

**USE AGREEMENT BETWEEN THE CITY OF LA CROSSE,
LA CROSSE BASEBALL, LLC AND THE NORTHWOODS LEAGUE,
INC. FOR THE USE OF COPELAND FIELD**

This Use Agreement (“Agreement”), made and entered into by and between the **City of La Crosse**, a Wisconsin municipal corporation (“**City**”), **La Crosse Baseball, LLC**, a Wisconsin limited liability company (“**Loggers**”) and the **Northwoods League, Inc.**, a for profit corporation created and existing under the laws of the State of Florida (“**League**”) is effective as of the date by which all parties have signed hereunder.

WHEREAS, Loggers have participated in the League’s summer collegiate baseball league since 2003, playing its home games at the City’s Copeland Field (the “Ballpark”) pursuant to the terms and conditions of the December 3, 2002 Lease Agreement and subsequent amendments between the City, the Loggers and the League (the “Parties”); and

WHEREAS, the Loggers desire to continue to operate a baseball team in La Crosse, Wisconsin, and for that purpose desires to lease the City’s Copeland Field; and

WHEREAS, the City believes it is in the public’s best interest to afford the citizens of the City an opportunity to attend and view baseball games; and

WHEREAS, the parties wish to formalize the terms and conditions under which the Loggers and the League are authorized to use the Ballpark.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, IT IS AGREED that the Loggers are granted a non-exclusive privilege to use the Ballpark and exclusive concession privileges for all baseball games at the Ballpark, subject to the following terms and conditions:

1. Definitions.

- a. *Game.* A “game” means a baseball game played through five (5) completed innings in accordance with League’s rules and as part of the amateur league commonly known as the Northwoods League.
- b. *Season.* While specific dates may vary, a “season” shall mean games, including play-off games, played beginning April 1st and ending November 1st of each calendar year.
- c. *Substantial Damage.* The term, “substantial damage” shall mean any damage to any portion of the Ballpark which would reasonably interfere with the Loggers’ use of the Ballpark for the use described herein.

- d. *Board.* “Board” means the City of La Crosse Board of Park Commissioners.
2. **Term.** This Agreement, unless earlier terminated as provided for herein, shall be effective for the time period that includes the next ten (10) seasons, commencing September 1st, 2013 and terminating August 31st 2023.
3. **Premises.** The City grants the non-exclusive use of the Ballpark more particularly described in **Exhibits A and B**, attached hereto, and consisting of approximately five (5) acres of land, including existing structures and all new structures to the Loggers and League.
4. **Scheduling and Use of the Ballpark.** The Parties agree to the following timetable for scheduling of events at the Ballpark:
 - a. By January 15th of each year, Loggers shall submit to the City a schedule of dates for up to forty-five (45) games for the Loggers and/or League.
 - b. City may allow use of the Ballpark to others, but shall grant priority scheduling of games to the Loggers for games to be scheduled through August 31st. By January 30th of each year, the City will prepare the master reservation schedule for the use of Copeland Park Field. Any conflicts between user groups other than the Loggers will be resolved by the Board.
 - c. The Loggers and the City shall jointly schedule times for practices by the Loggers. The City shall make reasonable efforts to accommodate the Loggers.
 - d. The Loggers’ request to use the Ballpark for any purpose other than the season, League and/or Logger sponsored baseball events, League exhibition season, League play-offs or League All Star games remains subject to any other City approval and fees, as necessary for such use.
 - e. The City agrees to extend to the University of Wisconsin-La Crosse a mutually agreed joint use agreement of City Park Facilities and UWL Recreational Facilities that will match the term of this Agreement, subject to Common Council approval.
 - f. Loggers will be allowed to store personal property specific to Loggers’ baseball operations on the site and have access to the site for the term of this Agreement. Loggers shall insure its personal property against loss. Loggers release the City from any past or future claims of personal property damage or loss.
 - g. The City will not unreasonably withhold increasing the number of games upon expansion of the number of teams in the League.

- h. The Loggers shall not allow any spectator on the field of play while any game is being played. "Field of play" means the area inside the first base fenceline, third base fenceline and outfield fenceline.

5. Loggers Responsibilities.

- a. Loggers shall provide all staff necessary for game operations including, but not limited to, ushers, ticket takers, scorekeepers, public address announcers, bat persons, locker room attendants, trainers, umpires, concessions, security, medical and groundskeepers.
- b. The Loggers shall clean the Ballpark and grounds following each game. All cleaning functions shall be completed by noon the day following the game. The City shall have the right to clean the Ballpark and bill the Loggers for the actual cost and such services if not completed as indicated above.
- c. The Loggers shall keep the Ballpark in a state that is safe and suitable for baseball, including field maintenance. This responsibility includes the mowing and trimming of grass in the Ballpark, as well as providing a security fence, around the perimeter of the field. On game days, the Loggers will have the field ready to play.
- d. The Loggers shall be responsible for all field maintenance and all daily operation expenses at the Ballpark for all Logger and non-Logger events, to specifically include but not limited to, the costs of mowing, landscaping, fertilization, turf repair, irrigation, dragging and lining the field during scheduled dates, telephone service, internet access and other similar costs. Moreover, all equipment and supplies necessary to perform these responsibilities, and the cost to run and maintain said equipment, shall be the Loggers'. Nothing in this Agreement requires the Loggers to provide any telephone service or internet access. "Turf repair" excludes replacement of the artificial infield turf after its customary useful life.
- e. The Loggers shall supply all necessary cleaning supplies and labor to maintain in a safe, clean and sanitary condition seating areas, space beneath the bleachers, the concourse, concession stand and adjacent area, public restrooms, adjoining parking lots, press box, office area, and any other area within the Ballpark used for Loggers and/or League activities.
- f. The Loggers shall pay for trash removal at all events at the Ballpark.
- g. The Loggers shall pay property tax for personal property.

- h. Loggers shall pay its prorated share of utilities, including, without limitation, water and sanitary service, and electric, as a result of its use of the Ballpark under this Agreement, within sixty (60) days after receiving an invoice for the same from the City. The Loggers shall be allowed to review any bill presented to the City for utilities prior to the invoice to the Loggers becoming due.
- i. The parties agree that the name of the baseball team shall be known as the “La Crosse Loggers.”
- j. The Loggers and/or League shall provide a free one (1) day clinic annually for all area baseball youths ages fourteen (14) and under and provide each participant with a free ticket to the game that evening.

6. City Responsibilities.

- a. The City agrees not to schedule a competing baseball league for the use of the Ballpark, so long as Loggers actually continue to use the Ballpark and conduct games.
- b. Except as to duties specifically delegated to the Loggers under this Agreement and for any damage due to the negligence or willful misconduct of the Loggers and/or League, the City agrees to be responsible for the maintenance and repair of the Ballpark, including, specifically, maintenance and repair of all city-owned structures at the Ballpark. In being responsible for the maintenance and repair of all city-owned structures at the Ballpark, the City agrees to comply and conform with all present and future laws, ordinances, rules, requirements and regulations of the federal, state, county and municipal government.
- c. The City will provide an incremental breakdown of the utility services for Logger and/or League sponsored events.
- d. Subject to applicable laws and approvals, if necessary, the City agrees to approve in concept the following projects, which will be funded entirely from private sources. The projects shall be implemented following City requirements and/or guidelines for construction, including, without limitation, all permits and inspections. The projects shall inure to the City, except the digital display video board, which will be considered personal property of the Loggers and subject to personal property tax. The Loggers are granted the right to submit specifications for the items below:
 - 1) Artificial infield turf
 - 2) Batting cages
 - 3) Digital display video board
 - 4) First base dugout replacement

7. Fees, Revenue and Related Financial Matters.

a. *Rent.* Loggers and/or League shall pay the City four hundred sixteen dollars (\$416.00) per game. For each season, the Loggers shall pay seven thousand dollars (\$7,000.00) to the City before June 30. The Loggers shall pay the remainder of rent on or before September 1. In the event of a cancellation of a scheduled game resulting in scheduling a doubleheader, the rent for the doubleheader will be at the single game rate of \$416.00. Rent will be paid to the City of La Crosse and deposited in the Copeland Park Improvement Fund. In addition to any other remedy available to the City, delinquent payments shall be charged a late fee of one and one-half percent (1.5%) per month. The Board reserves the right to charge a security deposit in the future in its sole and absolute discretion. Rent, charges and fees for non-game events require separate approval and payment as determined by the City and Board.

b. *Revenues and Licenses.*

1) During all games at the Ballpark, during the season, the Loggers shall have the exclusive right to sell concessions of the type that are usually sold at a baseball stadium, and to keep all proceeds from these concession sales. This includes the right to sell peanuts, popcorn, soft drinks, beer, hamburgers, hot dogs, programs and other promotional items, etc. For such events as may be determined by the Board which do not interfere with the Loggers' use of the Ballpark, like the Stars of Tomorrow Tournament, State Baseball Tournament, high school / scholastic events, and such other events which may be agreed to by the Parties herein, the sponsors of those events shall be allowed concession privileges at a location separate from where the Loggers sell, subject to prior approval of the Board. In addition, the sponsor of such events may enter into a separate agreement with the Loggers whereby the Loggers operate concession sales and provides for payment of a portion of those concession sales to the sponsor. The Loggers shall ensure that all applicable state and local laws and health regulations are complied with in the exercise of its concession rights.

2) The Loggers are granted the right to sublease advertising space at the Ballpark. The advertising signs shall be at such locations as approved by the Board prior to the season, including the digital display video board. The rights of advertisers and others obtained through concession rights shall end with the termination of this Agreement, and the termination provided shall be contained in all agreements between the Loggers and advertisers. The Board shall review and approve all such advertising prior to it being finalized by

the Loggers, which approval will not be unreasonably withheld. Once finalized by the Loggers and approved by the Board, such advertising shall not have to come before the Board again during the term of this Agreement. Any new or additional advertising shall be reviewed and approved by the Board. The Loggers shall remove or cover any tobacco or alcohol-related advertising in the park where sponsors or the Director of Parks and Recreation so request for non-Logger events.

- 3) The Loggers shall have all radio and TV rights and privileges for all games played at the Ballpark.
- 4) Subject to applicable law, the Loggers may apply for a seasonal beverage license on an annual basis for games and events held during the season at the Ballpark.
- 5) Subject to applicable law, the Loggers shall sell state or locally manufactured or distributed fermented malt beverages.
- 6) Loggers agree to obtain and keep in good standing all licenses and permits related to its operation.
- 7) Naming rights. The City retains all naming rights to the Ballpark. The Ballpark shall be called "Copeland Park Field," unless otherwise determined by the City.

8. **Assignment and Subcontracting.** Except as provided herein, the Loggers shall not assign this Agreement or any interest therein, nor let or underlet the Ballpark, or any part thereof, or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof for any other purpose without the advance written consent of the Board.

9. **Indemnification.**

- a. To the fullest extent allowable by law, Loggers hereby indemnifies and shall defend and hold harmless the City, its elected and appointed officials, officers, employees, authorized representatives and volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature whether arising before, during or after the usage of the Ballpark and in any manner directly or indirectly caused, occasioned, or contributed to or claimed to be caused, occasioned, or contributed to, by reason of any act, omission, fault, or negligence, whether active or passive, of Loggers or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement. Loggers' aforesaid indemnity and hold

harmless agreement shall not be applicable to any liability caused by the fault, negligence, or willful misconduct of the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

- b. In any and all claims against the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers by an employee of Loggers, any sublessee, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Loggers or any sublessee under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefit acts.
 - c. No provision of this indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the Ballpark is located.
 - d. Loggers shall reimburse the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Loggers' obligation to indemnify shall not be restricted to insurance proceeds, if any received by the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.
10. **Insurance.** Unless otherwise specified in this Agreement, the Loggers shall, at its sole expense, maintain in effect at all times during the usage of the Ballpark, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.
- a. *Worker's Compensation and Employers Liability Insurance.* The Loggers shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. The Loggers shall provide statutory coverage for work related injuries and employer's liability insurance with limits of at least one million dollars (\$1,000,000.00) each accident, one million dollars

(\$1,000,000.00) disease policy limit, and one million dollars (\$1,000,000.00) disease each employee.

b. *Commercial General Liability and Automobile Liability Insurance.* The Loggers shall provide and maintain the following commercial general liability and automobile liability insurance:

1) Coverage. Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

- a) Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)
- b) Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle)

2) Limits commencing May 23, 2014. The Loggers shall maintain limits no less than the following commencing on May 23, 2014:

- a) General Liability. Two million dollars (\$2,000,000.00) per occurrence (\$2,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.
- b) Automobile Liability. Two million dollars (\$2,000,000.00) for bodily injury and property damage per occurrence limit covering all vehicles to be used in relationship to the Agreement.
- c) Umbrella Liability. Five million dollars (\$5,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages. Coverage is to duplicate the requirements as set forth herein.

c. *Required Provisions.* The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISP endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Loggers; products and completed operations of the Loggers; premises occupied or used by the Loggers; and vehicles owned, leased, hired or borrowed by the Loggers. The coverage shall contain no special limitations on the scope of protection afforded to the City, its elected and appointed

officials, officers, employees or authorized representatives or volunteers.

- 2) For any claims related to this Agreement or usage of the Ballpark, the Loggers' insurance shall be primary insurance as respects the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by the City, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to it.
- 3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its elected and appointed officers, employees or authorized representatives or volunteers.
- 4) The Loggers' insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 5) Each insurance policy required by this Agreement shall state, or be endorsed to the state, that coverage shall not be canceled by the insurance carrier or the Loggers, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to the City.
- 6) Such liability insurance shall indemnify the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, the Loggers for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
- 7) The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations, liability explosion, collapse, underground excavation, and removal of lateral support and shall not contain an exclusion for what is commonly referred to by the insurers as the "XCU" hazards. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
- 8) All of the insurance shall be provided on policy forms and through companies satisfactory to the City, and shall have a minimum AM Best's rating of A- VII.

- d. *Deductibles and Self-Insured Retentions.* Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.
 - e. *Evidences of Insurance.* Prior to execution of the Agreement, the Loggers shall file with the City a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.
 - f. *Sub-Leases.* In the event that the Loggers employ other lessees (sub-lessees) as part of the Ballpark usage covered by this Agreement, it shall be the Loggers' responsibility to require and confirm that each sub-lessee meets the minimum insurance requirements specified above.
11. **Default and Termination.** In the event Loggers shall default in any of the amounts due to City as set forth in this Agreement or in the observance of any of the covenants, agreements, commitments or conditions herein contained, and any such default shall continue unremedied for a period of fifteen (15) days after written notice thereof to Loggers, or (a) Loggers shall make an assignment of its property for the benefit of creditors, or (b) Loggers shall petition a court to be adjudged a bankrupt, or (c) if a petition in bankruptcy shall be filed in any court against Loggers for more than thirty (30) days, or (d) if Loggers be judicially determined to be insolvent, or (e) Loggers shall be adjudged a bankrupt, or (f) if a receiver or other officer shall be appointed to take charge of the whole or any part of Loggers' property or to wind up or liquidate its affairs, or (g) if Loggers shall seek a reorganization under any of the terms of the National Bankruptcy Act, as amended, or under any other insolvency law, or (h) Loggers shall admit in writing its inability to pay its debts as they become due, or (i) if any final judgment shall be rendered against Loggers and remain unsatisfied for a period of thirty (30) days from the date on which it becomes final; or (j) if Loggers shall abandon the facility, City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Loggers, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of the Loggers hereunder; but cancellation shall not constitute a cancellation or a waiver by the City of the remainder of the total amounts payable to City, or for any damages or losses for the unexpired portion of the demised term which may be sustained by the City on account of such default, assignment, insolvency, adjudication, or other default as provided hereinabove in this Section, including any expenses incurred in exercising its rights in this Agreement.

In the event of lapse of insurance policies or coverage and protection as required by this Agreement City may, without notice of default, declare this Agreement terminated. Loggers shall have no access rights to or use of Ballpark unless all insurance policies required by this Agreement are in full force and effect.

In the event of termination of this Agreement for default, Loggers may make no claim for compensation for the capital improvements furnished and City shall retain title and ownership of the said Ballpark, together with all buildings and improvements thereon, without any payment whatsoever to Loggers. No improvements or buildings shall be removed from the above-described Ballpark during the term of this Agreement without the written consent of City, except any equipment, trade, and/or personal property of Loggers which Loggers lawfully remove prior to the termination of this Agreement.

12. **Impossibility of Performance.** Neither the City, League nor Loggers shall be obligated to or liable for the performance of any term or condition of this Agreement on its part to be performed if such performance is prevented by fire, earthquake, flood, act of God, riots or civil commotions, or by reason of any other matter or condition beyond the control of either party.
13. **Damage and Destruction at the Ballpark.** In the case of the destruction or any substantial damage of the Ballpark resulting from fire or other casualty, either City or Loggers may terminate this Agreement upon written notice to the other, if the Ballpark cannot be repaired or rebuilt by City within thirty (30) days if the casualty occurs between May 1st and August 31st, or prior to the commencement of the next season if the casualty occurs during the period from August 31st to May 1st. The City retains the sole authority to determine if the Ballpark is to be repaired or rebuilt.
14. **Ownership and Control.** The Loggers state that as of the date of signing of this Agreement, all persons and entities with interest in the Loggers' LLC are disclosed on the attached **Exhibit C** which is incorporated herein by this reference as if set forth in full. On an annual basis, on or before the fifteenth (15th) day of February of each year, a disclosure signed and authenticated by the member of the limited liability company setting forth the current members of the entity.
15. **Accounting.** The Loggers shall keep, or cause to be kept, full, complete and proper books, records and accounts of the gross sales and credits of such separate department, sublessee or division at any time operated in or on the Ballpark; such books, records and accounts, including any sales tax reports that the Loggers may be required to furnish to any governmental agency, for the purpose of verifying compliance with the terms and conditions of this Agreement, shall, at all reasonable times, be open to the inspection of the City, its auditor or other authorized representative or agent at no cost to City or its agents. If the Loggers fail to supply any and all records when asked by the City for the purpose

of verifying compliance with the terms and conditions of this Agreement or attempts to charge a fee or cost of any kind for inspection, reproduction, review or duplication of these records, it will be an immediate default under the terms and conditions of this Agreement. All books shall be maintained on a cash accounting basis.

16. **Compliance with All Laws.** The Loggers and League shall, at their own cost and expense, be responsible to promptly comply and conform with all present and future laws, ordinances, rules, requirements and regulations of the federal, state, county and municipal governments and of any and all other governmental authorities or agencies affecting the Ballpark or its use, and the Loggers and League shall, at their own cost and expense, make all additions, alterations or changes to the Ballpark or any portion thereof as may be required by a governmental authority or agency.

17. **Code Compliance.**

a. *Annually.* Without limitation, the following codes or their successor codes must be met annually or the Agreement will be in default:

- 1) City of La Crosse permits
- 2) Health Department & City permits for food and beverage operations
- 3) Fire department inspection requirements

b. *Environmental.* The Loggers shall, during the entire term of this Agreement, comply with all applicable federal, state, and local environmental laws, ordinances and amendments thereto and rules and regulations implementing the same, together with all common law requirements, which relate to discharge, emissions, waste, nuisance, pollution control, hazardous or toxic substances and other environmental matters as the same shall be in existence during the term hereof. All of the foregoing laws, regulations and requirements are hereinafter referred to as Environmental Laws.

The Loggers shall obtain all environmental licenses, permits, approvals, authorizations, exemption classifications, certificates and registrations (hereinafter collectively referred to as Permits) and make all applicable filings required of the Loggers under the Environmental Laws to operate at the Ballpark. The Permits and required filings shall be made available for inspection and copying by City at the Loggers' offices upon reasonable notice and during business hours. The Loggers shall not cause or permit any flammable explosive, oil, contaminant, radioactive material hazardous waste or material, toxic waste or material or any similar substance (hereinafter collectively referred to as Hazardous Substances) to be brought upon, kept or used in or about the Ballpark except for small quantities of such substances as is necessary for the business conducted upon the Ballpark provided that the Loggers shall handle, store, use and dispose of any such Hazardous

Substance in compliance with all applicable laws and in a manner which is safe and does not contaminate the Ballpark.

If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of any Hazardous Substance on or about the Ballpark by any occupant of the Ballpark during the Agreement, then the reasonable costs thereof shall be reimbursed by City to the Loggers upon demand. The Loggers shall deliver to City Material Safety Data Sheets describing all Hazardous Substances stored, used or disposed of on the Ballpark. The Loggers shall also, from time to time, at City's request, execute such other affidavits, representations and the like concerning the Loggers' best knowledge and belief regarding the presence of Hazardous Substances on the Ballpark. The Loggers agree to indemnify and hold City harmless from any liability, claim or injury, including attorney fees and the cost of any required or necessary repair, clean-up, remediation or detoxification, arising out of (i) the use, manufacture, handling, storage, disposal or release of any Hazardous Substances by the Loggers, its agents and employees and any subtenant and its agents and employees on, under or about the Ballpark, or (ii) an actual or alleged violation of Environmental Laws in connection with the occupancy of the Ballpark by the Loggers or any occupant of the Ballpark or the operation of the Loggers' business on the Ballpark during the term of the Agreement. The foregoing indemnification shall survive the expiration or earlier termination of this Agreement. It is agreed that City shall also indemnify the Loggers for any payment the Loggers are required to make with regard to necessary testing, repair, cleanup, remediation, or detoxification with regard to any environmental damage which existed prior to the Loggers' occupancy of the Ballpark.

18. City's Right of Entry and Inspection.

- a. *Right of Entry.* City shall have the right to enter the Ballpark at all reasonable times for the purpose of verifying compliance with the terms and conditions of this Agreement.
- b. *Inspection of Records.* City may also request any and all records from Loggers, at no cost, upon ten (10) days advance notice for the purpose of verifying compliance with the terms and conditions of this Agreement.
- c. *Public Records.* Loggers and League understand and acknowledge that City is subject to the Public Records Law of the State of Wisconsin. As such, Loggers and League agree to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. Loggers and League agree to assist City in complying with any public records request that City receives pertaining to this Agreement. Additionally, Loggers and League agree to indemnify and hold harmless City, its elected and appointed

officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from Loggers' and/or League's actions or omissions which contribute to City's inability to comply with the Public Records Law. In the event that Loggers and/or League decide not to retain its records for a period of seven (7) years, then it shall provide written notice to City whereupon City shall take custody of said records assuming such records are not already maintained by City. This provision shall survive the termination of this Agreement.

19. **Alterations and Improvements.**

a. *Structural changes.* The Loggers and/or League shall not make, or suffer to be made, any structural alterations or improvements of the real property without prior review and the written consent of both the Board and City. All such alterations or improvements shall be made in accordance with any applicable local, state and federal laws and regulations. Any additions to, or alterations of, the real property improvements shall become at once a part of the realty and belong to the City. If written consent of the City to any proposed alterations shall have been obtained, the Loggers and/or League agree to advise the Board in writing of the date upon which such alterations will commence in order to permit the City to post notice of no responsibility. The Loggers shall be consulted in any discussions pertaining to alterations proposed to be made by the City to the Ballpark. The Loggers shall further provide verification of the alteration's or improvements' value to the City Engineer, City Assessor and City Finance Director.

b. *Liens.* The Loggers and/or League shall keep the Ballpark free from any and all liens arising out of any work performed, materials furnished or obligations incurred by Loggers and/or League. Upon request, the Loggers and/or League shall provide verification, certification and proof that no liens or other encumbrances exist on any part of the Ballpark or portion thereto. In the event such liens or encumbrances exist, then the Loggers and League shall obtain a release of the same or other appropriate documentation extinguishing such lien or encumbrance following receipt of a fifteen (15) day noticed from the City.

20. **Abandonment.** The Loggers and League agree not to vacate or abandon the Ballpark at any time during the Agreement. Should the Loggers or League vacate or abandon the Ballpark or be dispossessed by process of law or otherwise, such abandonment, vacation or dispossession shall be a breach of the Agreement, and in addition to any other rights which the City may have, the City may remove any personal property belonging to the Loggers and/or League which remains in the Ballpark and store and dispose of the same, such removal, storage and disposal to be at the expense of the Loggers and/or League.

21. **Notices.** All notices to be given to the City and Loggers shall be in writing, and either personally delivered or deposited in the United States Mail, certified or registered, with postage prepaid, and addressed as follows:

To the League: Northwoods League, Inc.
403 East Center
Rochester, MN 55904

To the Loggers: La Crosse Baseball, LLC
c/o Daniel Kapanke
1610 Lakeshore Drive
La Crosse, WI 54603

To the City: Attn: City Clerk
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

With a copy to: Attn: Director of Parks and Recreation
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

22. INTENTIONALLY OMITTED.

23. **No Third-Party Beneficiary.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

24. **Independent Contractor.** The parties hereto agree that they are acting as independent contractors, and that nothing in this Agreement is intended to create, nor shall anything herein be construed or interpreted as creating a partnership, joint venture, or any such mutual relationship between the parties. Each party shall be responsible for its own separate debts, obligations and other liabilities.

25. **Construction.** This Agreement shall be construed and interpreted under the laws of the State of Wisconsin. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective hereto or in ascertaining intent, if any questions of intent should arise.

All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require. This Agreement may not be amended except in writing and approved by both parties.

26. **Governmental Approvals.** Loggers and League acknowledge that several of the specific undertakings of the City described in this Agreement may require approvals from the City of La Crosse Common Council, City of La Crosse governing bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Loggers and League further acknowledge that this Agreement is subject to appropriation by the La Crosse Common Council. City's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. City cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain such approvals on a timely basis.
27. **Patents, Trademarks, Copyrights and Royalties.** Loggers and League assume all costs arising from the use of patented, trademarked or copyrighted materials, equipment devices, processes or dramatic rights used in their conduct and agree to indemnify and hold harmless the City from all damage, costs and expenses on account of the use of any such materials, equipment, devices, processes or dramatic rights by the Loggers, League or their employees, agents, or licensees. Loggers and League agree to pay all royalties, license fees and other charges accruing or becoming due by reason of any music, live or recorded, or other entertainment of any kind played, staged or produced by the Loggers, League, their agents, employees or licensees in the Ballpark.
28. **Jury Trial Waiver.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.
29. **Governing Law.** This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.
30. **Severability.** If any of the terms or conditions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to person or circumstances other than those to which it is declared invalid or

unenforceable shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the full extent permitted by law.

31. **Title to be Retained by City.** City shall retain title and ownership of the Ballpark together with all buildings, and improvements thereon without any payment whatsoever to Loggers or League, except the digital display video board.
32. **Non-Discrimination.** In the performance of the services under this Agreement, Loggers and League agree not to discriminate against any employee, subcontractor or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status.
33. **League's Obligations.** The League is a party to this Agreement and agrees that it is bound by all obligations and duties of the Loggers herein.
34. **Entire Agreement.** The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the parties.
35. **No Waiver.** No failure to exercise and no delay in exercising, any right, power or remedy hereunder on the part of the City shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
36. **Authority.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.
37. **Execution of Agreement.** Loggers and League shall sign and execute this Agreement on or before sixty (60) days of its approval by the La Crosse Common Council, and the Loggers' and/or League's failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void, unless otherwise authorized.
38. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

WITNESS:

NORTHWOODS LEAGUE, INC.

BY: _____

Date: _____

WITNESS:

LA CROSSE BASEBALL, LLC.,

BY: _____

Date: _____

WITNESS:

CITY OF LA CROSSE

BY: _____

Tim Kabat, Mayor

Date: _____

BY: _____

Teri Lehrke, City Clerk

Date: _____