

**102008 Draft
USE AGREEMENT
BETWEEN
CITY OF MADISON
AND
NORTHWOODS LEAGUE
AND
MADISON MALLARDS LLC
2010-2019**

This Use Agreement (Agreement), made and entered into this ___ day of ____, 2009, by and between the City of Madison, a Wisconsin municipal corporation, hereinafter referred to as "City"; and the Madison Mallards LLC, a Wisconsin limited liability company ("Mallards"), and [Unnamed Foreign Corporation], a for profit corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as "League."

WHEREAS, Mallards desires to continue operating a summer collegiate baseball team in Madison, Wisconsin, and for that purpose desires to enter into a Use Agreement for nonexclusive use of the City's Warner Park Stadium, hereinafter referred to as "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 Mallards is authorized to use the Ballpark; and

WHEREAS, concurrently with the execution of this Use Agreement, the City, the Mallards and the League are executing and delivering the Agreement to Undertake Improvements to Warner Park Stadium, dated the date hereof; and

WHEREAS, the Agreement to Undertake Improvements to Warner Park Stadium sets forth the rights and obligations of the Parties with respect to the funding of the improvements to the stadium project; and

WHEREAS, because of the improvements to the stadium project, the parties wish to enter into a new Use Agreement superseding the existing Agreement,

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 played between June 1st and August 15th.
- 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.**

- a. This Agreement, unless earlier terminated as provided for herein, shall be effective for the period of time that includes the next ten Northwoods League seasons, commencing January 1, 2010, and terminating December 31, 2019. In the event Substantial Completion of the improvements to the Ballpark are not completed by April 30, 2010, the obligations herein shall be prorated accordingly. For the purposes of this Agreement, Substantial Completion means the time at which the City issues a Certificate of Occupancy for the Ballpark.
- b. Upon execution of this Agreement, the existing Use Agreement is terminated.

3. **Renewal.** This Agreement may be renewed for two five (5)-year term 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 City a minimum of one year prior to the expiration of the initial term or any renewal term, 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 five (5) years.

- 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 and changes in the terms and conditions of a renewal of this Agreement at least six (6) 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 Section 8(a) of this Agreement shall be modified to be seventy-five thousand dollars (\$75,000) for the first five (5) year renewal period and one hundred thousand dollars (\$100,000) for the second five (5) year renewal period.

4. **Ballpark Use.** Mallards shall have nonexclusive use of Ballpark for the operation of a summer collegiate 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 of Mallards Use of Ballpark.

- a. By January 15 of each year, the Mallards shall submit to the City a schedule of dates for up to 34 league games and up to four playoff games and one all star game.
- b. From January 16 – March 1 of each year, other amateur baseball teams may submit their scheduling requests to the City.
- c. 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.
- d. 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.
- e. Scheduling of all additional events shall be subject to approval by the Park Commission, 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 Park Commission, 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 Park Commission if there are special condition issues, e.g., amplification or music. The Mallards understands 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 is 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. In addition:
 - (1). Mallards may use 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) Mallards may negotiate dates, additional to official games and workouts, for youth baseball clinics for a negotiated fee and with prior written approval of City.
 - (3) 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.
 - (4) Mallards has option of scheduling a home game during the weekend of the City's July 4th celebration. Mallards game for this event shall end by the start of the fireworks or Mallards agrees to suspend game (and turn off field

- lights) and not resume play until a minimum of fifteen (15) minutes after the conclusion of the fireworks.
- (5) 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.
 - (6) 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.
 - (7) 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. Park Commission 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 a Parks fireworks fee of two hundred dollars (\$200) in addition to any other applicable City permit fees related to fireworks displays. City insurance requirements for firework displays shall also apply.
 - (8) 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.
 - (9) Any concert at Ballpark must receive Park Commission approval, and Mallards shall not request more than three (3) concerts in a calendar year.
 - (10) Mallards shall prepare a security plan for all uses of Ballpark.
 - (11) Mallards requests to use Ballpark for any purposes other than the Regular Season remains subject to any other City approvals necessary for such use.

6. Mallards Responsibilities.

- a. Mallards shall provide all staff including but not limited to players, coaches, managers, ushers, ticket sellers, scorekeepers, public address announcers, concession staff, security staff 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 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 Ballpark used for Mallards activities.
- d. Mallards shall deposit all trash in dumpsters provided by Mallards. 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.
 - e. Mallards shall supply equipment related to field use including batting cage and 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.
 - f. Mallards shall not exceed the patron capacity established by City for the Ballpark. Patron capacity for ball games and similar sporting events is seventy five hundred (7,500). Patron capacity for concert events is fifteen thousand (15,000).
 - g. 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.
 - h. 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 under age 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 lease, but the matter may be resolved in the alcohol licensing process.
 - i. Mallards shall submit an annual neighborhood impact plan to the Park Commission, by March 1 of each year, addressing how the Mallards will address its impacts on the neighborhood surrounding the Stadium, including pedestrian safety, fireworks, noise, litter and other neighborhood impacts.
 - j. Mallards shall submit an annual Fan Access plan to the Park Commission, by March 1 of each year, that will provide sufficient parking and address access by bus, bicycle and pedestrians for the customers of the Mallards. Mallards shall provide City with a copy of their Use Agreement for parking at North Town Center, or any other off site parking venue. Mallards will provide for a minimum of 350 parking stalls outside of Warner Park. If the Mallards fail to provide 350 off site spaces, the Park Commission may reduce the maximum capacity of the Stadium for Mallards games or events by up to 1350 persons. The Park Commission will consider the impact of the parking on other users of Warner Park and the impact of parking on 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 Park Commission.

7. City Responsibilities.

- a. City shall supply all bases for field use.
- b. City agrees not to schedule a competing baseball league for use of the Ballpark, so long as Mallards continue to use the Ballpark.
- c. City agrees to prepare and mark the field for all Mallards games, to be completed no later than two (2) hours prior to game time.
- d. City agrees to provide player and coach parking, not to exceed 25 spaces at Warner Park during regular season when 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.

- e. City agrees to provide all maintenance listed under Section 8.a.

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:

2010: \$50,000	2015: \$57,963
2011: \$51,500	2016: \$59,702
2012: \$53,045	2017: \$61,493
2013: \$54,636	2018: \$63,338
2014: \$56,275	2019: \$65,238

This fee reflects the Mallards' use of the facility annually for up to 34 league 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. Included in the game rental fee will be the City costs of:

1. Mowing;
 2. Irrigation;
 3. Dragging and lining the field once per date;
 4. Fertilization;
 5. Maintenance and repair of stadium lighting;
 6. All utilities except water and electricity for office, Ballpark lighting, concessions and telephone and related service fees, which Mallards shall pay;
- b. Extra Fees. Upon request by Mallards and at actual cost, City agrees to provide:
 1. Field grooming between innings or after batting practice;
 2. Drying agents for infield to get a scheduled game completed;
 - c. 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.

- d. Capital Improvement .

Should Mallards desire to make any other capital improvements to Ballpark, Mallards must submit plans to City for review by October 15 of each year for projects occurring the following year so City can schedule staff time for project review and

support. City retains the right to approve or not approve any plans that are submitted based on City's needs. Should Mallards fail to submit plans in a timely manner, City may charge Mallards for any staff time needed to review or support the proposed project.

Mallards agrees that consistent with Section 20, City shall retain ownership of any capital improvement to the Ballpark funded in whole or in part by any source.

e. **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.

f. **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 in an "as is" condition.

11. Home Games. The Mallards covenants that it 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. Mallards shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, 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 Mallard's and/or Subcontractor's acts or omissions in the use of the Ballpark, except to the extent of any insurance proceeds received from Mallards' insurer(s) by City on account of any such item. Such indemnification shall not apply to acts of willful misconduct of City.
- 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 Contract (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 Contract (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 Contract (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.

Further, 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.

Further, 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.d. 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. Mallards agrees to maintain and restore any capital improvements made in conjunction with Section 8.e. and to restore Ballpark to its condition prior to the commencement of Agreement, excepting normal wear and tear. 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 Mach 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. 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.

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:

To City: Superintendent of Parks
City of Madison
Madison Municipal Building, Room 120
Madison, WI 53710

To 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.

Mallards hereby makes the following assurances: Mallards assures and certifies that it will comply with section 39.05 of the Madison General Ordinances, "Nondiscrimination Based on Disability in City Facilities and City-Assisted Programs and Activities," and agrees to ensure that any subcontractor who performs any part of this agreement complies with sec. 39.05, where applicable. This includes but is not limited to assuring compliance by the Mallards and any subcontractor, with section 39.05(4) of the Madison General Ordinances, "Discriminatory Actions Prohibited."

Mallards may not, in providing any aid, benefit or service, directly or through contractual, licensing or other arrangements, violate the prohibitions in Section 39.05(4), listed below:

Discriminatory Actions Prohibited Mallards assures that, in providing any aid, benefit, or service, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

1. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
2. 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;
3. 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;
4. 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;
5. 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;
6. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
7. 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 contract 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 contract 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.

Signature Page
Use Agreement Between City of Madison
and Northwood League
Term of Agreement: 2010-2019

IN WITNESS WHEREOF the parties hereto have set their hands and seals.

CITY OF MADISON, WISCONSIN
a Wisconsin municipal corporation

David J. Cieslewicz, Mayor

Date: _____

City Clerk

Date: _____

APPROVED:

Dean Brassler, City Comptroller

Date: _____

Eric Veum

Date: _____

APPROVED AS TO FORM:

Michael P. May, City Attorney

Date: _____

NORTHWOODS LEAGUE[Need Correct Name]

Witness Signature

Date: _____

Dick Radatz, Jr., President

Date: _____

MADISON MALLARDS, LLC

Witness Signature

Date: _____

Steve Schmitt, Owner

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) [Is this impacted by proposed construction?]

ATTACHMENT B [this needs to be updated and no reference in body of agreement]

**LIST OF REMAINING 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