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Board of Park Commissioners
City of Madison

Re.: **Second Amendment to the Use Agreement for the Warner Park Stadium—
Furthering Your Mission and Being Good Stewards of Parks Department and City
Assets**

Dear Commissioners:

You are tasked with fulfilling the mission of the Parks Department and being good stewards of the City's assets. The proposed agreement for the use of Warner Park Stadium (the Ballpark) between the City of Madison (the City) and the Madison Mallards, LLC (the Mallards) is unfair to City taxpayers and could better fulfill the mission of the Parks Department by generating more revenue for the operation and maintenance of the City's parks.

Specifically, I ask that you:

1. Reject the proposed Second Amendment to the Use Agreement for the Ballpark.
2. Defer any adjustment of the 2020 rent until the financial wellbeing of the Mallards is determined and what hardship, if any, the current rental obligation for 2020 may impose.
3. Secure the professional help of a consultant who is a subject matter expert with experience in college and/or minor league baseball operations and venue management to determine the value of the proposed agreement and to assist the City in negotiating an agreement with the Mallards or another team that is a win-win for both parties.
4. Solicit competitive offers from other interested baseball teams, venue operators, and/or food and beverage companies that specialize in comparable venues for the use of or management of the Ballpark.

These recommendations are based in part on the following:

- We know the 2020 baseball season was canceled. However, there are no facts or evidence available to establish the financial wellbeing of the Mallards, including the revenues or profits they've realized during the term of the current agreement, what their owner's equity is, or what revenues or profits they expect during the term of the proposed agreement.
- Other business owners and property taxpayers in Madison are obligated to pay their 2020 property taxes even if they have suffered the most severe economic losses, been forced out of business, or lost their jobs as a result of COVID-19.
- It appears that the Parks Commission and Parks Department staff do not have meaningful and relevant knowledge, expertise, or experience to determine the value of this agreement or

in successfully negotiating equitable terms on behalf of a venue owner with college or minor league baseball teams for a user agreement like this.

- The total net rent for the eight-year term of the proposed agreement is approximately \$473,868, or an average of \$59,234 per year.
- In 2019 the Mallards attendance was 218,866, advertised prices for single game tickets to the Mallards in 2020 were \$9 to \$42, and, according to JJ Cooper, executive editor of Baseball America, revenue per capita for minor league baseball teams for tickets, concessions, and merchandise/novelties is generally in the range of \$17 to \$22 per game.
- Based on an annual attendance of 218,866 and per capita revenue of \$16 for tickets, concessions, and merchandise/novelties, the Mallard's annual revenue from the current agreement is about \$3.5 million. This does not include their revenues from luxury seats, club seats, loge boxes, party suites, advertising and sponsorship, naming rights, secondary tenants, other events, or other revenue.
- The rent in the proposed agreement, net of capital improvements, is about \$0.27 per capita or 1.7% of the Mallard's revenues for tickets, concessions, and merchandise/novelties. The gross rent, including the Mallard's contributions to capital improvements, is about \$0.34 per capita and 2.12% of revenues.
- The Mallards are a for profit enterprise.
- The Mallards do not pay property taxes on the Ballpark nor do they make a payment in lieu of taxes (PILOT) to the City for their use of the Ballpark.
- In comparison, the 2018 revenues from the golf course enterprise were \$2.4 million and it made a PILOT to the City of \$198,000, which was 8.25% of revenues.
- Based on a review of professional literature and contracts for other baseball venues:
 - Net rents can be in the range of 10 to 20% of revenues.
 - It is common practice in the baseball industry for users and venue operators to pay rent based on a percentage of revenues and/or per capita based on attendance.
 - Users can pay for a significant percentage or all of the capital improvements plus fair and reasonable rent to the venue owner.
- It appears there may be legal issues with revenue sharing on the sale of alcoholic beverages. If the user agreement includes revenue sharing, it could exclude revenue from alcoholic beverages.
- During discussions of the user agreement for Breese Stevens field, concerns were raised that if rent was based on revenue sharing, neighbors and community members would feel their voices were not heard because of the City's interest in maximizing revenue. In my literature review and in conversations with industry professionals, I have not seen or heard any evidence this has ever been an issue. It appears to be a red herring. If neighbors, community members, and taxpayers were familiar with the details of the proposed agreement and the Mallard's revenues, what would they think about the financial terms?

- Based on previous attendance at Mallards' games and rents that are fair and reasonable using current baseball industry metrics, a user agreement for the Ballpark that is a win-win for the Mallards and the City could generate an additional \$373,000 per year, perhaps more (see attached proforma).

In summary and for all of the above reasons, the proposed agreement appears to be a sweetheart deal for the Mallards, it is grossly unfair to City taxpayers, and could better serve the mission of the Parks Department.

If you have any questions or I can be of any further assistance, please let me know.

Sincerely,



Alex Saloutos

Attach: Warner Park User Agreement Proforma
Second Amendment to the Use Agreement for the Warner Park Stadium, Final, August
24, 2020

cc: Satya Rhodes-Conway, Mayor, City of Madison
Alders, Common Council, City of Madison
Eric Knepp, Superintendent, Parks Division, City of Madison
Vern Stenman, President, Big Top Baseball
Paul Fanlund, The Cap Times
Chris Murphy, The Cap Times
Katie Dean, The Cap Times
Jason Joyce, The Cap Times
Katelyn Ferral, The Cap Times
Phil Brinkman, Wisconsin State Journal
Dean Mosiman, Wisconsin State Journal
John Smalley, Wisconsin State Journal
Christopher White, Wisconsin State Journal
Jeff Haupt, Isthmus
Craig Bartlett, Isthmus
Judith Davidoff, Isthmus

**WARNER PARK
USER AGREEMENT PROFORMA**

Operating Revenues

Gate Receipts	\$1,641,495
Concessions and Catering	\$1,641,495
Merchandise/Novelties	\$ 218,866
Parking	
Luxury Suites	
Club Seats	
Loge Boxes	
Party Suites	
Advertising and Sponsorship	
Naming Rights	
Secondary Tenant(s)	
Other Events	
Other Revenue	
Total Operating Revenues	\$3,501,856

Assumptions

Attendance (per 2019)	218,866
Games (per 2019)	36
Average Ticket Price (2020 single game prices \$9 to \$42)	\$ 7.50
Concession Per Cap	\$ 7.50
Merchandise and Novelties Per Cap	\$ 1.00
Total Per Cap*	\$ 16.00

*MiLB per cap total of \$17 to \$22 per JJ Cooper, Executive Editor, Baseball America

WARNER PARK USER AGREEMENT PROFORMA

Rent Proforma A

Per Ticket Rent/Revenue Share	\$ 0.50
Concessions Revenue Share	10%
Base Rent	\$ 50,000
Admissions Rent	\$ 109,433
Concessions Rent	<u>\$ 164,150</u>
Total Rent	\$ 323,583
Rent as a Percent of Operating Revenues	9.2%

Rent Proforma B

Per Ticket Rent/Revenue Share	\$1.00
Concessions Revenue Share	10%
Base Rent	\$ 50,000
Admissions Rent	\$ 218,866
Concessions Rent	<u>\$ 164,150</u>
Total Rent	\$ 433,016
Rent as a Percent of Operating Revenues	12.4%

Rent Proforma C

Per Ticket Rent/Revenue Share	10%
Concessions Revenue Share	17.5%
Base Rent	\$ 50,000
Admissions Rent	\$ 164,150
Concessions Rent	<u>\$ 287,262</u>
Total Rent	\$ 501,411
Rent as a Percent of Operating Revenues	14.3%

Total Proposed Rent 2021-2028 (Net of Capital Contributions)	\$ 473,867
Total Rent Proforma B Term 2021-2028	\$3,464,124
Incremental Rent	\$2,990,257

**WARNER PARK
USER AGREEMENT PROFORMA**

Proposed Rent Schedule	Games	Attendance	Rent
2020			\$ 1
2021 (\$1 per capita over 125,000)	36	218,866	93,866
2022	36	218,866	\$ 65,000
2023	36	218,866	\$ 65,000
2024	36	218,866	\$ 70,000
2025	36	218,866	\$ 70,000
2026	36	218,866	\$ 75,000
2027	36	218,866	\$ 75,000
2028	36	218,866	\$ 80,000
Totals for 2021 to 2028	288	1,750,928	\$ 593,867
Average Gross Rent Per Year			\$ 74,233
Rent Credit for Capital Improvements by Mallards			\$ 120,000
Total Net Rent for 2021 to 2028			\$ 473,867
Average Net Rent Per Game			\$ 1,645
Average Net Rent Per Year			\$ 59,233
Average Net Rent Per Capita			\$ 0.27
Average Net Rent as a Percent of Revenue			1.7%

**SECOND AMENDMENT TO THE USE AGREEMENT FOR
THE WARNER PARK STADIUM**

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 Northwoods 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, the Agreement has an initial term of 10-years that expires on December 31, 2020, with three one-year renewals (for 2021, 2022 and 2023) available upon the Mallards’ request; and,

WHEREAS, pursuant to the November 4, 2010 “Agreement to Undertake Improvements to Warner Park Stadium Between the City of Madison and Madison Mallards LLC” (the “Improvement Agreement”), the Mallards and the City have made significant capital improvements to the Ballpark which improvements have benefited the facility and the City, and which Agreement expires upon the earlier of a written agreement of the City and the Mallards or June 20, 2021; and,

WHEREAS, on November 7, 2017, the Parties entered into the First Amendment to the Agreement (the “First Amendment”), under which, among other things, the City allowed the Mallards to use the renovated Duck Blind area of the Ballpark for public and private uses year-round; and,

WHEREAS, under the Agreement, the Improvement Agreement, and the First Amendment, the Ballpark has been greatly improved and its use by the Mallards and the League for summer baseball and other events has provided a family-friendly and community oriented entertainment option that has been very successful, drawing over 6,000 fans to Warner Park and the Ballpark for each game, and over 200,000 fans each year of the Agreement, allowing the Mallards to lead the League in annual attendance every year; and,

WHEREAS, the Mallards have invested more than \$5 million in improvements and maintenance of the Ballpark since 2010 and all capital improvements to the Ballpark are owned by the City of Madison and increase the value of the City’s asset; and,

WHEREAS, the COVID pandemic has created unprecedented challenges for the utilization of the Ballpark, which significantly impacts the ability of the Mallards to meet the financial obligations under the existing agreement; and,

WHEREAS, the 2020 Mallards season has been cancelled due to restrictions on mass gatherings issued by Public Health of Madison and Dane County; and,

WHEREAS, the City desires to continue the relationship at the Ballpark to promote the public benefits of having a proven and successful operator manage the facility; and,

WHEREAS, given the success of the Agreement, and the desire of the Parties to provide additional long-term security to the current Ballpark operations, the Parties wish to extend the term of the current Agreement by allowing for an additional five option years and also to allow for a procedure to make future park improvements following the expiration of the Improvement Agreement.

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 Second Amendment To The Use Agreement For The Warner Park Stadium During The 2011-2020 Baseball Seasons (“Second Amendment”) is to set forth the terms and conditions upon which the Mallards may exercise an additional five-year renewal periods, effectively extending the term of the Agreement, as amended, through 2028. This Second Amendment also addresses the impacts of the COVID-19 pandemic on Ballpark operations. Additionally, this Second Amendment will replace the Improvement Agreement as it relates to future Ballpark improvements.
2. Improvement Agreement. Mallards and the City agree that the Parties have satisfied all terms and conditions of the separate 2010 Improvement Agreement and that the Improvement Agreement is terminated upon the effective date of this Agreement.
3. Section 3 of the Agreement is amended as follows:
 - “3. Renewal. This Agreement may be renewed for ~~three~~ eight 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~~ three months 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~~ \$1, with a \$1 per ticket payment to the City for all tickets sold in calendar year 2021 in excess of 125,000 tickets for games at the Ballpark.
2022: ~~\$69,211~~ \$65,000
2023: ~~\$71,288~~ \$65,000
2024: \$70,000
2025: \$70,000
2026: \$75,000
2027: \$75,000
2028: \$80,000”

4. Section 6.k of the Agreement is amended to read as follows:

“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. The Mallards shall notify all stakeholders identified by the Parks Superintendent of this submission to the Board of Park Commissioners.”

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

“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 agreements. venue. Mallards will provide for a minimum of 200 parking stalls outside of Warner Park. If the Mallards fail to do not provide 200 off site spaces parking stalls outside of Warner Park,~~ the Board of Park Commissioners may reduce the maximum capacity of the Stadium ~~for Mallards games or events~~ by up to ~~1350-945~~ 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.~~”

6. In Section 8.a. of the Agreement, the 2020 Game Rental Fee for Mallards’ use of the Ballpark in 2020 is amended from \$65,238 to \$1.

7. Subsection 8.b. of the Agreement is deleted and replaced as follows:

“b. Capital Improvements.

1) Definition. Capital Improvements are permanent improvements made to the Ballpark facilities, and includes fixtures and other movable equipment

intended to have permanence at the Ballpark and valued at more than \$10,000.

- 2) Capital Improvement Approval Procedure. Any Capital Improvements desired by Mallards during the course of this Agreement that include City funding or that will be made by the City shall be submitted to the Parks Superintendent in writing prior to April 1 of each year for potential inclusion in the Capital Budget. Any Capital Improvements made and funded exclusively by Mallards are subject to approval by the Board of Park Commissioners. All improvements completed at the Ballpark must be approved by the City prior to work commencing. Capital Improvements to the Ballpark made without the City's approval shall be removed and the Ballpark restored to the condition it was in prior to the improvement being made.
- 3) Construction and Acceptance of Capital Improvements. Following approval of a Capital Improvement as noted above, improvements may be constructed, with such work being subject to all City codes, permits and regulations. If the work is done by Mallards, following completion Mallards shall inform the City and the City shall inspect the Capital Improvements. If the work is satisfactory, the City shall inform Mallards of the same, after which Mallards shall donate the Capital Improvements to the City as provided for under Wis. Stat Sec. 62.15(1e). The City shall retain ownership of any Capital Improvement to the Ballpark funded in whole or in part by any source, and Mallards is not entitled to any reimbursement from the City in the event of the termination of this Agreement under Section 13, except as specifically provided elsewhere in this Agreement.”
- 4) Capital Improvement Rental Fee Credits. For any improvements to the Ballpark funded exclusively by Mallards that are approved by City, a dollar for dollar credit against Rental Fees will be provided to the Mallards up to \$120,000 of agreed upon value of improvements. No more than \$40,000 worth of credits can be applied in a given year, but unused credits may be utilized in future years.”

8. Section 11 of the Agreement is amended as follows:

- “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 or if the Stadium is not available.”

9. Section 29 of the Agreement is created to read as follows:

- “29. Status of Parties. It is agreed that Mallards is an independent contractor and not an employee or representative of the City, and that any persons who Mallards utilizes

and provides for services under this Agreement are employees or volunteers of Mallards and are not employees or volunteers of the City of Madison. In addition, it is agreed that by granting Mallards the right to use the Ballpark for the purposes set forth herein, that the City is not granting Mallards the right to sell or distribute any City goods or services nor is there a community of interest, as that term is defined at Wis. Stat. Sec. 135.02(1), between the City and Mallards arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135.”

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

MADISON MALLARDS, LLC

Vern Stenman, President

Date

NORTHWOODS LEAGUE, INC.

Gary Hoover, President

Date

CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Eric Veum, Risk Manager

Date

Approved as to form:

Michael Haas, City Attorney

Date

Execution of this Second Amendment by the City is authorized by Resolution Enactment No. RES-20-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2020, and the Board of Parks Commissioners approval granted on _____, 2020.