheduling of baseball only events at the Ballpark:

- 1) By January 15 of each year, the Mallards shall submit to the City a schedule of dates for up to 40 regular season League games and up to four playoff games and one all star game. In addition, Mallards may use the Ballpark for up to three dates after March 21 and before the start of the Regular Season each year, at no cost, for Mallards team workouts only.
- 2) From January 16 – March 1 of each year, other amateur baseball teams may submit their scheduling requests to the City.
- 3) After March 1 of each year the Ballpark will be reserved on a first come, first served basis and subject to typical approval processes by the city.

b. Scheduling of Other Events at Ballpark. Scheduling of all additional events at the Ballpark shall be subject to approval by the Board of Park Commissioners, which will make a good faith effort to approve any such request in as timely a manner as possible. However, events under 1,000 persons in expected attendance may be approved by Parks Division staff. Approval for larger events (larger than 1,000) will be subject to approval of the Board of Park Commissioners, upon recommendation of Parks staff. At the time a request is made to Parks staff, notification will also be provided by the Mallards to the two (2) members of the Common Council representing the neighborhoods surrounding Warner Park. Parks staff may, at their discretion, refer small-event requests to the Board of Park Commissioners if there are special condition issues, e.g. amplification or music. The Mallards understand and agree that non-baseball events may require additional staffing from Police, Parks, Fire & other City agencies based on conditions of approval for these events and that Mallards is responsible for such additional staffing costs. Exclusive concession rights for all events scheduled by the Mallards at the Ballpark are granted to the Mallards under their existing restaurant/vending permits and licenses. The Mallards may contract to provide concessions for other groups under the Mallards' existing restaurant/vending permits and licenses, provided the food to be served has previously been approved and further provided that no alcohol beverages shall be served unless approved by Parks Department Staff. Any plan by the Mallards to schedule additional events must accommodate other park users.

c. Use of the Ballpark by Mallards. In addition to use of the Ballpark and facilities for baseball events and other approved events under this Section, the Parties agree as follows:

- 1) Mallards may negotiate dates, in addition to official games and workouts, for youth baseball clinics for a negotiated fee and with prior written approval of City.
- 2) Mallards team shall have exclusive use of the home locker room during its regular season. Use of home locker room beyond the regular season is subject to negotiation by the parties.
- 3) Mallards has the option of scheduling a home game during the weekend of the City's July 4th celebration. The Mallards game for this event shall end by the start of the fireworks in Warner Park, or Mallards agrees to suspend the game, turn off all field lights, and not resume play until a minimum of fifteen (15) minutes after the conclusion of the fireworks.
- 4) Mallards may not allow spectators to enter Ballpark more than one hundred twenty (120) minutes prior to posted game time and shall clear Ballpark of all spectators within thirty (30) minutes of the completion of any game. Mallards agrees to cease all vending of food and beverages at the conclusion of each game, unless an approved Mallards event immediately follows the game, in which case all vending of food and beverages shall cease at the conclusion of the subsequent event. Mallards shall seek the approvals set out above in order to serve food or beverages at the subsequent event.
- 5) Mallards must submit a written request to the Superintendent of Parks, at the address listed in Paragraph 18, at least seven (7) days prior to the date of any event or promotion that requires the hours of operation at Ballpark to be extended.
- 6) This Agreement does not authorize firework displays of any kind. If the Mallards intends on providing a fireworks display at the conclusion of a game, Mallards shall submit a written request for such display to the Superintendent of Parks at the address listed in Paragraph 18. Board of Park Commissioners approval is required before fireworks can be discharged at the Ballpark or Warner Park. Mallards shall submit all fireworks display requests in a timely fashion allowing time for the request to be included on the Agenda of the Madison Board of Park Commissioners at a regularly scheduled meeting. Mallards shall be responsible for determining the Board's meeting dates and times as that information is readily available on City's web site at www.cityofmadison.com. All approved fireworks displays require the payment of the Parks fireworks fee applicable at the time of the permit in addition to any other applicable City permit fees related to fireworks displays. The current fireworks fee, as approved by the Board of Parks Commissioners, is two hundred and fifty dollars (\$250). City insurance requirements for firework displays shall also apply.
- 7) The use of live performers or other amplified music or public address announcements shall comply with City of Madison noise and sound Ordinances at all times.

- 8) Any concert at Ballpark must receive Board of Park Commissioners approval, and Mallards shall not request more than three (3) concerts in a calendar year.
- 9) Mallards shall prepare a security plan for all uses of the Ballpark.
- 10) Mallards' requests to use the Ballpark for any purposes other than the League Regular Season, Playoffs or All-Star Game remains subject to any other City approvals necessary for such use.

6. Mallards Responsibilities.

- a. Mallards shall provide all staff for the Ballpark, including, but not limited to, players, coaches, managers, ushers, ticket sellers, scorekeepers, public address announcers, concession staff, security staff, field maintenance crew, parking attendants and cleaning crew. Mallards agrees to employ staff adequate to provide outstanding customer service.
- b. Mallards ushers shall wear a uniform, at a minimum a Mallards shirt, identifiable by color, logo or some other measure, as agreed to by the parties.
- c. Mallards shall supply all equipment related to field use including all bases, a batting cage and a pitcher's screen. Mallards acknowledges that if it requires an infield tarp, it will supply the tarp and will place and remove the tarp as needed.
- d. Mallards agrees to prepare and mark the field for all Mallards games, and all other games scheduled by the City under Sec. 5.a. of this Agreement no later than two (2) hours prior to game time, weather permitting.
- e. Mallards shall be responsible for all field maintenance and all daily operation expenses at the Ballpark, to specifically include, but not be limited to, the costs of mowing, landscaping, fertilization, turf repair, irrigation, dragging and lining the field during scheduled dates, field grooming between innings or after batting practice, the application of drying agents to get a scheduled game completed, electricity and water use, telephone service, internet access, and other similar costs. Moreover, all equipment and supplies necessary to perform these responsibilities, and the costs to run and maintain said equipment, shall be the Mallards.
- f. Mallards shall provide all necessary cleaning supplies and labor to maintain in a clean and sanitary condition seating areas, space beneath bleachers, the concourse, concession stand and adjacent area, public restrooms, locker rooms, adjoining parking lots, press box, office area, and any other area within the Ballpark used for Mallards activities. Any custodial services, and any chemicals, trash-liners, soap and paper used by the Mallards pursuant to its obligations under this provision, are required to be in accordance with the City's Green Cleaning Program and comply with the green product standards, specifications and practices of this Program. Mallards is required to be familiar with the applicable standards of the City's Policy for a Sustainable Green Cleaning Program. These standards are set forth in the City of Madison's Administrative Procedure Memorandum No. 4-6, available at <http://www.cityofmadison.com/mayor/apm/4-6.pdf>, and are subject to change. The

failure to abide by the requirements of this Program shall be a default subject to Section 13 of this Agreement.

- g. Mallards shall deposit all trash from Ballpark use in dumpsters provided by the Mallards, and provide for all trash removal services. Mallards agrees to complete post game clean up by 10:00 a.m. on the day following each Mallards game or other Mallards scheduled use.
- h. Mallards shall not exceed the patron capacity established by City for the Ballpark. Patron capacity for ball games and similar sporting events is six-thousand seven-hundred and fifty (6,750). Patron capacity for concert events is fifteen thousand (15,000). These capacity amounts may only be amended by approval of the Board of Parks Commissioners.
- i. Mallards shall be responsible for public safety and shall coordinate with the City of Madison North Police District to ensure public safety requirements are adequately met.
- j. Mallards shall annually, by March 1 of each year, submit its alcohol beverage policy to the Alcohol License Review Committee for approval by the ALRC. The alcohol beverage policy shall address how the Mallards will prevent underage drinking and over consumption at Mallards games and stadium events. A failure to have the alcohol beverage policy approved by the Alcohol License Review Committee will not be a default under this Agreement, but the matter may be resolved in the alcohol licensing process.
- k. Mallards shall submit, by March 1 of each year, an annual neighborhood impact plan to the Board of Park Commissioners addressing how the Mallards will address its impacts on the neighborhood surrounding the Ballpark, including pedestrian safety, fireworks, noise, litter and other neighborhood impacts.
- l. Mallards shall submit, by March 1 of each year, an annual Fan Access Plan to the Board of Park Commissioners. This Plan will detail Mallards' plan to provide sufficient parking at or near the Ballpark, and address customer access to the Ballpark by bus, bicycle and foot. Mallards shall also provide City with a copy of Mallards' Use Agreement for parking at North Town Center, or any other offsite parking venue. Mallards will provide for a minimum of 200 parking stalls outside of Warner Park. If the Mallards fail to provide 200 off site spaces, the Board of Park Commissioners may reduce the maximum capacity of the Stadium for Mallards games or events by up to 1350 persons. The Board of Park Commissioners will consider the impact of the parking and access as detailed in the Plan on other users of Warner Park and the surrounding neighborhood in making its decision regarding the maximum capacity. Any decision on reduction of capacity at the Ballpark may be appealed to the Common Council, but will be in effect during any appeal. A set amount of parking shall be reserved at the Warner Park Community and Recreation Center for persons using the Center by the Board of Park Commissioners.
- m. Prior to the start of the Regular Season, representatives of Mallards and City will meet to discuss any special maintenance needs related to the Ballpark and the

baseball field at the Ballpark. Mallards and City will endeavor to identify appropriate times to undertake such maintenance so as to not disrupt use of the Ballpark by Mallards or others.

7. City Responsibilities.

- a. City agrees not to schedule a competing baseball league for use of the Ballpark, so long as Mallards continue to use the Ballpark.
- b. City agrees to provide player and coach parking, not to exceed 25 spaces, at Warner Park during the regular season when the team is out of town. City and Mallards will jointly create a method to designate those vehicles that are permitted to park overnight at Warner Park.
- c. Except as to duties specifically delegated to Mallards under this Use Agreement, City agrees to be responsible for the maintenance and repair of the Ballpark, including, specifically, maintenance and repair of all structures and fixtures at the Ballpark other than in the field area, such as general building maintenance, stadium lighting, etc.
- d. City agrees to provide Mallards with a storage shed for the storage of all maintenance and general equipment necessary for Mallards to operate the Ballpark consistent with the Mallards obligations under Section 6 of this Agreement.

8. Fees, Revenue and Related Financial Matters.

- a. Game Rental Fee. The Mallards agree to pay an annual fee for use of the Ballpark (Game Rental Fee). The Game Rental Fee for each year for the term of this Agreement shall be:

2011: \$50,000	2016: \$57,963
2012: \$51,500	2017: \$59,702
2013: \$53,045	2018: \$61,493
2014: \$54,636	2019: \$63,338
2015: \$56,275	2020: \$65,238

This fee reflects the Mallards' use of the facility annually for up to 40 league regular season games and up to four playoff games and an all star game, plus up to six (6) additional events (baseball or non-baseball) with capacity limits as follows: two (2) events under 1,000, two (2) events from 1,001 to 5,000, and two (2) events from 5,001 to 15,000. The Mallards shall be responsible for the cost of any additional event-related personnel required by the City (e.g., police, parks or fire staffing). If the Mallards pursue hosting more than the 6 additional events, they shall be subject to standard Park fees.

The Game Rental Fee does not include the use of additional fenced areas of Warner Park, including the multi-use field. If Mallards wishes to use these areas, Mallards must pay a separate fee pursuant to park policies and formally book the area through the Parks Community Services Manager.

- b. Capital Improvements. Pursuant to the terms and conditions of the Improvement Agreement, Mallards agree to contribute approximately \$500,000 to the Bleacher Replacement Project and spend at least \$500,000 in Future Ballpark Improvements over the lifetime of this Agreement. Any capital improvements desired by Mallards during the course of this Agreement shall be subject to the terms and conditions of the Improvement Agreement, and, consistent with Section 20 of this Agreement and the Improvement Agreement, City shall retain ownership of any capital improvement to the Ballpark funded in whole or in part by any source.
- c. Revenues and Licenses:
- 1) Mallards shall receive all revenues from sales related to admissions, advertising, programs, novelties, television and radio rights, and food and beverage concessions for any event scheduled by Mallards. City will allow Mallards the exclusive vending rights for all events scheduled by Mallards and held in Ballpark. Mallards may contract to provide concessions for other groups under the Mallards' existing restaurant/vending permits and license upon approval of Parks Staff.
 - 2) Mallards agrees to obtain and keep in good standing all licenses and permits related to its operation.
 - 3) City retains the right to review and approve all advertising displayed in Ballpark or at Warner Park.
 - 4) Mallards agrees not to sell or give away any cigarettes or tobacco products on City premises.
 - 5) Mallards may only serve fermented malt beverage products (beer and wine coolers) at events taking place at Ballpark. No intoxicating liquor may be served, sold or given away at Ballpark. Mallards is responsible for obtaining a Class B Beer license from the City Clerk each year and agrees to comply with all applicable liquor laws.
- d. Payment. Mallards agrees to make all necessary fee payments to City no later than thirty (30) days after the date of invoice. Mallards agrees that any payments overdue thirty-one (31) days or more after the date of invoice incur a late payment interest charge of eighteen percent (18%) per annum calculated on a daily basis. City shall provide all invoices to the Mallards for the Regular Season on or before September 1 each year, or the next business day after September 1 if it should fall on a weekend or holiday.
9. Assignment and Subcontracting. Mallards shall not assign this Agreement or any interest therein. Mallards may not subcontract the use of Ballpark without prior written approval of City.
10. Disclosures and Acknowledgement. With full and complete knowledge, Mallards accepts Ballpark, and any improvements made thereto during the course of this Agreement, in an "as is" condition.

11. Home Games. Mallards and League covenants that Mallards will play all its home games in Madison, Wisconsin, and that the Mallards shall not relocate or agree to relocate or permit the relocation of the Mallards outside the boundaries of Madison, Wisconsin, during the term of this Use Agreement. The City may waive this requirement for isolated exhibition games.
12. Indemnification and Insurance.
 - a. Indemnification. The Mallards shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Mallards' acts or omissions in the performance of this agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees. The Mallards and League, for themselves and their successors and assigns, hereby waive all rights of recovery and causes of action as against the City and any of its officers, officials, agents, employees, invitees, consultants and contractors, for any damage to the Ballpark, whether caused by negligence or otherwise.
 - b. Insurance. Mallards agrees that it shall provide to City at its own cost and expense insurance as specified below with a company or companies authorized to do business in the State of Wisconsin. Each policy and certificate shall require a thirty (30) day advance written notice of cancellation, non-renewal or material change in the policy. A Certificate of Insurance for all required insurance shall be filed with City at or before Mallards signs this Agreement. The below-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
 - 1) General Liability. Commercial General Liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. The Mallards' coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. The Mallards shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds. This insurance shall be required for the full term of the lease and any renewal periods.
 - 2) Liquor Liability Insurance. Liquor Liability insurance in the amount of coverage of at least \$1,000,000 per occurrence listing the City of Madison, its officers, officials, agents and employees as additional insureds (unless Mallards employs an independent concessionaire, in which case Mallards

shall cause the concessionaire to secure such liquor liability insurance coverage).

- 3) Automobile Liability. Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. The Mallards shall require all subcontractors under this Agreement (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria. This insurance shall be required for the full term of the lease and the renewal period.
 - 4) Workers' Compensation. Statutory Workers' Compensation insurance as required by the State of Wisconsin. The Mallards shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. The Mallards shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.
 - 5) Umbrella Liability. Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Liquor Liability, Business Automobile Liability and Employers Liability with minimum limits of \$4,000,000 per occurrence and in the aggregate.
- c. Surety. Mallards agrees to provide to City at or prior to its signing of this Agreement a surety bond issued by a company and signed by an agent, both of which are authorized to do business in the State of Wisconsin, for no less than Twenty-Five Thousand Dollars (\$25,000). In the alternative, the Mallards may provide to City an irrevocable standby letter of credit for Twenty-Five Thousand Dollars (\$25,000) issued by a bank on a form as approved by the City Attorney. Both the bond and the letter of credit shall have an expiration date sixty (60) days beyond the termination date of this Agreement or any subsequent renewals.
13. Default and Termination. In the event Mallards shall default in any of the amounts due to City as set forth in this Agreement or in the observance of any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of fifteen (15) days after written notice thereof to Mallards, or (a) Mallards shall make an assignment of its property for the benefit of creditors, or (b) Mallards shall petition a court to be adjudged a bankrupt, or (c) if a petition in bankruptcy shall be filed in any court against Mallards for more than thirty (30) days, or (d) if Mallards be judicially determined to be insolvent, or (e) Mallards shall be adjudged a bankrupt, or (f) if a receiver or other officer shall be appointed to take charge of the whole or any part of Mallards' property or to wind up or liquidate its affairs, or (g) if Mallards shall seek a reorganization under any of the terms of the National Bankruptcy Act, as amended, or under any other insolvency law, or (h) Team shall admit in writing its inability to pay its debts as they become due, or (i) if any final judgment shall be rendered against Mallards and remain unsatisfied for a period of thirty (30) days from the date on which it becomes final; or (j) if Mallards shall abandon the facility, City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Mallards, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate

this Agreement and all rights of the Mallards hereunder and require payment of the Performance bond as set forth in Section 12.c.; but such receipt of payment from the performance bond and/or cancellation shall not constitute a cancellation or a waiver by the City of the remainder of the total amounts payable to City, or for any damages or losses for the unexpired portion of the demised term which may be sustained by the City on account of such default, assignment, insolvency, adjudication, or other default as provided hereinabove in this Section, including any expenses incurred in exercising its rights in this Agreement.

In the event of lapse of insurance policies or coverage and protection as required by this Agreement City may, without notice of default, declare this Agreement terminated. Mallards shall have no access rights to or use of Ballpark unless all insurance policies required by this Agreement are in full force and effect.

In the event of default as defined in this Section, City may declare the present value (discounted at the prime rate of Citicorp Bank, N.A.) of the balance of the Game Rental Fee for the term of Agreement immediately due and payable and if not paid within ten (10) days after written notice to Mallards, shall be entitled to immediate payment from the surety of the entire unpaid balance of the rent due as well as other costs incurred by City. In the event of termination of this Agreement for default, Mallards may make no claim for compensation for the capital improvements furnished under Section 8.b. and the Improvement Agreement and City shall retain title and ownership of the said Ballpark, together with all buildings and improvements thereon, without any payment whatsoever to Mallards. No improvements, buildings or fixtures shall be removed from the above-described Ballpark during the term of this Agreement or renewal period of this Agreement without the written consent of City, except any equipment or trade fixtures of Mallards which Mallards lawfully removes prior to the termination of this Agreement.

14. Restoration of Ballpark. Within thirty (30) days of the termination of this Agreement and no later than thirty (30) days prior to the expiration of Mallards' surety, Mallards agrees to remove all of its equipment and property and to vacate Ballpark. Items to be removed include all items in Attachment B to this Agreement. Mallards agrees to maintain and restore any capital improvements made in conjunction with Section 8.b. and the Improvement Agreement and to restore Ballpark to its condition prior to the commencement of Agreement, excepting normal wear and tear and any improvements made thereto. Mallards acknowledges City shall be the sole judge of whether Ballpark, including capital improvements, has been completely vacated and satisfactorily restored. At its option, City may complete any removal of property and restoration of property it deems necessary and bill Mallards for actual costs, or it may call upon the surety provided or it may exercise any other lawful option.
15. Impossibility of Performance. Neither City nor Mallards shall be obligated to or liable for the performance of any term or condition of this Agreement on its part to be performed if such performance is prevented by fire, earthquake, flood, act of God, riots or civil commotions, or by reason of any other matter or condition beyond the control of either party.
16. Damage and Destruction at the Facility. In the case of the destruction or any Substantial Damage of the Ballpark resulting from fire or other casualty, either City or Mallards may terminate this Agreement upon written notice to the other, if the facility cannot be repaired or rebuilt by City within thirty (30) days if casualty occurs between March 1st and August 15th,

or prior to the commencement of the next Mallards baseball season if casualty occurs during the period from August 16th to March 1st. City retains the sole authority to determine if the Ballpark is to be repaired or rebuilt.

17. Binding on Parties; Amendments. Agreement shall be binding on the parties hereto, their respective heirs, devisees and successors and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto unless the same be in writing signed by the duly authorized agent or agents who executed Agreement, except that for terms only affecting City and Mallards, or where specifically set forth in this Agreement, only those Parties need enter into a written amendment of the terms of this Agreement for it to be effective.

18. Notices. All notices required to be given under the terms of this Agreement shall be personally delivered or sent, postage prepaid, by depositing the same in United States mail addressed as follows:

City: Superintendent of Parks
 City of Madison Parks Division
 210 Martin Luther King, Jr. Blvd., Room 104
 PO Box 2987
 Madison, WI 53701

League: Dick Radatz, Jr., President
 Northwoods League
 2900 4th Street SW
 Rochester, MN 55902

Mallards: Steve Schmitt
 2920 N. Sherman Avenue
 Madison, WI 53704

19. Agreement Governed by Laws of Wisconsin. This Agreement shall be deemed executed in the City of Madison and in the State of Wisconsin and governed by the laws of the State of Wisconsin.

20. Title to be Retained by City. City shall retain title and ownership of Ballpark together with all buildings, fixtures and improvements thereon without any payment whatsoever to Mallards.

21. Non-Discrimination. In the performance of the services under this Agreement, Mallards agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. Mallards further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, or national origin.

22. Nondiscrimination Based on Disability. Mallards shall comply with Section 39.05, Madison General Ordinances, "Nondiscrimination Based on Disability in City-Assisted Programs and

Activities.” Under Section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance. Under Section 39.05(3)(b)4, “City financial assistance” includes any arrangement by which the City provides or otherwise makes available assistance in the form of the lease of, and the permission to use, City property.

Mallards assures that, in providing any service at the Premises, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

- a. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- b. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
- c. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
- d. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
- e. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient’s program;
- f. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
- g. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

Mallards shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).

23. Compliance with the Law. Mallards agrees to comply with all laws and ordinances of the United States, the State of Wisconsin and City of Madison.
24. League’s Obligations. The League is a party to this Agreement and agrees that it is bound by all obligations and duties of the Mallards herein.

- 25. Entire Agreement. The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the parties.
- 26. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Mallards shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Mallards therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
- 27. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this contract remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Improvement Agreement to be duly executed as of the date first above written.

CITY OF MADISON, WISCONSIN
A municipal corporation

By: _____
David J. Cieslewicz, Mayor
Date: _____

By: _____
Maribeth Witzel-Behl, City Clerk
Date: _____

APPROVED:

Dean Brassler, City Comptroller
Date: _____

Eric Veum, City Risk Manager
Date: _____

APPROVED AS TO FORM:

Michael P. May, City Attorney
Date: _____

MADISON MALLARDS, LLC
By:

[Title]

Date: _____

[Title]

Date: _____

NORTHWOODS LEAGUE, INC.
By:

Dick Radatz, Jr., President

Date: _____

Secretary

Date: _____

ATTACHMENT A

Description of the Ballpark Contained within Warner Park, Madison, Wisconsin:

Part of the Northeast $\frac{1}{4}$ of Section 36, Town 8 North, Range 9 East, City of Madison, Dane County, Wisconsin, more fully described as follows:[We need this description and map]

(See attached diagram – Attachment A, page A-2)

ATTACHMENT B

LIST OF EQUIPMENT AND PROPERTY TO BE REMOVED OR RESTORED.

Mallards agrees to remove, restore, or provide proof of the transfer to Northwoods League the following items:

1. Removal of arched Madison Mallards sign above the fenced entrance to complex; Post caps to be replaced on the fencing.
2. Removal of all food service related materials and equipment from all concession areas: coolers, tubs, racks, cart, tables, chairs, etc.
3. Removal of washers and dryer from locker room.
4. Removal of all materials and equipment from medicine/training room area.
5. Removal of home plate batting cage.
6. Removal of all Green Valley storage containers.
7. Removal of advertising on fencing around the park.
8. Removal of advertising on the scoreboard.
9. Removal of all railroad ties and tires (under bleachers and around concrete slab).
10. Removal of all temporary framework behind fencing.
11. Removal of cable TV antenna and FM radio antennas.
12. Removal of two (2) pitching screens and three (3) infield screens.
13. Removal of tarp and tube.