

**FIRST AMENDMENT TO THE USE AGREEMENT FOR THE WARNER PARK
STADIUM DURING THE 2011-2020 BASEBALL SEASONS**

Between the City of Madison, Madison Mallards LLC and Northwoods League, Inc.

THIS 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, on November 4, 2010, the City, the Mallards, and the League (the “Parties”) entered into the “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” (the “Agreement”) which Agreement set forth the terms and conditions upon which the Mallards could use the City’s baseball stadium located at Warner Park (the “Ballpark”); and,

WHEREAS, during the term of the Agreement and pursuant to the November 4, 2010 Agreement to Undertake Improvements to Warner Park Stadium (the “Improvement Agreement”), the Mallards have made significant capital improvements to the Ballpark, including, in 2017, adding additional facilities that can be used year round in the “Duck Blind” portion of the Ballpark, located in right field; and,

WHEREAS, the Agreement does not expressly contemplate the use of the Ballpark or new Improvements at the Ballpark year-round; and,

WHEREAS, Mallards now wish to have the opportunity to use the Duck Blind area year-round for public and private events; and,

WHEREAS, under the terms of the Agreement, Mallards were limited to selling only beer and wine coolers at the Ballpark under a Class B beer license; and,

WHEREAS, Mallards now wish to have the opportunity to expand alcohol sales at the Ballpark to include selling wine to the whole Ballpark and liquor to groups in private venues within the Ballpark.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this First Amendment To The Use Agreement For The Warner Park Stadium During The 2011-2020 Baseball Seasons (“First Amendment”) is to set forth the terms and conditions upon which the City will allow Mallards to use the renovated Duck Blind area for public and private uses year-round, to clarify that outdoor concert events are required to have Board of Park Commissioners approval, and to expand its alcohol sales at the Ballpark.

2. Section 4 of the Agreement is amended as follows:

“Ballpark Use. Mallards shall have nonexclusive use of Ballpark for the operation of a baseball team. Mallards shall also have the nonexclusive use of the Duck Blind area in right-field year-round for private or public events. 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 outdoor 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.”

3. Section 5.c.8 of the Agreement is amended to read as follows:

“8) Any outdoor concert at Ballpark must receive Board of Park Commissioners approval, and Mallards shall not request more than three (3) outdoor concerts in a calendar year.”

4. Section 5.c.11 of the Agreement is created to read as follows:

“11) Mallards shall be permitted to use the Duck Blind venue in right field for year-round public or private events. The approval of such events shall be subject to subsection b. above and other applicable requirements under this subsection c.

5. Section 6.h. of the Agreement is amended to read as follows:

“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 outdoor concert events is fifteen thousand (15,000). These capacity amounts may only be amended by approval of the Board of Parks Commissioners.”

6. Section 6.n. of the Agreement is created to read as follows:

“n. Annually, Mallards shall provide one catered event within the Duck Blind area for up to 100 Madison parks volunteers on a non-game day that is mutually agreeable between Mallards and the City. This requirement may be waived by the Superintendent of Parks.”

7. Section 8.c.5 of the Agreement is deleted and replaced as follows:

“5) Mallards may serve fermented malt beverage products (beer and wine coolers) and wine at events taking place at Ballpark. In addition, liquor may be served, sold or given away at Ballpark only within designated venues within the Ballpark. Mallards is responsible for obtaining the necessary liquor licenses from the City

Clerk each year and agrees to comply with all applicable liquor laws. Prior to submitting an application to the City Clerk for a new or expanded liquor license, Mallards shall obtain the Board of Parks Commissioner's approval of the proposal."

8. Section 21 of the Agreement is amended to read as follows:

"21. Non-Discrimination. In the performance of the services under this Agreement the Mallards agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, 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, sexual orientation, gender identity or national origin."

9. Section 28 of the Agreement is created to read as follows:

"28. Counterparts; Electronic Delivery. This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original."

10. Exhibit A to the Agreement was meant to set forth a legal description and map of the Ballpark, but did not do so. Hence, attached to this First Amendment is what should have been Exhibit A to the Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

MADISON MALLARDS, LLC

Steven Schmitt, President

Date

NORTHWOODS LEAGUE, INC.

Dick Radatz, Jr., President

Date

_____, Secretary

Date

CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

Approved as to form:

David P. Schmiedicke, Finance Director

Date

Michael P. May, City Attorney

Date

Eric Veum, Risk Manager

Date

Execution of this First Amendment by the City is authorized by Resolution Enactment No. RES-17-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2017, and the Board of Parks Commissioners approvals granted on _____, 2017.

EXHIBIT A

WARNER PARK – BALLPARK AREA DESCRIPTION

Part of the Northeast Quarter of Section 36, T08N R09E, City of Madison, Dane County, Wisconsin, more particularly described as follows:

Commencing at a brass cap in concrete at the West Quarter-Corner of Section 30, T08N R10E; thence N34°32'W, 1060.5 ft more or less to the southwesterly right-of-way line of Northport Drive and the point of beginning; thence S20°29'W, 61.4 ft; thence S21°09'E, 10.3 ft; thence S20°15'W, 32.2 ft; thence S55°11'W, 11.1 ft; thence S18°58'W, 68.5 ft; thence S10°20'W, 69.4 ft; thence N78°05'W, 20.7 ft; thence S11°13'W, 269.6 ft; thence S21°20'E, 14.5 ft; thence S11°00'W, 96.5 ft; thence N88°30'W, 369.0 ft; thence N29°18'W, 211.3 ft; thence N00°49'E, 430.7 ft; thence N39°26'E, 173.8 ft; thence N59°52'E, 154.6 ft more or less to the southwesterly right-of-way line of Northport Drive; thence S58°44'E along said right-of-way, 445.4 ft to the point of beginning.

Containing 391,000 square feet or 8.98 acres, more or less.

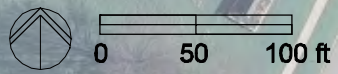
Bearings are referenced to the Dane County Coordinate System, NAD83(1997) Datum.

Description prepared April 28, 2008 by Dan Rodman RLS 2793, City of Madison WI Parks Division.

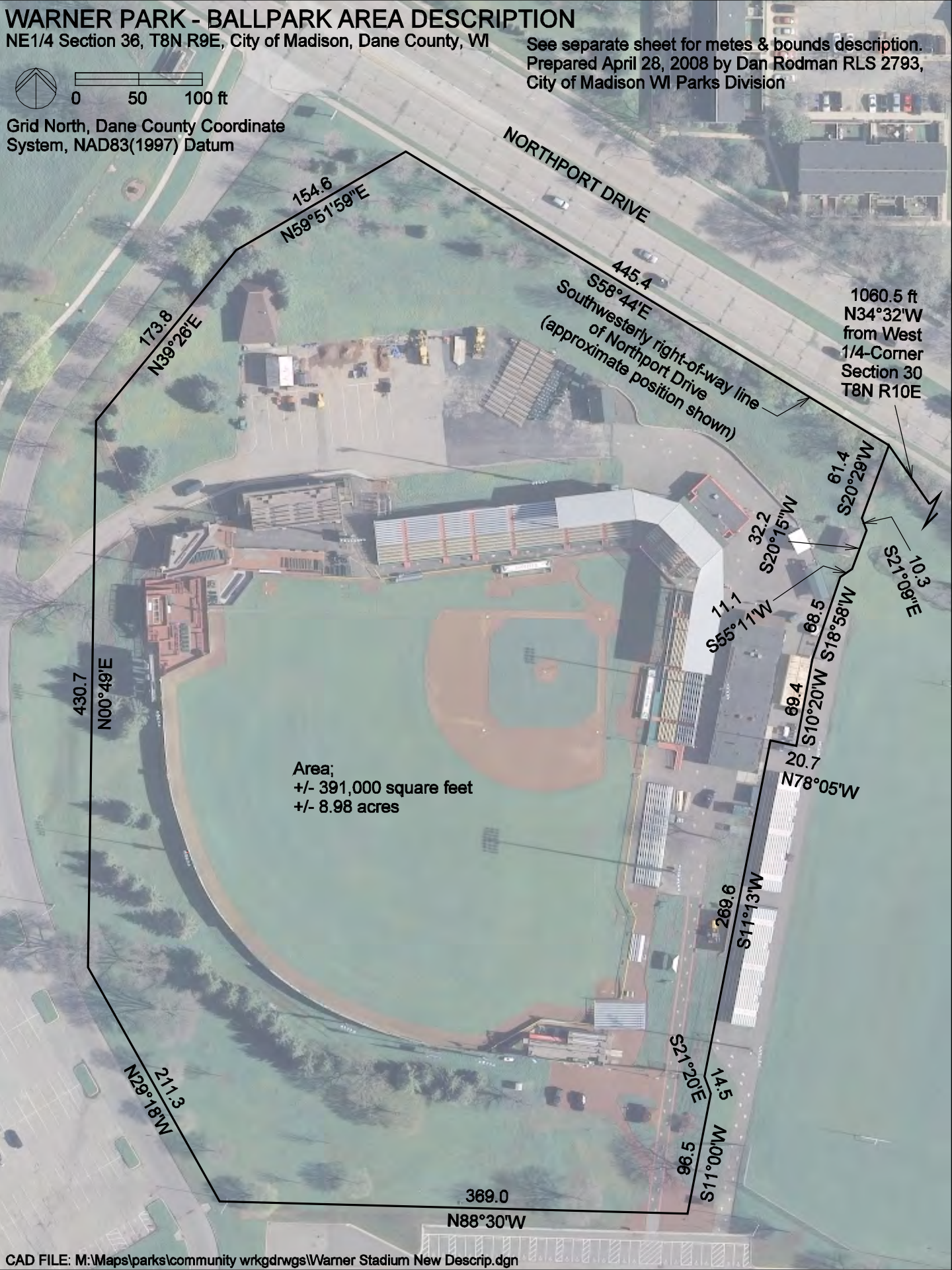
WARNER PARK - BALLPARK AREA DESCRIPTION

NE1/4 Section 36, T8N R9E, City of Madison, Dane County, WI

See separate sheet for metes & bounds description.
Prepared April 28, 2008 by Dan Rodman RLS 2793,
City of Madison WI Parks Division



Grid North, Dane County Coordinate System, NAD83(1997) Datum



Area;
+/- 391,000 square feet
+/- 8.98 acres

NORTHPORT DRIVE

1060.5 ft
N34°32'W
from West
1/4-Corner
Section 30
T8N R10E

- 154.6 N59°51'59"E
- 445.4 S58°44'E
- 173.8 N39°26'E
- 1060.5 ft N34°32'W from West 1/4-Corner Section 30 T8N R10E
- Southwesterly right-of-way line of Northport Drive (approximate position shown)
- 61.4 S20°29'W
- 10.3 S21°09'E
- 32.2 S20°15'W
- 11.1 S55°11'W
- 68.5 S18°58'W
- 69.4 S10°20'W
- 20.7 N78°05'W
- 269.6 S11°13'W
- 14.5 S21°20'E
- 96.5 S11°00'W
- 369.0 N88°30'W
- 211.3 N29°18'W
- 430.7 N00°49'E