

Public Park Management Contract
City of Waukesha – Big Top Waukesha Stadium Manager, LLC

This Public Park Management Contract ("Contract") is made effective on December ____, 2017 ("Effective Date") by and between the City of Waukesha, Wisconsin, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188-3646 (the "City"); Northwoods League, Inc. (the "League"), a Florida corporation with its principal office located at 2900 4th Street SW, Rochester, Minnesota 55902; Big Top Waukesha Stadium Manager, LLC, a Wisconsin limited liability company with its principal address at 2920 North Sherman Avenue, Madison, Wisconsin 53704 (the "Manager"), Steven W. Schmitt ("Mr. Schmitt"), an individual with his address for notices at 2920 North Sherman Avenue, Madison, Wisconsin 53704; Conor Caloia ("Mr. Caloia"), an individual with his address for notices at 2920 North Sherman Avenue, Madison, Wisconsin 53704; Joel V. Stenman a/k/a Vern Stenman ("Mr. Stenman"), an individual with his address for notices at 2920 North Sherman Avenue, Madison, Wisconsin 53704; and James Kacmarcik ("Mr. Kacmarcik"), an individual with his address for notices at 1000 Badger Circle, Grafton, WI 53204. Mr. Schmitt, Mr. Caloia, Mr. Stenman, and Mr. Kacmarcik are each a "Guarantor" and are collectively, the "Guarantors." The City, League and Manager and each Guarantor are a "Party"; together, they are the "Parties."

Manager desires to manage the City-owned athletic field, stadium and appurtenant parking in Frame Park that is depicted and described in the attached and incorporated Exhibit A (collectively, the "Facility"). The Parties intend that the Manager shall have the right to, among other things, book, promote and produce sporting, cultural, concerts and other events at the Facility, in accordance with this Contract.

The Parties further intend that the Manager shall have the right to enter into certain sub-contracts. Specifically, the Parties intend that the Manager enter into (i) a sub-contract in the form attached to this Contract as Exhibit B ("Baseball Sub-Contract") with an amateur, summer, collegiate baseball team ("Baseball Team") affiliated with the League for use of the Facility and which shall be a material condition of this Contract; and (ii) a sub-contract in form to be negotiated and approved by the City ("Soccer Sub-Contract") with a soccer team ("Soccer Team") for use of the Facility. Together, the Baseball Team and Soccer Team are the "Teams."

The City believes it is in the public interest to afford the citizens of the City an opportunity to attend games of its own baseball and soccer teams. The City further believes it in the public interest that existing Facility users Carroll University, Waukesha North High School, and Waukesha South High School (collectively, the "Existing Users") continue to enjoy certain rights to use the Facility after the Effective Date.

The Guarantors, as members of the Manager, are willing to guaranty certain of Manager's obligations in this Contract.

The Parties wish to formalize the terms and conditions under which Manager is authorized to use the Facility and to specify which of Manager's obligations the Guarantors will guaranty to the City.

Therefore, in consideration of their mutual promises and covenants stated herein, the receipt and sufficiency of which is accepted, the Parties agree and contract as follows:

1. **Real Property Subject to this Contract.** This Contract does not give Manager rights to use any other areas in Frame Park beyond the boundaries shown in Exhibit A. The Facility shall also include all subsequent fixtures added and improvements made to the Facility by the Parties pursuant to this Contract, including, without limitation, the Facility Improvements (defined below).

2. **Use of the Facility.** Subject to the terms and conditions of this Contract, including, without limitation, the rights of the Existing Users described below, the City hereby grants the exclusive use of the Facility to Manager, including the exclusive right to book, book, promote and produce sporting, cultural, concerts and other events at the Facility and enter into the Baseball Sub-Contract (as set forth in **Exhibit B**) as a material condition of this Contract and, subject to the City's approval of its form, the Soccer Sub-Contract. Except for the Permitted Events (defined below), Manager may not use the Facility for any activities without the advance, written permission of the City. The following "**Permitted Events**" do not require any prior consent (except for applicable permits) from the City:

2.1 **Events.** Subject to the terms of this Contract, Manager may conduct up to 85 Ticketed Events per calendar year. "**Ticketed Events**" means events, Baseball Team games (and no other summer collegiate or professional baseball games), Soccer Team games, concerts, community festivals, markets, and other athletic events, for which Manager charges an admission fee. Manager may schedule more than 85 Ticketed Events in a calendar year, but only (i) with the City's written consent, and (ii) subject to an additional fee of \$2,000.00 per event paid by Manager to the City for each such additional event ("**Additional Event Fee**").

2.2 **Practices.** Manager may conduct practice sessions for the Teams, on dates and at times determined by Manager, subject to the scheduling priority of the Existing User Events.

2.3 **Events Must Serve the Public Interest.** All Ticketed Events and other events for which Manager contracts with parties (except the Existing Users or the City) for use of the Facility ("**Manager Events**") shall be of a nature that is intended to interest the general public and be consistent with the mission of the City's Department of Parks, Recreation and Forestry. Baseball Team games, Soccer Team games, Existing User Events, City Events, the National Night Out Program, and Fiesta Waukesha are deemed to be in the interest of the general public and consistent with the mission of the City's Department of Parks, Recreation and Forestry.

2.4 **Compliance with Park Rules.** All Ticketed Events and uses by parties other than Manager or the Existing Users shall be subject to all rules and regulations of the Parks, Recreation and Forestry Board, a copy of which is attached as **Exhibit C**, except as specifically provided in this Contract, and the Parks, Recreation and Forestry Board shall not unreasonably withhold, delay or condition its approval for any uses.

2.5 **Schedule Coordination.** Manager shall contact the Existing Users as soon as possible after the Teams' schedule is set for each consecutive baseball season, and shall request that the Existing Users submit their proposed game or use dates within a reasonable time, but no sooner than fifteen (15) days after their respective schedules are announced for the season. The City shall notify Manager of the date of the National Night Out program by October 1 of the year prior. After completion of a schedule for all users for the season, Manager shall submit the proposed schedule to the Director of the Parks, Recreation and Forestry Department for approval, which shall not be unreasonably conditioned, delayed or withheld. Manager shall cooperate with other users in setting a practice schedule, and shall work in good faith to accommodate the Existing Users' practice schedules to the extent reasonably possible. If Manager and other users are unable to resolve practice scheduling disputes, the Director of the City's Parks, Recreation and Forestry Department shall act as arbitrator and his/her determination shall be final. Manager and the Director of the City's Parks, Recreation and Forestry Department shall meet at least annually to review the scheduling process, and to modify the scheduling process to resolve conflicts and issues. The City's representative for review and resolution of scheduling conflicts shall be the Director of the Department of Parks, Recreation and Forestry or his or her designee.

2.6 **Scheduling Priorities.** Manager shall cooperate in good faith with the Existing Users in scheduling their games, and to make reasonable accommodations to their needs. If a conflict arises between users, then the following priorities shall be applied to resolve such dispute:

2.6.1 **City's Night Out.** The City shall have first priority to schedule its one-day, annual "**National Night Out Program**" and to require the rescheduling of any conflicting events at the Facility, including, without limitation, Ticketed Events or Existing User Events.

2.6.2 **Team Seasons.** Subject to the priority of the National Night Out Program, Manager shall, for all of the Teams' regular season and any post-season games ("**Team Games**"), have the priority to schedule Team Games over, and to reschedule with reasonable advance notice, any conflicting events of all Existing Users, the City or any other third party.

2.6.3 **Existing User Events.** Subject to the National Night Out Program and Team Games as described above, the Existing Users shall have the priority use of the Stadium for the following events only (collectively, the "**Existing User Events**"):

2.6.3.1 Home, regular season, baseball games of the Carroll University men's baseball team (but not makeup or rescheduled games).

2.6.3.2 Home, regular season, baseball games of the Waukesha North High School boys' varsity baseball team (but not makeup or rescheduled games).

2.6.3.3 Home, regular season baseball games of the Waukesha South High School boys' varsity baseball team (but not makeup or rescheduled games).

2.6.4 **City Events.** Subject to the priority of the National Night Out Program, Team Games and Existing User Events as described above, Manager shall make a good-faith effort to accommodate the City's Department of Parks, Recreation and Forestry's requests for use of the Facility ("**City Events**").

2.6.5 **Fiesta Waukesha.** Subject to the priority of the National Night Out Program, Team Games, Existing User Events, and City Events as described above, Manager shall make a good-faith effort to accommodate La Casa de Esperanza's requests for use of the Facility for its one-day, annual "**Fiesta Waukesha.**"

3. **Parking.** Manager shall have the exclusive use of the parking area shown on the attached **Exhibit A**, and the City shall install signs to indicate Manager's exclusive use.

4. **Term, Renewal.** The "**Term**" of this Contract commences on the Effective Date and expires on December 31, 2037, unless terminated earlier as provided herein. If Manager gives written notice to the City of its intent to extend or renew this Contract no earlier than December 31, 2032 and no later than December 31, 2036, then Manager shall have the exclusive right at any time in the year 2037 to negotiate and enter into a written extension or renewal of this Contract. So long as Manager is not in continuing default of its obligations under this Contract, Manager shall have the undisturbed, quiet use and enjoyment of the Facility.

5. **Facility Improvements.**

5.1 **Design and Construction.** Manager and the City Parks, Recreation and Forestry Board shall cooperate in the design of improvements to the Facility initially described in the attached and incorporated **Exhibit D**

(collectively, the "Facility Improvements"). The plans and specifications of the Facility Improvements approved by the City Plan Commission and City Parks, Recreation and Forestry Board are the "Final Facility Plans." The cost of the design and construction of the Facility Improvements shall be shared by Manager and the City in accordance with this Contract. The Facility Improvements shall be ADA compliant, and in compliance with all federal and state non-discrimination laws. The Facility Improvements shall be deemed fixtures and real property improvements, shall become the sole property of the City, and shall be available for use by all users of the Facility, subject to Manager's Exclusive Use (defined below). The Parties acknowledge that construction of the improvements will be public construction, and all requirements of Wis. Stats. §62.15, §66.0901, and §779.14 shall apply and be followed in contracting for the work. The City shall issue a request for proposals for the construction in accordance with the Facility Improvements Plans and Specifications approved by the City, and award a contract to the lowest responsible bidder. The City shall enter into construction contracts necessary for the construction of the Facility Improvements, and Manager or its designated agents shall be named in such construction contracts as parties (i) with the authority to enter and conduct inspections of the Facility and the progress of the construction of the Facility Improvements during construction, (ii) as parties who shall receive all notices given to the City with a right to attend all construction meetings, and (iii) as parties who must consent to any change order that would have the effect of increasing the cost of the Facility Improvements over Four Million Seven Hundred Thousand Dollars (\$4,700,000.00). Terms of contracts with construction contractors shall be subject to approval by the City Attorney. The City shall have sole authority to obtain all design and construction permits and approvals for the Facility Improvements, the cost of which shall be included in the total cost of Facility Improvements as shared by Manager and the City as described below. All construction shall use high-quality materials, be constructed in a good and workmanlike manner, and comply with all applicable codes.

5.2 Cost of Facility Improvements. Manager shall contribute no less than Five Hundred Thousand Dollars (\$500,000.00) toward the cost of design and construction of the Facility Improvements ("Manager Contribution"). The Manager Contribution may be in the form of direct cash payment from the Manager to City, or as a purchase (and transfer to the City) of any discrete portion of materials or equipment that are part of the Facility Improvements (e.g., stadium seats or turf), or in the form of a contract between Manager and a contractor to perform some discrete portion of the work of designing or constructing the Facility Improvements, which contract shall be subject to the prior, written consent of the City Attorney. Manager and the City shall coordinate the Manager's Contribution so it does not conflict with or delay or is redundant with the City's construction of the Facility Improvements. Manager shall provide the City with evidence of its costs incurred in the Manager's Contribution, which shall be credited towards Manager's Contribution. In no event may Manager include any costs of its own employees, members, officers or of any affiliate. The City shall contribute up to Four Million Two Hundred Thousand Dollars (\$4,200,000.00) to the remaining cost of the Facility Improvements. Except for any costs arising from the City's breach of this Contract or from the City's or its employees' or agents' unreasonable delays or negligence, any cost of construction of the Facility Improvements in excess of Four Million Seven Hundred Thousand Dollars (\$4,700,000.00) shall be the sole responsibility of Manager. Payments by the City shall be made directly to contractors, and only upon presentation of invoices for work completed by contractors, accompanied by executed construction-lien waivers. The City shall, within thirty (30) days after substantial completion of the Facility Improvements, submit to Manager an invoice of Manager's share of the Facility Improvements Costs. Manager shall have thirty (30) days after its receipt of the City invoice to submit evidence of its contributions toward the Manager Contribution and to make payment to the City of all remaining amounts of Manager Contribution.

5.3 Security for Performance and Payment. If the Manager will hire any architect, designer or contractor to perform any part of the design or construction of the Facility Improvements, then Manager shall obtain and deliver to the City, promptly upon the execution of a contract for the construction of the Facility Improvements, payment and performance bonds naming the City as beneficiary, each in the amount of the cost of all such Facility Improvements

in excess of \$4,200,000.00 (but not less than \$500,000.00), conditioned on the faithful performance of Manager's obligations regarding the Facility Improvements and the payment to every person, including every subcontractor, supplier, or service provider, of all claims for payment for labor, services, materials, plans, or specifications performed, furnished, or procured for the purpose of performing any work on the behalf of Manager. No assignment, amendment or change of this Contract will release the sureties on the bonds.

5.4 Construction Liens. The City and Manager shall keep the Facility free and clear of all construction and mechanics liens, and shall be responsible for obtaining unconditional lien waivers and releases from all subcontractors, vendors and suppliers for the all improvements to the Facility pursuant to this Contract. Except for any liens of City's contractors, the Manager shall indemnify and hold the City harmless from any construction liens imposed on the Facility and all actual attorney fees and court costs incurred in removing the liens.

6. Exclusive Use of Certain Improvements. Manager shall have exclusive use of the office space, retail space, and video displays in the Facility ("Manager's Exclusive Areas"). Other parties, including the Existing Users, may use these improvements with Manager's permission. Other users, including the Existing Users, shall have the right to use all areas of the Facility except for the Manager's Exclusive Areas without Manager's permission, subject to the City's approval.

7. Fees. Manager shall pay the following fees to the City:

7.1 Annual Use Fee. Manager shall pay an "Annual Use Fee" of One Hundred Fifty Thousand Dollars (\$150,000.00), payable in two equal installments due on June 1 and September 1 of each calendar year, except that the Annual Use Fee for 2019 shall be payable in one payment, due on September 1, 2019.

7.2 Additional Ticketed Event Fee. Manager shall pay an additional Two Thousand Dollar (\$2000.00) fee for each Ticketed Event in excess of 85 per year ("Additional Ticketed Event Fee").

8. Credit for Cleaning and Utility Expenses. The City shall credit to Manager an amount to reimburse Manager for the expenses incurred by Manager in cleaning and preparing the Facility for Existing User Events and for utility use during events by the Existing Users. The amount shall be determined according to the "Cleaning and Utility Credit Schedule" attached and incorporated as Exhibit E. The Cleaning and Utility Credit Schedule shall be amended from time to time to conform to actual expenses for cleaning and utility usage, by the mutual written agreement of the Parties, which shall not be unreasonably delayed, conditioned or withheld.

9. Frame Park and Riverwalk Improvement Contribution. Manager shall pay to the City an annual contribution during the term of this Contract towards improvements to be made by the City to Frame Park and the Riverwalk, exclusive of the Facility, in the amount of Twenty-Five Thousand Dollars (\$25,000.00) ("Annual Frame Park Contribution"). The Annual Frame Park Contribution shall be in cash, goods or services, valued at cost. Cash payment shall be made in advance of each season, no later than January 30, beginning in 2019. Contributions of goods and services shall only be made upon approval by the City, which shall not be unreasonably withheld.

10. Operating Expenses and Utilities. Manager shall be solely responsible for payment of all expenses incurred in the operation of the Team, and the City shall not contribute to any such expenses ("Team Expenses"). In addition, Manager shall pay the cost of all electric, gas, water and sewer, telephone, data, cable and other utilities used at the Facility by all users at all times during the year ("Facility Utilities").

11. Manager Maintenance of Facility. Manager shall be solely responsible, at its sole expense, for the following:

11.1 Routine Maintenance. Manager shall be solely responsible, at its sole expense, for the Routine Maintenance of the Facility. "Routine Maintenance" means, without limitation, cleaning, painting, garbage and recyclables collection and disposal; playing field and artificial turf maintenance; replacement of consumable items such as light bulbs, including field light bulbs; annual routine maintenance of HVAC equipment, repairs involving an expense of no more than \$5,000 per individual item requiring repair, annual winterization, and cleaning of roofs, gutters, and downspouts. Manager shall be responsible for obtaining all supplies and materials necessary for such maintenance, at its sole expense.

11.2 Maintaining Clean Condition. Manager shall be solely responsible, at its sole expense, for maintaining the Facility in a neat and clean condition, and not allowing the accumulation of garbage, recyclables, debris, dirt, leaves, animal droppings, or other such waste materials. Manager shall maintain all painted surfaces in clean condition, and shall repaint all interior and exterior finishes as necessary. Manager shall keep all lawn and landscaping within the Facility mowed, trimmed, watered and in good condition and appearance. Manager shall leave the Facility in a clean and usable condition for all other users of the Facility, and if Manager fails to do so, the City shall clean the Facility and charge the cleaning expense to Manager.

11.3 Maintaining Safe Condition. Manager shall be solely responsible, at its sole expense, for maintaining the Facility in a condition that is safe for all guests, patrons, invitees and permittees in the Facility, and complying with the requirements of the Wisconsin Safe Place Statute, Wis. Stats. §101.11.

11.4 Preparing Facility for Existing Users. Manager shall be solely responsible, at its sole expense, for preparing the Facility for scheduled events by the Existing Users, and giving access to the Facility to the Existing Users, no later than two (2) hours before any scheduled game by the Existing Users.

12. City Maintenance of Facility. The City shall be responsible for performing, at its sole cost, the following: (i) major repairs to the Facility involving an expense of more than \$5,000 per individual item requiring repair; (ii) replacement of equipment and fixtures (except for minor consumable items as part of Routine Maintenance); (iii) casualty losses to the Facility covered by the City's insurance, (iv) capital expenses related to the Facility; and (v) the repair or replacement of any items that require repair or replacement due to the negligent or intentional act or omission of the City or its employees or agents. Regardless of the foregoing, Manager shall be responsible for repair or replacement of any items that require repair or replacement due to the negligence or intentional acts or omissions of Manager or its employees, owners, officers, directors, affiliates, teams, or agents.

13. Admission Fees. Manager may charge admission fees to enter the Facility for Ticketed Events, and for other events conducted by Manager pursuant to this Contract; provided, however, all grandstand (but not suite) admission fees must be approved by the Director of the City's Department of Parks, Recreation and Forestry, which approval shall not be unreasonably withheld, conditioned or delayed. All admission fees collected shall be the sole property of Manager.

14. Concessions. Manager shall have the exclusive concession for sales of food, beverages, novelties, programs, and other items within the Facility, for all events at the facility and Manager may enforce a "no-carry-in" rule for food and beverages on those days. Subject to all applicable state and local laws, Manager may sell fermented malt beverages and wine within the Facility during Team games. All proceeds from such sales shall be the sole property of Manager.

15. **Soccer Team Name.** The Soccer Sub-Contract shall provide, among other things, that the Soccer Team's owner may name, market and promote the Soccer Team with the first word in its name being a word other than Waukesha.

16. **Marketing and Promotion of Events.** Manager shall market and promote the Manager's events using usual, customary, and generally-accepted best practices for marketing and promoting such events, at its sole expense. The City shall not be responsible for any marketing or promotion, but shall reasonably cooperate with Manager in Manager's marketing and promotion efforts.

17. **Advertising in the Facility.** Manager shall have the exclusive right to sell advertising space for the advertising spaces shown in the attached **Exhibit F** within the Facility, and the City shall have no right to any proceeds. Contracts between Manager and advertisers shall terminate no later than upon the end of the Teams' last season in the facility or December 31, 2037, and shall require that advertising be removed upon termination of the contracts. Manager shall not sell any space for advertising adult-oriented entertainment businesses, or tobacco or smoking products, and all advertising contracts shall be subject to the approval of the Director of the City's Department of Community Development, which shall not unreasonably be withheld, delayed or conditioned. All contracts for advertising shall terminate upon the termination of this Contract, regardless of the reason for termination. Advertising for alcoholic beverages may not be visible at collegiate or high school events scheduled at the facility.

18. **Facility Naming Rights.** Manager shall have the exclusive right to sell stadium naming rights to the entire Facility and naming rights to separate portions of the Facility known as venue naming rights, and the City shall have no right to any proceeds. The stadium naming rights owners and names shall be subject to the City's approval, and the name may not refer to or identify in any way with alcoholic beverages, tobacco or smoking products, adult entertainment, or businesses engaged in those fields. Any name of the entire Facility shall end with the phrase, "...at Frame Park." The name may be placed on signs mounted in, on and around the Facility, which shall be subject to City approval. The term of the naming-rights contract shall expire upon the termination of this Contract, regardless of the reason for termination. The venue naming rights owners and names shall be subject to the City's approval, and the name may not refer to or identify in any way with tobacco or smoking products, adult entertainment or businesses engaged in those fields.

19. **Broadcast Rights.** Manager shall have the exclusive broadcast and rebroadcast rights, whether by radio or television or otherwise, for the Soccer Teams' games played at the Facility, and the City shall have no right to any proceeds.

20. **Cross-Default Remedy for League.** Notwithstanding anything else in this Contract to the contrary, if the Baseball Team is in default under the Baseball Sub-Contract (**Exhibit B**) beyond any applicable cure period as set forth in the Baseball Sub-Contract, Manager shall be deemed to have materially defaulted under this Contract and League shall have the option, exercisable at its sole discretion by written notice to the City, Manager and Guarantors, to remove Manager and to assume all of Manager's rights and obligations under this Contract. It is expressly understood and agreed as between all of the Parties to this Contract that upon the removal of Manager and assumption of this Contract by the League, Guarantors' obligations hereunder shall not be terminated but shall remain in full force and effect for the term of League's assumption of Manager's rights and obligations of this Contract. If League does not exercise its right to remove Manager and assume all of Manager's rights and obligations under this Contract, then City may assume in its sole discretion Manager's rights under this Contract and give written notice to all parties that may owe money to Manager under all sub-contracts and all other agreements for naming rights, advertising, concessions, or broadcast rights, directing them to make such payments to the City, and the Manager, League and Guarantors consent to such terminations, assumption and assignments.

21. **Staffing.** Manager shall provide sufficient trained staff necessary for the efficient operation of all Manager Events, and the City shall have no obligation to provide any staff for Manager Events.

22. **Required Submissions.** Within thirty (30) days after the Effective Date, Manager shall develop and submit to the City the following items and subsequently submit the following every two (2) years prior to May 1:

22.1 A neighborhood impact plan that projects impacts to the surrounding neighborhood from noise, lights, vehicle traffic, and pedestrian traffic; and describes measures to be taken by Manager to mitigate the impacts;

22.2 A parking plan that anticipates the number of vehicles that will be drawn to the neighborhood during events, and describes measures to be taken by Manager to mitigate problems;

22.3 A responsible-alcohol-consumption plan, detailing measures that will be taken by Manager to minimize drunkenness among attendees and the effects of drunken behavior; and

22.4 Requests for any special event approvals required under City ordinances for planned events.

23. **Loss by Casualty and Property Casualty Insurance.**

23.1 **Loss by Casualty.** If the Facility is materially damaged or rendered unusable during a Team's season by fire, wind, flood, or other casualty to the extent that their repair, restoration or rebuilding would take more than thirty (30) days, then City will promptly begin to repair, restore and rebuild the Facility to its former condition. If the casualty loss is due to a cause for which Manager are bound to indemnify the City from losses under this Contract, then the City will begin repair, restoration and reconstruction promptly upon the City's receipt of indemnification funds. Manager's obligation to pay any amount to the City, including, without limitation, the Annual Use Fee, shall abate, pro-rata, and the Term shall be extended, for the period the Facility is not fully usable for Manager's purposes.

23.2 **Casualty Insurance.** The City shall insure the Facility against damage and destruction by fire or other casualty, including extended coverage, to the replacement value of the fixtures, buildings and improvements on the Facility, at its sole expense.

23.3 **Manager Personal Property Insurance.** Manager shall obtain insurance at its own expense to cover any casualty loss for any reason to its personal property placed on or in the Facility. City shall not be liable to Manager for any loss or damage to Manager's personal property kept at the Facility.

24. **Indemnification and Liability Insurance.**

24.1 **Indemnification.** During the Term, including any extension or renewal terms, Manager shall indemnify and hold the City and League, and their respective officials, owners, officers, employees and agents, harmless from all liabilities, damages, fines, suits, claims, demands, actions, costs and expenses of any kind, including those asserted by third parties, and including actual attorney fees and court costs to the extent arising out of any of the following:

24.1.1 Any default in performance of any term, covenant or condition of this Contract by Manager;

24.1.2 Any damage to the Facility to the extent arising out of the Manager's or its employees' or agents' negligence that is not otherwise covered by the City's property insurance;

24.1.3 Any personal injury, including death, resulting at any time on, in or about the Facility to the extent arising out of the Manager's or its employees' or agents' negligence; except such liabilities that arise as a result of negligence or intentional acts of the City, the Existing Users, La Casa de Esperanza's, or any of their invitees or guests, or arising from the City's breach of this Contract;

24.1.4 Any damages arising from Manager's infringement of intellectual property rights of a third party, false advertising, unfair trade practices or competition, defamation, or interference with contract; or

24.1.5 Any judgements, judgement liens, or construction liens, asserted by creditors of Manager.

24.2 **Liability Insurance.** During the term of this Contract, including any renewal terms, Manager shall purchase and maintain comprehensive public liability insurance, including property damage and liquor liability, naming the City and League as additional insureds, against liability for injury to persons or property occurring in, on or about the Facility or arising out of its possession, use or occupancy by Manager, at Manager's sole expense ("**Manager Liability Insurance**"). The Manager Liability Insurance shall have a limit of not less than One Million Dollars (\$1,000,000) per accident or occurrence, Two Million Dollars (\$2,000,000) aggregate, and umbrella coverage to a limit of not less than Five Million Dollars (\$5,000,000). Manager's Liability Insurance shall be occurrence, and not claims-made, policies, and shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Manager shall furnish to City and League copies of the policies along with proof of payment of the premium, endorsements showing City and League as additional insureds, and copies of renewals after the expirations and renewals of the policies. The policies shall provide that they may not be canceled by the insurer without ten (10) days' written notice to the City and Manager.

25. **No Nuisance Activities.** Manager shall not conduct any activity at the Facility which constitutes a public nuisance.

26. **Guaranty of Payment by Guarantors.** The Guarantors jointly and severally guarantee payment to the City of Manager's payment obligations under this Contract. The City shall provide the Guarantors with written notice of any and all proceedings to collect from Manager for such obligations, or any extension or renewal thereof. Unless terminated pursuant to the terms and conditions set forth herein, this is a continuing guaranty and shall continue in force under any and all circumstances as to such obligations, including assumption of this Contract by League, or any renewal or extension thereof.

27. **Default by Manager.** If Manager defaults in the performance of any material term or condition of this Contract, then the City shall give written notice to Manager, League and Guarantors. Manager shall then have five (5) business days after receipt of the notice to cure any default in payment, and fifteen (15) business days after receipt of the notice to cure any other noticed material default. If Manager fails to cure the noticed default within the time period set forth herein, then the Guarantors shall then have an additional five (5) business days thereafter to cure any default in payment, and an additional ten (10) business days thereafter to cure any other material default. If the Guarantors cure the noticed default, then the Manager's rights shall continue without penalty or interruption. If, after the expiration of the default cure periods described herein, Manager or Guarantors have not cured Manager's default, then the League shall have an additional five (5) business days thereafter to cure any default in payment and an additional ten (10) business days thereafter to cure any other material default. If the League cures the noticed default, then the League shall have the option to assume Manager's rights and obligations under this Contract by written notice given to the City within five (5) business days after the League cures the default. If, after the expiration of the default cure periods described herein, Manager, Guarantors and League have not cured Manager's default, then the City may terminate, and then assume, Manager's rights under this Contract and give written notice to all parties that

may owe money to Manager under all sub-contracts and all other agreements for naming rights, advertising, concessions, or broadcast rights, directing them to make such payments to the City, and the Manager, League and Guarantors consent to such terminations, assumption and assignments.

28. **Termination other than Default.** This Contract may be terminated at any time by the mutual, written agreement of the Parties. If Manager is the subject of a voluntary or involuntary petition in bankruptcy, the appointment of a receiver of Manager's assets, or the assignment of Manager's assets for the benefit of creditors, then then the City may terminate, and then assume, Manager's rights under this Contract and give written notice to all parties that may owe money to Manager under all sub-contracts and all other agreements for naming rights, advertising, concessions, or broadcast rights, directing them to make such payments to the City, and Manager and Guarantors consent to such terminations, assumption and assignments.

29. **Teams' Sub-Contracts.** The termination of this Agreement before its expiration or Manager's default of its obligations under this Contract shall not cause the Baseball Sub-Contract or Soccer Sub-Contract to be in default or to be terminated or cancelled so long as the Baseball Team and Soccer Team and their respective guarantors, as applicable, are not then in default of their respective obligations beyond any cure period under the Baseball Sub-Contract and Soccer Sub-Contract.

30. **No Discrimination.** During the performance of this Contract, Manager shall not discriminate against any patron or employee or applicant for employment on the basis of race, religion, disability, sex, sexual orientation, national origin, color, creed, marital status, age or public assistance status. Manager acknowledges that the Facility is subject to the Wisconsin Public Accommodations Law, Wis. Stats. §106.52.

31. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship among the Parties other than independent contractors. The Parties are not agents for one another, have no authority to bind the others to contracts, and have no vicarious liability for the others' acts or omissions.

32. **Governmental Immunities and Notice Requirements Preserved.** Regardless of any provision in this Contract, nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities granted, or notice requirements imposed, by Wis. Stats. §893.80 or any other law.

33. **Permits and Licenses.** Manager shall be responsible, at Manager's sole expense, for obtaining all permits and licenses required for any of its activities allowed by this Contract.

34. **Assignment Prohibited.** This Contract may not be assigned by Manager without the City's written consent which will not be unreasonably withheld, conditioned or delayed.

35. **Notices.** All notices required by this Contract, and all other communications between the Parties, must be in writing and addressed at the addresses given for each Party in the first paragraph of this Contract. Any Party can change its address for notices by notice to all of the other Parties.

36. **Corporate Authorization.** The individuals executing this Contract on behalf of Manager and NWL warrant and represent that they are duly authorized to bind their respective parties to this Contract, and warrant and represent that the execution of this Contract is not prohibited by their respective articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order.

37. **Assistance of Counsel, Voluntary Contract.** The Parties acknowledge that they have either had the assistance of legal counsel in the negotiation, review and execution of this Contract, or have voluntarily waived the

opportunity to do so; that they have read and understood each of this Contract's terms, conditions and provisions, and their effects; and have executed this Contract freely and not under conditions of duress.

38. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.

39. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Parties' costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.

40. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.

41. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.

42. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, then it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

(Signatures on next page)

City of Waukesha

By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk
Date: _____

Big Top Waukesha Stadium Manager, LLC

By: _____
Print Name: _____
Title: _____
Date: _____

Northwoods League, Inc.

By: _____
Print Name: _____
Title: _____
Date: _____

Guarantors

Steven W. Schmitt
Date: _____

Conor Caloia
Date: _____

Vern Stenman
Date: _____

James Kacmarcik
Date: _____

EXHIBIT A

Map and Description of Facility and Parking Areas

DRAFT

Exhibit B

Form of Baseball Sub-Contract

(begins on next page)

DRAFT

EXHIBIT C

Park Rules

DRAFT

EXHIBIT D

Facility Improvements

2500 permanent, fixed seats.

A press box.

Concession stands.

Office space.

Retail Space.

Rest rooms.

Locker rooms.

Fencing.

Spectator improvements, including decks, suites, and food and beverage service areas.

Dugouts.

Scoreboard with a video display.

Artificial turf on the entire playing surface.

Weatherproof storage space for equipment and supplies.

EXHIBIT E

Cleaning and Utility Credit Schedule

Cleaning and preparation of Facility for games by Existing Users, per game:###.##

Utility use, per game:

No field light use:.....###.##

Field light use:.....###.##

DRAFT

EXHIBIT F

Advertising Space Locations

DRAFT