

**Public Facility Design, Construction and Management Contract**  
City of Waukesha – Big Top Waukesha Stadium Manager, LLC

This Public Facility Design, Construction and Management Contract ("Contract") is made effective on the date last written below ("Effective Date") by and between the City of Waukesha, Wisconsin, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188-3646 (the "City"); City of Waukesha Parks, Recreation and Forestry Board (the "Board"), a municipal board of the City, 1900 Aviation Drive, Waukesha, Wisconsin, 53188-2471; Northwoods League, Inc. (the "League"), a Florida corporation with its principal office located at 2900 4<sup>th</sup> 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, the Board, League and Manager and each Guarantor are a "Party"; together, they are the "Parties."

WHEREAS, Manager desires to manage the City-owned public entertainment stadium multi-use facility and appurtenant locker rooms and concession facilities in Mindiola 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.

WHEREAS, 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."

WHEREAS, the City believes it is in the public interest to afford the citizens of the City an opportunity to utilize the Facility for public entertainment and stadium athletics purposes including the opportunity to attend games of its own baseball and soccer teams. The City further believes it in the public interest that Carroll University and the Waukesha School District (including Waukesha North High School and Waukesha South High School) (Carroll University and the Waukesha School District are collectively, the "Other Users") enjoy certain rights to use the Facility for practices and games after the Effective Date.

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

WHEREAS, 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.

NOW, 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 Mindiola Park beyond the boundaries shown in **Exhibit A**, except as set forth herein. 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 Other Users described below, the City hereby grants the exclusive use of the Facility to Manager, including the exclusive right to 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 pursuant to Section 19, below, 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 schedule practice sessions for the Teams, on dates and at times determined by Manager, subject to the scheduling priority of the Other User Events (defined below).

2.3 **Events Must Serve the Public Interest.** All Ticketed Events and other events for which Manager contracts with parties (except the Other 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, and City Events, defined below, 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 Other Users shall be subject to all rules and regulations of the Board, a copy of which is attached as **Exhibit C**, except as specifically provided in this Contract, and the Board shall not unreasonably withhold, delay or condition its approval for any uses.

2.5 **Schedule Coordination.** Manager shall contact the Other Users as soon as possible after the Baseball Team's schedule is set for each consecutive baseball season, and shall request that the Other 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. After completion of a schedule for all users for the season, Manager shall submit the proposed schedule to the Director of the City's Parks, Recreation and Forestry Department, on behalf of the Board and the City, for approval, which shall not be unreasonably conditioned, delayed or withheld. Manager shall cooperate with the Other Users in setting a practice schedule, and shall work in good faith to accommodate the Other Users' practice schedules to the extent reasonably possible. If Manager and the Other Users are unable to resolve practice scheduling disputes, the Director of the City's Parks, Recreation and Forestry Department, on behalf of the Board and the City, shall act as arbitrator and his or 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.

2.6 **Scheduling Priorities.** Manager shall cooperate in good faith with the Other 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 **Team Seasons.** 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 the Other Users, the City or any other third party.

2.6.2 **Other User Events.** Subject to Team Games as described above, the Other Users shall have the priority use of the Stadium for the following events only (collectively, the "**Other User Events**"):

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

2.6.2.2 Home, regular season, baseball games of the Waukesha School District teams (including Waukesha North High School's boys baseball teams and Waukesha South High School's boys baseball team) (but not makeup or rescheduled games).

2.6.2.3 Practices for Carroll University men's baseball team and the Waukesha School District teams (including Waukesha North High School's boys baseball teams and Waukesha South High School's boys baseball team).

2.6.3 **City Events.** Subject to the priority of Team Games and Other 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**").

2.6.4 Subject to the priorities as described above, Manager shall make a good-faith effort to book, schedule, promote and produce Ticketed Events including other sporting, cultural, concerts, and other Manager Events at the Facility.

2.7 **Warranties and Representations of City Concerning the Facility.** The City represents and warrants that it has authority to grant Manager the rights to use the Facility as provided in this Agreement and that the Facility is and shall remain free of liens, encumbrances and restrictions that would prohibit or interfere with Manager's permitted use of the Facility under this Agreement.

3. **Parking.** Manager shall have the non-exclusive right to use the parking areas in Mindiola Park beyond the Facility boundaries shown in **Exhibit A** for Ticketed Events and Manager Events as depicted and described in the attached and incorporated **Exhibit A-1**. For all Ticketed Events, Manager Events, Other User Events, and City Events, Manager shall provide event staff to direct traffic and ensure safety, and shall maintain a policy of liability insurance in accordance with Section 23.2, below. Manager shall have the exclusive use of the parking area shown on the attached **Exhibit A-1** for its staff and the Teams' players, 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, 2033, 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, 2031 and no later than December 31, 2032, then Manager shall have the exclusive right through September 30, 2033 to negotiate and enter into a written extension or renewal of this Contract for an extension term of five (5) years expiring on December 31, 2038 ("First Extension Term"), unless said First Extension Term is terminated earlier as provided herein or any subsequent document. If Manager and City do not enter into a written extension or renewal on or before September 30, 2033, this Contract shall terminate upon expiring December 31, 2033, pursuant to the terms and conditions set forth herein. If Manager and City enter into the First Extension Term and Manager gives written notice to the City of its intent to extend or renew this Contract no earlier than December 31, 2036 and no later than December 31, 2037, then Manager shall have the exclusive right through September 30, 2038 to negotiate and enter into a written extension or renewal of this Contract for an extension term of five (5) years expiring on December 31, 2043 ("Second Extension Term"), unless said Second Extension Term terminated earlier as provided herein or any subsequent document. If Manager and City do not enter into a written extension or renewal on or before September 30, 2038, this Contract shall terminate upon expiring December 31, 2038, pursuant to the terms and conditions set forth herein. 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 (the "Facility Cost") shall be shared by Manager and the City in accordance with this Contract. The Facility 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 Final Facility Plans approved by the City, and award a contract to the lowest responsible bidder. If the lowest responsible bidder bids an amount that would result in a Facility Cost in excess of Twelve\_ Million Dollars (\$12,000,000), then the Parties shall cooperate in revising and resubmitting the bid package until either (i) the lowest responsible bidder bids an amount that would result in a Facility Cost equal to or less than Twelve Million Dollars (\$12,000,000.00), or (ii) the Manager consents in writing to awarding a bid such that the resulting Facility Cost would exceed Twelve Million Dollars (\$12,000,000). All construction controlled by the City shall be substantially completed so that the Baseball Team can lawfully occupy and use the Facility by May 1, 2020 and the public can lawfully attend Baseball Team games by no later than June 1, 2020 ("Substantial Completion"). The contracts the City awards for construction of the Facility Improvements shall provide that if Substantial Completion does not occur by May 10, 2020, the contractor shall pay liquidated damages, in an amount to be agreed upon by the City and the Manager, to Manager for each calendar day or part thereof from May 10, 2020 until Substantial Completion. Manager shall notify the City of vendors and bidders that potentially can supply materials or equipment or perform some portion of the work of designing or constructing the Facility Improvements, and City shall send requests for proposals to those parties as well. The City shall enter into construction contracts for the construction of the Facility, the total amount of which shall constitute the Facility Cost as set forth above. In such construction contracts Manager or its designated agents shall: (i) be given authority to enter and conduct inspections of the Facility and the progress of the construction of the Facility Improvements during construction, (ii) receive all notices given to the City with a right to attend all construction meetings. No change to the Final Facility Plans shall be made without a written change order signed by the City. No

change order that would have the effect of increasing the Facility Cost shall be valid without Manager's written consent. 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, the cost of which shall be included in the Facility Cost 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. The City shall contribute up to \$11,500,000.00 to the Facility Cost. 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. Manager shall contribute up to an additional \$500,000.00 toward the Facility Cost, or such additional amount as Manager agrees to pursuant to Section 5.1 ("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 approval of the City Attorney. Manager and the City shall coordinate the Manager's Contribution so it does not conflict with, delay, or be redundant with the City's construction of the Facility Improvements. In no event may Manager include any costs of its own employees, members, officers or of any affiliate in the Manager Contribution. Manager shall provide the City with evidence of its costs incurred in connection with the cost of design and construction or supplying materials or equipment for the Manager's Contribution, which shall be credited towards Manager's Contribution. 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 the Facility Cost agreed to by Manager as provided in Section 5.1 shall be the sole responsibility of Manager. The City shall, within 30 days after Substantial Completion of the Facility Improvements, submit to Manager an invoice of Manager's share of the Facility Improvements Costs, which invoice shall credit any costs incurred and previously-submitted by Manager towards Manager's Contribution. Manager shall have 30 days after its receipt of the City invoice to make payment to the City of all remaining amounts of Manager Contribution.

5.3 Security for Performance and Payment. If the Manager hires 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 the Facility Cost (but not less than \$500,000.00), conditioned on the faithful performance of Manager's obligations regarding the Facility 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 that are marked as Manager's Exclusive Areas on **Exhibit A**. Other parties, including the Other Users, may use the Manager's Exclusive Areas with Manager's permission. Other parties,

including the Other 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.** Beginning in 2021, Manager shall pay to City an "Annual Use Fee" in the initial amount of one hundred fifty thousand dollars (\$150,000), payable in two equal installments due on May 1 and October 1 of each calendar year, beginning May 1, 2021. Beginning in 2022 and each year thereafter during the term of this Agreement, the Annual Use Fee shall increase by one percent (1%) over the Annual Use Fee for the prior year.

7.2 **Additional Event Fee.** Within 10 business days of each Ticketed Event in excess of 85 per year, Manager shall pay to the City the \$2,000.00 Additional Event Fee.

7.3 **Contribution of Annual Use Fees to Capital Maintenance Fund.** The City shall establish and maintain a Capital Maintenance Fund to pay for future repairs, renovations, replacement materials, and any costs which would constitute City maintenance costs under Section 11 of this Agreement. The Manager shall use the Capital Maintenance Fund to pay for capital expenditures to maintain and improve the Facility. The City shall contribute annually to the Capital Maintenance Fund an amount equal to the Annual Use Fee paid by Manager beginning in 2028. The City shall have the right to approve all of Manager's capital maintenance projects funded by the Capital Maintenance Fund prior to their commencement.

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 the Other User Events and for utility use during the Other User Events. The amount shall be determined according to the "Cleaning and Utility Credit Schedule" attached and incorporated as **Exhibit F**. 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 City and Manager, which shall not be unreasonably delayed, conditioned or withheld.

9. **Operating Expenses and Utilities.** Manager shall be solely responsible for payment of all expenses incurred in the operation of the Teams, 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.

10. **Manager Responsibilities and Maintenance of Facility.** Manager shall be solely responsible, at its sole expense, for the following:

10.1 **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; cleaning of roofs, gutters, and downspouts; and annual winterization. Manager shall be responsible for obtaining all supplies and materials necessary for such maintenance, at its sole expense.

10.2 **Manager Equipment.** Manager shall be solely responsible, at its sole expense, for purchasing, installing, maintaining and replacing certain equipment at the Facility including the press box area, televisions and other audio-visual electronics, and the video board. Manager shall be responsible for obtaining all equipment, supplies and materials necessary for such installation, maintenance and replacement, at its sole expense.

10.3 **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.

10.4 **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.

10.5 **Preparing Facility for Other Users.** Manager shall be solely responsible, at its sole expense, for preparing the Facility for the Other User Events, and giving access to the Facility to the Other Users, no later than two (2) hours before any scheduled practice or game by the Other Users. Further, Manager shall be solely responsible, at its sole expense, for preparing the Facility for the City Events, and giving access to the Facility to the City, no later than two (2) hours before the City Events.

11. **City Maintenance of Facility.** The City shall be responsible for performing, at its sole cost, the following: (i) repairs to the Facility that do not qualify as Routine Maintenance as described herein; (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.

12. **Admission Fees.** Manager may charge admission fees to enter the Facility for Ticketed Events, Manager Events, and for other events conducted by Manager pursuant to this Contract; provided, however, all admission fees, except admission fees to suites, 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.

13. **Concessions.** Manager shall have the exclusive concession for sales of food, beverages, novelties, programs, and other items for all events at the Facility and shall open and staff the concession facilities for all Ticketed Events, Manager Events, Other User Events, and City Events. Manager may staff the concession facilities with booster club members, community volunteers, or other similar groups. 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 apply for and hold licenses for the sale of fermented malt beverages and intoxicating liquor but Manager shall only sell fermented malt beverages and wine (but no other intoxicating liquor) within the Facility during the Teams' games. All proceeds from such sales shall be the sole property of Manager but Manager may share said proceeds with booster clubs, community volunteer groups, or other similar type groups that staff the concession facilities.

14. **Baseball Team and Soccer Team Names.** The Baseball Sub-Contract and Soccer Sub-Contract shall provide, among other things, that the Teams shall be named, marketed and promoted with the word "Waukesha" in their names.

15. **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.

16. **Advertising in the Facility.** Manager shall have the exclusive right to sell advertising space for the advertising spaces shown in the attached **Exhibit G** within the Facility, and the City shall have no right to any proceeds. Contracts between Manager and advertisers shall terminate no later than December 31, 2033, or upon the end of the Teams' last season in the facility if this Contract is extended, and shall require that advertising be removed upon termination of the contracts. Manager may extend or renew the contracts if Manager and City entered into the First Extension Term and Second Extension Term, respectively. 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 Parks, Recreation and Forestry Department, 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.

17. **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 receive an annual fee of \$10,000 in each calendar year in which the Manager receives revenue for granting naming rights. This annual fee shall increase by one percent each year during the term of this Agreement. Proposed holders of stadium naming rights and proposed stadium 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. The name may be placed on signs mounted in, on and around the Facility, which signs 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 of this Contract.

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

19. **Material Condition; Material Default; Cross-Default Remedy for League.** The Manager shall enter into the Baseball Sub-Contract (**Exhibit B**) as a material condition of this Contract. Regardless of anything else in this Contract to the contrary, if Manager or 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. If the League assumes Manager's responsibilities, all then-existing scheduling of Other Users' events in the Facility shall not be changed.



20. **Staffing.** Manager shall provide sufficient trained staff necessary for the efficient operation of all Ticketed Events, Manager Events, Other User Events, and City Events, and the City shall have no obligation to provide any staff for such events.

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

21.1 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;

21.2 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;

21.3 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

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

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

22.1 **Loss by Casualty.** If the Facility is materially damaged or rendered unusable by fire, wind, flood, vandalism, or other casualty covered by the City's property-casualty insurance, 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 is 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. If the Facility is materially damaged or rendered unusable by fire, wind, flood, vandalism, or other casualty which is not caused by Manager or its employees, owners, officers, directors, affiliates, teams, or agents, and the full cost of repair of such damage is not covered by the City's property-casualty insurance, then, upon written notice to the City, the Manager may terminate this Agreement without further obligation under this Agreement.

22.2 **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.

22.3 **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.

23. **Indemnification and Liability Insurance.**

23.1 **Indemnification.** During the Term, including any extension or renewal terms, Manager and the City shall indemnify and hold each other, and each other's 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:

23.1.1 Any default in performance of any term, covenant or condition of this Contract by the indemnifying party;

23.1.2 Any material breach of any representation or warranty by the indemnifying party;

23.1.3 Any damage to the Facility to the extent arising out of the indemnifying party's or its employees' or agents' acts or omissions;

23.1.4 Any personal injury, including death, resulting at any time on, in or about the Facility to the extent arising out of the indemnifying party's or its employees' or agents' acts or omissions; except to the extent such liabilities arise as a result of negligence or intentional acts of the other Parties, the Other Users, or any of their invitees or guests, or arising from the the other Party's breach of this Contract;

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

23.1.6 Any judgements, judgement liens, or construction liens, asserted by creditors of the indemnifying party.

23.2 **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 \$1,000,000 per accident or occurrence, \$2,000,000 aggregate, and umbrella coverage to a limit of not less than \$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 30 days' written notice to the City and Manager.

24. **No Nuisance Activities.** Manager shall not conduct any activity at the Facility which constitutes a public nuisance. The Parties agree that the conduct of activities permitted under this Agreement in a manner that complies with all applicable laws and ordinances shall not constitute a nuisance.

25. **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.

26. **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 5 business days after receipt of the notice to cure any default in payment, and 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 5 business days thereafter to cure any default in payment, and an additional 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 5 business days thereafter to cure any default in payment and an additional 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 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.

27. **Remedies for City's Material Default.** If the City defaults under any obligation hereunder and the City's failure to perform is not cured within 15 business days after written notice from the Manager specifying the default, then the Manager may, but is not required to, cure the default and notify the City of the Manager's costs incurred in curing the default. The Manager may set off the documented costs of curing the City's default from amounts otherwise owed by the Manager to the City under this Agreement.

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, and Manager shall be responsible for compliance with that law by Manager and its employees and agents.

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 with respect to claims arising under tort 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. **Estoppel Instruments.** The City and the Manager shall, upon the written request of any other Party or each other, promptly deliver to the Party requesting the same a certificate stating: (i) whether or not this Agreement is in full force and effect, (ii) the date on which this Agreement will expire, (iii) whether or not this Agreement has been modified or amended in any way and attaching a copy of such modification or amendment, (iv) whether or not there are any existing defaults under this Agreement to the knowledge of the Party executing the certificate and specifying the nature of such defaults, if any, (v) the status of Annual Use Fee payments, and (vi) any other facts regarding the operation of this Agreement which the requesting Party may reasonably request.
37. **Corporate Authorization.** The individuals executing this Contract on behalf of Manager and the League 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.
38. **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.
39. **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.
40. **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.
41. **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.
42. **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.
43. **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)**

DRAFT

**City of Waukesha**

\_\_\_\_\_  
By Shawn N. Reilly, Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Attested by Gina L. Kozlik, City Clerk

Date: \_\_\_\_\_

**City of Waukesha Parks, Recreation and Forestry Board**

\_\_\_\_\_  
By Wayne Merchle, President

Date: \_\_\_\_\_

\_\_\_\_\_  
Attested by Mike Volpano, Secretary

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**

DRAFT

**EXHIBIT A-1**

**Map and Description of Parking Areas**

DRAFT



**EXHIBIT B**

**Form of Baseball Sub-Contract**

*(begins on next page)*

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**EXHIBIT C**

**Park Rules**

DRAFT

## EXHIBIT D

### Facility Improvements

Mobilization.

Erosion control.

Demolition.

Earthwork.

Base aggregate dense, asphalt pavement (parking and paths), concrete (concourse), special concrete (plaza/entryway).

Parking area lighting, striping and signage.

Lighting (area lighting and stadium lighting).

Landscaping and restoration.

Open shelters.

Entry feature.

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**

### **Annual Use Fee Schedule**

<b>Year</b>	<b>Amount</b>
2019	\$ 0
2020	\$ 0 (\$500,000 manager contribution)
2021	\$ 150,000
2022	\$ 151,500
2023	\$ 153,015
2024	\$ 154,545
2025	\$ 156,090
2026	\$ 157,650
2027	\$ 159,226
2028	\$ 160,818
2029	\$ 162,426
2030	\$ 164,050
2031	\$ 165,690
2032	\$ 167,346
2033	\$ 169,019

2034 \$ 170,709

2035 \$ 172,416

**EXHIBIT F**

**Cleaning and Utility Credit Schedule**

Cleaning and preparation of Facility for games by Other Users, per game: .....\$##.##

Utility use, per game:

No field light use: .....\$##.##

Field light use: .....\$##.##

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**EXHIBIT G**

**Advertising Space Locations**

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