

Public Park Land Use Contract

City of Waukesha – Big Top Waukesha, LLC – Northwoods League, Inc.

This “Contract” is made effective on _____, 2017 (“Effective Date”) by and between the City of Waukesha, Wisconsin, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188-3646, referred to herein to as the “City”; Big Top Waukesha, LLC, a Wisconsin limited-liability company, 2920 North Sherman Avenue, Madison, Wisconsin 53704, referred to herein as “Big Top”; and Northwoods League, Inc., 2900 4th Street SW, Rochester, Minnesota 55902, referred to herein as “NWL”. The City, Big Top and NWL are each a “Party”; together, they are the “Parties.”

Recitals

Big Top desires to operate an NWL-affiliated amateur, summer, collegiate baseball team in the City, which is referred to herein as the “Baseball Team.” Big Top desires that the Baseball Team practice in and play its home games and host other League (defined below) games at the City-owned baseball field, stadium and appurtenant parking and other facilities in Frame Park (collectively, the “Facility”). The Facility is depicted and further described on the attached and incorporated **Exhibit A**.

Big Top also desires to operate a soccer team in the City at the Facility (the “Soccer Team”). Collectively, the Baseball Team and Soccer Team are the “Teams.”

NWL is engaged in the development and promotion of amateur baseball teams operating as of the date of this Contract in Minnesota, Wisconsin, Iowa, Michigan, Illinois, North Dakota and Ontario, Canada, as the Northwoods League (referred to herein as “Northwoods League” or “League”), and desires that a League team play at the Facility.

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 Baseball Team will be a member of the League, and NWL, in consideration of the terms and conditions set forth herein, is willing to guaranty certain of Big Top’s obligations in this Contract.

The Parties wish to formalize the terms and conditions under which Big Top is authorized to use the Facility, to assure NWL shall have the right to continue play at Frame Park, and to specify which of Big Top’s obligations NWL 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 Big Top or NWL 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 and control of the Facility to Big Top, and to the extent set forth herein, to NWL. Except for the Permitted Events (defined below), Big Top 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 Agreement, Big Top may conduct an unlimited number of free events, and up to 85 Ticketed Events per calendar year. "Ticketed Events" means events, Baseball Team games (and no other summer collegiate or professional baseball league games), Soccer Team games, concerts, community festivals, markets, and other athletic events, for which Big Top charges an admission fee. Big Top 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 Big Top to the City for each such additional event ("Additional Event Fee"). Notwithstanding any other provision in this Contract, and irrespective of whether NWL elects to assume Big Top's rights and obligations under this Contract, upon termination of this Contract for any reason whatsoever, NWL shall have the right to schedule and play Northwoods League baseball games at the Facility for a period of three (3) years following such termination, and NWL shall pay reasonable annual rent for such use of the Facility as mutually agreed between NWL and City.

2.2 **Practices.** Big Top may conduct practice sessions for the Teams, on dates and at times determined by Big Top, 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 Big Top contracts with parties (except the Existing Users or the City) for use of the Facility ("Big Top 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 Big Top 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 D**, except as specifically provided in this Contract, and the Parks, Recreation and Forestry Board shall not unreasonably withhold, delay or condition any approval for any uses.

2.5 **Schedule Coordination.** Big Top shall contact the Existing Users as soon as possible after the League's 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 leagues' schedules are announced for the season. The City shall notify Big Top 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, Big Top shall submit the proposed schedule to the City for approval, which shall not be unreasonably conditioned, delayed or withheld. Big Top 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 Big Top and other users are unable to resolve practice scheduling disputes, the City shall act as arbitrator and the City's determination shall be final. Big Top and the City 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.** Big Top 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 League Season. Subject to the priority of the National Night Out Program, Big Top and the League shall, during the League regular season and any post-season ("League Games"), have the priority to schedule its League 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 League 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 varsity baseball team (but not makeup or rescheduled games).

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

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

2.6.4 City Events. Subject to the priority of the National Night Out Program, League Games and Existing User Events as described above, Big Top 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, League Games, Existing User Events, and City Events as described above, Big Top 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**. Big Top shall have the exclusive use of the parking area shown on the attached **Exhibit A**, and the City shall install signs to indicate Big Top'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 Big Top 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 Big Top 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.

5. **Facility Improvements**.

5.1 Design and Construction. Big Top 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 B** (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 Big Top 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 Big Top'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 Big Top 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 Big Top 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. Big Top shall be solely responsible for payment of no less than Five Hundred Thousand Dollars (\$500,000.00) of the cost of design and construction of the Facility Improvements. Big Top shall provide the City with evidence of its costs incurred in the hire of licensed architects or engineers regarding the design of the Facility Improvements, which shall be credited towards Big Top's contribution. In no event may Big Top 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 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 Big Top. 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.

5.3 Security for Performance and Payment. Big Top 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 improvements in excess of \$4,200,000.00 (but not less than \$500,000.00), conditioned on the faithful performance of Big Top's obligations regarding the design of 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 Big Top. No assignment, amendment or change of this Contract will release the sureties on the bonds.

5.4 Construction Liens. The City and Big Top 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 work performed under contract with the City, Big Top and NWL 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. Big Top's and NWL's obligations to indemnify and hold harmless the City and keep the property free of liens is conditioned upon payment by City of its financial obligations in accordance with this Contract.

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

7. **Fees.** Big Top shall pay the following fees to the City:

7.1 **Annual Use Fee.** Big Top 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.** Big Top 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 Big Top an amount to reimburse Big Top for the expenses incurred by Big Top 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 C**. 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.** Big Top 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.** Big Top 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, Big Top 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. **Big Top Maintenance of Facility.** Big Top shall be solely responsible, at its sole expense, for the following (collectively, the “Big Top Maintenance”):

11.1 **Routine Maintenance.** All Routine Maintenance of the Facility. “Routine Maintenance” includes, 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. Big Top shall be responsible for obtaining all supplies and materials necessary for such maintenance, at its sole expense.

11.2 **Maintaining Clean Condition.** 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. Big Top shall maintain all painted surfaces in clean condition, and shall repaint all interior and exterior finishes as necessary. Big Top shall keep all lawn and landscaping within the Facility mowed, trimmed, watered and in good condition and appearance. Big Top shall leave the Facility in a clean and usable condition for all other users of the Facility, and if Big Top fails to do so, the City shall clean the Facility and charge the cleaning expense to Big Top.

11.3 **Maintaining Safe Condition.** 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.** 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 major repairs to the Facility involving an expense of more than \$5,000 per individual item requiring repair, replacement of equipment and fixtures except for minor consumable items as part of Routine Maintenance, casualty losses to the Facility covered by the City's insurance, and capital expenses related to the Facility. Regardless of the foregoing, Big Top shall be responsible for repair or replacement of any items that require repair or replacement due to the negligent or intentional act or omission of Big Top, NWL, or their respective employees, owners, officers, directors, affiliates, teams, or agents (the "**Negligence Maintenance**").

13. **Admission Fees.** Big Top may charge admission fees to enter the Facility for Ticketed Events, and for other events conducted by Big Top 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. All admission fees collected shall be the sole property of Big Top.

14. **Concessions.** Big Top 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 Big Top may enforce a "no-carry-in" rule for food and beverages on those days. Subject to all applicable state and local laws, Big Top may sell fermented malt beverages and wine within the Facility during Team games. All proceeds from such sales shall be the sole property of Big Top.

15. **Team Name.** Big Top and NWL agree that the first word in the Baseball Team's name shall be "Waukesha," that the Baseball Team shall be marketed and promoted as City of Waukesha team, and the Facility shall be identified as the Baseball Team's and Soccer Team's home field. Big Top may, however, name, market and promote the Soccer Team with the first word being Wisconsin, Milwaukee or Waukesha due to the regional nature of the sport.

16. **NWL All-Star Game.** NWL agrees that a minimum of one (1) NWL All-Star Games will be scheduled at the facility during the Term, with the first happening within the first five (5) League seasons after the Effective Date.

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

18. **Advertising Within the Facility.** Big Top shall have the exclusive right to sell advertising space for the advertising spaces shown in the attached **Exhibit E** within the Facility, and the City shall have no right to any proceeds. Contracts between Big Top and advertisers shall terminate no later than upon the end of the League's last season in the facility or December 31, 2037, and shall require that advertising be removed upon termination of the contracts. Big Top 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 City, which shall not unreasonably be withheld. 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.

19. **Facility Naming Rights.** Big Top 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.

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

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

22. **Required Submissions.** Within thirty (30) days after the Effective Date, Big Top 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 Big Top 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 Big Top to mitigate problems.

22.3 A responsible-alcohol-consumption plan, detailing measures that will be taken by Big Top to minimize drunkenness among attendees and the effects of drunk behavior.

22.4 Request for any special event approvals required under City ordinances.

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

23.1 **Loss by Casualty.** If the Facility is materially damaged or rendered unusable during the League'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 Big Top and NWL 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. Rent and additional rent shall abate, pro-rata, and the Term shall be extended, for the period the Facility is not fully usable for Big Top's and NWL'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 **Big Top Personal Property Insurance.** Big Top 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 Big Top for any loss or damage to Big Top's personal property kept on the leased property.

24. **Indemnification and Liability Insurance.**

24.1 **Indemnification.** During the Term, including any extension or renewal terms, Big Top and NWL shall indemnify and hold the City, and its officials, 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, caused by:

24.1.1 Any default in performance of any term, covenant or condition of this Contract by Big Top or NWL.

24.1.2 Any property damage caused by the use and occupancy of the Facility by Big Top or the Teams, or by any use of the Facility allowed by Big Top, NWL or the Teams, including the Big Top Events, and including casualty loss to the Facility that might otherwise be covered by the City's property casualty insurance.

24.1.3 Any personal injury, including death, resulting at any time on, in or about the Facility during use of the Facility by Big Top or the Teams; 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 the infringement of intellectual property rights of a third party, false advertising, unfair trade practices or competition, defamation, or interference with contract.

24.1.5 Any judgements, judgement liens, or construction liens, asserted by creditors of Big Top or NWL.

24.2 **Liability Insurance.** During the term of this Contract, including any renewal terms, Big Top shall purchase and maintain comprehensive public liability insurance, including property damage and liquor liability, naming the City and NWL as an 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 Big Top or the Teams, at Big Top's sole expense. The 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). Big Top's 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. Big Top shall furnish to City and NWL copies of the policies along with proof of payment of the premium, 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 days' written notice to the City, NWL and Big Top.

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

26. **Guaranty of Payment by NWL.** NWL guaranties payment to the City of Big Top's payment obligations related to the Annual Use Fee, the Additional Ticketed Event Fee, the Annual Frame Park Contribution, the Team Expenses, the Facility Utilities, the Big Top Maintenance, the Negligence Maintenance, the Big Top Indemnification Obligations, Big Top Liability Insurance, and Big Top's Attorney Fee Shifting Obligations. Notwithstanding anything to the contrary herein, NWL's

indemnification and guarantee obligations in this Contract do not include the Facility Improvements or any cost, claim, litigation or obligation of any kind related to the Facility Improvements. The City shall provide NWL written notice of any and all proceedings to collect from Big Top 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, or any renewal or extension thereof. This Guaranty shall be binding upon any successors of NWL. NWL acknowledges that it has a financial interest in this Contract, that it receives a financial benefit from this Contract.

27. **Default by Big Top.** If Big Top defaults in the performance of any material term or condition of this Contract, the City shall give written notice to Big Top and NWL. Big Top shall have ten (10) days after receipt of the notice to cure any default in payment, and thirty (30) days after receipt of the notice to cure any other noticed material default. If Big Top fails to cure the noticed default within the time period set forth herein, NWL shall thereafter have an additional five (5) business days to cure any default in payment, and an additional fifteen (15) days to cure any other material default. If NWL cures the noticed default, then Big Top's right to use and occupy the Facility is terminated immediately, and Big Top shall remove from the Facility, and NWL shall assume Big Top's rights and obligations under this Contract. If, after the expiration of the default cure periods described herein, Big Top or NWL have defaulted in their respective payment obligations under this Contract, then the City may give written notice to all parties that may owe money to Big Top or NWL for naming rights, advertising, concessions, or broadcast rights, directing them to make such payments to the City, and Big Top and NWL consent to such assignment of payments without further action.

28. **Termination other than Default.** This Contract may be terminated at any time by the mutual, written agreement of the Parties. This Contract shall terminate immediately, upon Big Top being the subject of a voluntary or involuntary petition in bankruptcy, the appointment of a receiver of Big Top's assets, or the assignment of Big Top's assets for the benefit of creditors, in which case NWL at its sole discretion, but not obligation, may assume Big Top's rights and obligations under this Contract by providing written notice to the City within thirty (30) days of such termination. Irrespective of whether NWL elects to assume Big Top's rights and obligations under this Contract, upon termination of this Contract for any reason whatsoever, NWL shall have the right to schedule and play Northwoods League baseball games at the Facility for a period of three (3) years following such termination, and NWL shall pay reasonable annual rent for such use of the Facility as mutually agreed in good faith between NWL and City.

29. **No Discrimination.** During the performance of this Contract, Big Top 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. Big Top and the League acknowledge that the Facility is subject to the Wisconsin Public Accommodations Law, Wis. Stats. §106.52.

30. **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.

31. **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.

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

33. **Assignment Prohibited.** This Contract may not be assigned by Big Top without the City's written consent which will not be unreasonably withheld.

34. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

To the City: Attention City Administrator
City of Waukesha
201 Delafield Street
Waukesha WI 53188

To Big Top: Attention _____
Big Top Waukesha, LLC
2920 N Sherman Ave
Madison WI 53704

To NWL: Attention _____
Northwoods League, Inc.
2900 4th Street SW
Rochester MN 55902

35. **Corporate Authorization.** The individuals executing this Contract on behalf of Big Top 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.

36. **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.

37. **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.

38. **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.

39. **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.

40. **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.

41. **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: _____

Big Top Waukesha, LLC

Northwoods League, Inc.

By (print name) _____
Title: _____
Date: _____

By (print name) _____
Title: _____
Date: _____

DRAFT

EXHIBIT A

Map and Description of Facility and Parking Areas

DRAFT

Exhibit B

Stadium 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 C

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 D

DRAFT

EXHIBIT E

Advertising Space Locations

DRAFT