

**JOINT MEETING OF THE SEBASTIAN COUNTY QUORUM COURT  
AND THE CITY OF FORT SMITH BOARD OF DIRECTORS  
THURSDAY, DECEMBER 11, 2014  
TOUR OF AQUATICS FACILITY CONSTRUCTION SITE AT 5:00 PM  
AND JOINT MEETING TO FOLLOW AT 6:00 PM  
BEN GEREN SAFE SHELTER  
7700 SOUTH ZERO  
FORT SMITH, ARKANSAS**

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**AGENDA**

- I. Aquatics Facility Tour 5:00-5:30 PM  
(Dinner available beginning at 5:45 PM)
  
- II. Call to Order
  - A. Pledge of Allegiance
  - B. Invocation
  - C. Roll Call
    - 1. Sebastian County Quorum Court
    - 2. Fort Smith City Board of Directors
  
- III. Consider Aquatics Operating Budget, Presentation by Richard Coleman, ARM
  - A. Proposed Budget
  - B. Rate Analysis
  - C. Recommended Pricing Structure Summer 2015
  - D. Definition of "Budget Line Item Code Descriptions"
  
- IV. Consider Operating Agreement
  
- V. Consider Facility Name
  
- VI. Public Comments
  
- VII. Adjournment



## David Hudson

Sebastian County Judge  
County Court House  
35 South 6th Street, Room 106  
Fort Smith, Arkansas 72901  
(479) 783-6139  
FAX (479) 784-1550

December 8, 2014

### MEMO

To: Quorum Court  
Fort Smith City Board of Directors

Copy: City Administrator

From: County Judge 

Subject: Joint City/County Meeting Regarding the Aquatics Project  
Thursday, December 11, 2014

Enclosed is a copy of the proposed Aquatics operating budget that includes the following:

- a) A definition of budget line item code descriptions
- b) Aquatics facility rate analysis
- c) Proposed aquatics facility budget
- d) Recommended pricing structure for Summer 2015

Also enclosed is a copy of the operating agreement.

The final enclosure is a review of the facility name. The three names being considered are Parrot Island, Flamingo Falls and Coral Bay. County and City administration have reviewed names and recommend Parrot Island Water Park as the name of the facility. The name of the facility needs to consider its marketing potential, the identity of the facility and the image of the facility. A name is needed to begin marketing the facility relatively soon. Sample logos have been developed, and are also attached, which will be followed up and fine-tuned later. The pressing issue, once again, is determining the name of the facility.

The intent of the joint meeting on Thursday, December 11, is to achieve tentative approval of the Aquatics operating budget, rate structure and operating agreement and develop a consensus on facility name.

Richard Coleman with ARM will attend the meeting to present the Aquatics budget, rate analysis and other materials and answer questions. Should you have follow-up questions concerning the enclosed materials, please do not hesitate to contact the County Judge's office or the City Administrator's office.

jw

- Attachments:
- 1) Proposed aquatics facility budget
  - 2) Aquatics facility rate analysis
  - 3) Recommended pricing structure for summer 2015
  - 4) Definition of budget line item code descriptions
  - 5) Copy of Operating Agreement
  - 6) Review of facility name/logos

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**Ben Geren Aquatic Park 2015 Draft Budget version 4.0**

Ordinary Income/Expense	Jan 15	Feb 15	Mar 15	Apr 15	May 15	Jun 15	Jul 15	Aug 15	Sep 15	Oct 15	Nov 15	Dec 15	TOTAL
Income													Jan-Dec 15
4001 - Season Passes													
4001.10 - Season Passes Sold In Park	11	20	15	147	6,623	10,477	1,361	227	-	-	-	-	18,880
4001.20 - Season Passes Sold Online	283	283	378	378	1,369	1,941	83	5	-	-	-	-	4,720
4001.50 - Season Passes Sold in Prev Year	-	-	-	-	-	-	-	-	-	-	-	-	-
4001.60 - Gold Season Pass	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total 4001 - Season Passes</b>	<b>294</b>	<b>303</b>	<b>393</b>	<b>525</b>	<b>7,992</b>	<b>12,418</b>	<b>1,444</b>	<b>232</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>23,600</b>
4002 - Day Passes													
4002.10 - Day Passes Sold In Park	-	-	-	-	60,961	267,185	315,628	161,165	16,427	-	-	-	821,350
4002.20 - Day Passes Sold Online	-	-	-	-	6,905	36,681	42,535	33,957	-	-	-	-	120,080
4002.30 - Group Sales	-	4,167	8,334	21,648	49,212	41,649	43,754	39,587	-	-	-	-	208,350
4002.40 - Consignment Accounts	-	-	3,316	4,974	30,985	31,502	72,853	22,164	-	-	-	-	165,800
Total 4002 - Day Passes	-	4,167	11,650	26,622	148,063	377,017	474,770	256,873	16,427	-	-	-	1,315,580
4009 - Facility Fee	294	4,470	12,043	27,147	166,055	388,435	476,214	257,105	16,427	-	-	-	1,339,190
4003.10 - Registrations at Park	-	-	-	-	-	-	-	-	-	-	-	-	-
4080 - Locker Rentals	-	-	-	-	1,334	4,185	3,987	2,703	-	-	-	-	12,210
4083 - Cabana Rentals	-	-	-	-	-	-	-	-	-	-	-	-	-
4091 - Other Rentals	-	-	-	-	-	-	-	-	-	-	-	-	-
4100 - Food & Beverage	-	-	-	-	70,179	219,474	218,128	133,269	-	-	-	-	641,025
4150 - Gift Shop Merchandise	-	-	-	-	27,621	64,626	58,809	32,088	-	-	-	-	183,150
	-	-	-	-	99,134	288,285	280,924	168,060	-	-	-	-	836,385
4010 - Revenues Offset	-	-	-	-	-	-	-	-	-	-	-	-	-
4042 - Coupons & Discounts	-	-	-	-	(20,822)	(73,816)	(121,257)	(51,947)	-	-	-	-	(267,836)
4043 - Returned Checks & Chargebacks	-	-	-	-	-	-	(111)	(54)	-	-	-	-	(165)
4044 - Refunds & Returns	-	-	-	(10)	(698)	(454)	(476)	(1,087)	(575)	-	-	-	(3,500)
4045 - Cash Over/Short	-	-	-	-	463	60	349	(39)	527	-	-	-	1,293
4048 - Discount Adjustment	-	-	-	(10)	(21,257)	(74,210)	(121,384)	(53,184)	(102)	-	-	-	(270,208)



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6131 · Web Site Development & Hosting	5,253	324	324	324	324	324	599	324	324	324	984	3,004	7,505
6135 · Ticketing Software & Support	4,518	-	-	687	-	-	-	-	-	-	-	-	3,852
6136 · Computer Services & Repairs	-	-	129	2,708	734	755	159	588	-	-	472	1,334	7,026
6138 · Technology Supplies < \$500	-	-	-	23	23	17	23	-	-	-	-	-	116
6140 · Equipment Parts & Repairs	-	-	-	-	215	56	76	-	-	-	-	-	347
	10,301	856	2,661	5,455	3,420	2,738	2,476	1,446	858	1,874	4,756	37,867	
6181 · Insurance-Workers Compensation	-	-	-	1,738	1,738	1,738	4,049	1,738	-	-	-	-	11,000
6182 · Insurance-EPLI/Crime	-	-	-	1,521	1,521	1,521	1,521	1,521	-	-	-	-	7,604
6184 · Equipment/Mechanical	-	-	-	-	-	-	-	-	-	-	-	-	-
6185 · Insurance-General Liability	-	-	-	5,921	5,921	5,921	5,921	5,921	-	-	-	-	29,606
6186 · Insurance-Excess Gen Liability	-	-	-	1,051	1,051	1,051	1,051	1,051	-	-	-	-	5,257
6187 · Insurance Property	2,159	2,159	2,159	2,671	2,671	2,671	2,671	2,671	2,671	2,671	2,671	2,671	30,000
6191 · Finance Charge	-	-	-	-	-	-	-	-	-	-	-	-	-
6195 · Insurance-Other	720	432	432	432	432	432	432	432	432	432	432	729	5,769
	2,879	2,591	2,591	13,334	13,334	13,334	15,645	13,334	3,103	3,103	3,103	3,400	89,239
6401 · Television	-	-	-	-	-	-	-	-	-	-	-	-	-
6403 · Radio	-	-	-	233	1,614	3,344	671	-	-	-	-	-	10,000
6404 · Magazine	-	-	645	-	192	192	192	-	-	-	-	-	1,289
6405 · Billboards	-	-	-	2,472	2,473	907	-	-	-	-	-	-	5,852
6406 · Other Media	-	-	118	23	2,110	1,006	-	-	-	-	-	-	3,257
6407 · Direct Mail	-	-	902	-	4,097	-	-	-	-	-	-	1,399	6,397
6408 · Internet	-	1,500	1,500	2,250	2,250	2,250	2,250	-	-	-	-	2,250	15,000
6410 · Materials & Collateral	-	3,876	1,708	3,657	2,901	4,239	2,251	-	-	749	-	-	15,506
6411 · Production Fees	-	5,868	-	1,291	8,650	384	769	-	-	-	-	-	11,737
6412 · Marketing & Agency Fees	-	-	-	-	1,500	1,500	3,000	-	-	-	-	-	9,000
6414 · Promotions & Partnerships	-	-	-	-	-	-	-	-	-	-	-	-	-
6416 · Marketing Travel and Mileage Reimburseme	600	1,320	1,320	2,683	1,320	2,348	1,368	1,383	600	600	1,052	12,000	
	600	12,564	6,193	13,254	26,915	18,789	8,250	1,383	600	1,349	4,701	106,947	
6442 · Live Entertainment	-	-	-	-	-	-	-	-	-	-	-	-	-
6443 · Appearance & Agency Fees	-	-	-	-	-	-	-	-	-	-	-	-	-
6445 · Other Event Costs	-	-	1,608	1,072	1,429	4,783	3,946	2,162	-	-	-	-	15,000
	-	-	1,608	1,072	1,429	4,783	3,946	2,162	-	-	-	-	15,000
6450.10 · Training	-	-	191	-	-	389	-	-	-	-	-	-	581
	-	-	191	-	-	389	-	-	-	-	-	-	581

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6503 · Employee Uniforms	159	-	142	2,470	4,261	1,437	512	63	-	-	164	-	9,208
6504 · Employee Training Fees & Costs	-	-	-	1,102	-	(44)	-	-	-	-	-	-	1,058
6505 · Training & Uniforms Reimbursed	-	(37)	-	(2,112)	(936)	(802)	-	-	-	-	-	-	(6,480)
6510 · Payroll Services	231	231	231	463	785	932	886	1,103	439	231	231	231	5,786
6520 · Director Salaries	12,916.67	12,916.67	12,916.67	12,916.67	12,916.67	12,916.67	12,916.67	12,916.67	12,916.67	12,916.67	12,916.67	12,916.67	155,000
6530 · Manager Salaries	5,666.67	5,666.67	5,666.67	5,666.67	5,666.67	5,666.67	5,666.67	5,666.67	5,666.67	5,666.67	5,666.67	5,666.67	68,000
6540 · Seasonal Wages	-	-	-	-	-	-	-	-	-	-	-	-	-
6540.22 · Aquatics	-	-	-	513	20,219	48,756	49,896	49,896	8,910	-	-	-	178,200
6540.24 · Park Services	-	-	-	1,342	2,463	5,764	5,764	5,764	653	-	-	-	21,750
6540.26 · First Aid	-	-	-	-	198	1,186	1,037	1,464	-	-	-	-	4,133
6540.30 · Maintenance	-	-	1,760	2,640	2,477	3,130	2,839	2,352	1,586	1,320	1,320	2,574	22,000
6540.44 · Cashier & Accounting	-	-	-	-	2,160	7,830	7,935	7,993	1,080	-	-	-	27,000
6540.60 · Guest Services	-	-	3,199	3,199	6,379	15,827	15,286	15,605	1,919	1,279	640	640	63,973
6540.72 · Food & Beverage	-	-	-	1,600	3,200	7,888	8,894	9,138	640	640	-	-	32,000
6540.74 · Gift Shop	-	-	-	70	1,440	4,560	4,570	4,560	480	320	-	-	16,000
6540.80 · Marketing	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total 6540 · Seasonal Wages</b>	-	-	<b>4,959</b>	<b>9,364</b>	<b>38,536</b>	<b>94,941</b>	<b>96,221</b>	<b>96,772</b>	<b>15,268</b>	<b>3,559</b>	<b>1,960</b>	<b>3,214</b>	<b>364,794</b>
6580 · Payroll Taxes	-	-	-	-	-	-	-	-	-	-	-	-	-
6581 · Employer SS & MI	929	929	1,177	1,397	2,856	5,676	5,740	5,768	1,693	1,107	1,027	1,090	29,390
6582 · FUTA	113	113	113	113	113	113	113	113	113	113	113	113	1,360
6583 · SUTA-MS	19	19	24	38	461	1,089	1,113	1,113	212	22	21	22	4,152
<b>Total 6580 · Payroll Taxes</b>	<b>1,061</b>	<b>1,061</b>	<b>1,314</b>	<b>1,549</b>	<b>3,431</b>	<b>6,878</b>	<b>6,966</b>	<b>6,994</b>	<b>2,018</b>	<b>1,243</b>	<b>1,161</b>	<b>1,225</b>	<b>34,901</b>
6595 · Employee Health Insurance	3,640	3,640	3,579	4,068	4,098	4,077	3,846	4,160	3,972	3,972	3,972	4,002	47,024
<b>Total 6595 · Employee Health Insurance</b>	<b>23,674</b>	<b>23,478</b>	<b>28,808</b>	<b>37,587</b>	<b>67,582</b>	<b>124,222</b>	<b>126,079</b>	<b>126,874</b>	<b>40,280</b>	<b>27,588</b>	<b>26,071</b>	<b>27,255</b>	<b>679,499</b>
6701 · Janitorial Supplies	-	-	-	748	1,794	2,261	1,399	994	(71)	-	-	-	7,125
6703 · Pest Control	-	-	-	-	-	335	-	39	39	-	-	-	413
6704 · Equipment & Supplies < \$500	-	-	52	348	450	670	96	225	139	-	4	-	1,984
6705 · Equipment Repairs & Maintenance	-	-	321	351	600	1,365	463	810	287	283	-	-	4,480
6706 · Attraction Repairs & Maintenance	-	-	-	-	-	1,715	3,085	2,898	661	661	661	661	16,531
6710 · Facilities Repairs & Maintenance	-	-	-	-	-	2,580	3,033	1,381	1,018	117	1,028	557	16,531
6712 · Locker Service Fees	-	-	-	-	494	2,311	2,202	1,285	208	-	-	-	6,500
6713 · Locker Supplies & Fees	-	-	-	-	-	-	-	-	-	1,041	-	-	1,041
6720 · Safety Equipment < \$1,000	-	-	337	1,195	759	31	865	24	63	-	-	-	3,273
6721 · Life Safety Park Certification	-	1,577	1,577	1,577	1,577	1,577	1,577	1,051	-	-	-	-	10,513
6730 · Chemicals & Water Conditions	-	-	-	5,951	6,550	11,933	15,500	10,051	1,226	-	-	-	49,592
6732 · Furnishings & Signage < \$500	-	-	-	326	1,934	647	1,035	356	-	-	-	-	4,298



# Ben Geren Aquatic Park Rate Analysis

	# Days	Regular				20 Avg Attendance				450				Season Pass				400			
		80 Value		1400 Value		14 Rack Rate		13 Rack Rate		12 Rack Rate		13 Rack Rate		12 Rack Rate		13 Rack Rate		12 Rack Rate			
		Rate	Value	Regular	Revenue	Rate	Value	Regular	Revenue	Rate	Value	Regular	Revenue	Rate	Value	Regular	Revenue	Rate	Value		
Rack over 48"	% of Mix	\$15	\$10	\$436,800	\$23,400	\$14	\$9	\$407,680	\$21,060	\$13	\$8	\$378,560	\$18,720	\$12	\$8	\$349,440	\$18,720				
Rack Under 48"	26%	\$10	\$5	\$347,200	\$13,950	\$9	\$5	\$312,480	\$13,950	\$8	\$5	\$277,760	\$13,950	\$7	\$5	\$243,040	\$13,950				
Group Consignment over 48"	31%	\$12	\$5	\$201,600	\$6,750	\$10	\$5	\$168,000	\$6,750	\$9	\$5	\$151,200	\$6,750	\$8	\$5	\$134,400	\$6,750				
Group/Consignment under 48"	15%	\$7	\$5	\$156,800	\$9,000	\$6	\$5	\$134,400	\$9,000	\$5	\$5	\$112,000	\$9,000	\$4	\$5	\$89,600	\$9,000				
Online	20%	\$13	\$5	\$116,480	\$3,600	\$12	\$5	\$107,520	\$3,600	\$11	\$5	\$98,560	\$3,600	\$9	\$5	\$80,640	\$3,600				
Season Passes	8%	\$59	\$59	\$23,600	\$3,600	\$59	\$59	\$23,600	\$3,600	\$59	\$59	\$23,600	\$3,600	\$59	\$59	\$23,600	\$3,600				
<b>Totals</b>	<b>100%</b>			<b>\$1,282,480</b>	<b>\$56,700</b>			<b>\$1,153,680</b>	<b>\$54,360</b>			<b>\$1,041,680</b>	<b>\$52,020</b>			<b>\$920,720</b>	<b>\$52,020</b>				
Total Admission Revenues				\$1,339,180				\$1,208,040				\$1,093,700				\$972,740					
Swim Lesson Revenue				\$0				\$0				\$0				\$0					
Concession/Retail Revenue				\$836,385				\$836,385				\$836,385				\$836,385					
Revenue Offsets				(\$270,208)				(\$241,608)				(\$218,740)				(\$194,548)					
Sponsorships				\$30,000				\$30,000				\$30,000				\$30,000					
<b>Revenue</b>				<b>\$1,935,357</b>				<b>\$1,832,817</b>				<b>\$1,741,345</b>				<b>\$1,644,577</b>					
of Good Sold				\$282,296				\$282,296				\$282,296				\$282,296					
<b>Gross Profit</b>				<b>1,653,061</b>				<b>1,550,521</b>				<b>1,459,049</b>				<b>1,362,281</b>					
G&A Expense				\$108,878				\$108,878				\$108,878				\$108,878					
Technology and Communications				\$37,867				\$30,294				\$30,294				\$30,294					
Insurance				\$89,239				\$89,239				\$89,239				\$89,239					
Advertising				\$106,947				\$64,168				\$64,168				\$64,168					
Events and Entertainment				\$15,000				\$15,000				\$15,000				\$15,000					
Swim Lesson Expense				\$581				\$581				\$581				\$581					
Employee Costs				\$679,499				\$679,499				\$679,499				\$679,499					
Park Conditions/R&M				\$114,615				\$114,615				\$114,615				\$114,615					
Utilities				\$94,250				\$94,250				\$94,250				\$94,250					
Taxes and Licenses				\$-				\$-				\$-				\$-					
Management Fee				\$96,772				\$96,772				\$96,772				\$96,772					
<b>Total Expense</b>				<b>1,343,648</b>				<b>1,293,296</b>				<b>1,293,296</b>				<b>1,293,296</b>					
<b>Ordinary Income</b>				<b>\$309,413</b>				<b>\$257,225</b>				<b>\$165,753</b>				<b>\$68,985</b>					
Total Reserve Accounts				\$174,047				\$164,954				\$156,721				\$148,012					
<b>Net Income</b>				<b>\$135,366</b>				<b>\$92,272</b>				<b>\$9,082</b>				<b>(\$79,027)</b>					

5.0%



Date: November 25, 2014  
Document Number: **008**  
Re: Recommended Pricing Structure

### **Recommended Pricing Structure Summer 2015**

The much anticipated inaugural season for the Ben Geren Aquatic Park (watch soon for the official naming of the facility) will soon be here. Careful consideration has been giving to the following recommended pricing structure for summer 2015:

Regular Rate Over 48" Tall:	\$ 15.00
Regular Rate Under 48" Tall:	\$ 10.00
Children Under 3 year of age:	Free
Season Pass:	\$ 59.00*
Family Season Pass:	\$ 199.00**
Group Discount Rates:	As low as \$ 7.00

**Additional Notes:**

- There will be numerous “value” days throughout the summer with admission prices starting at \$ 5.00 a person.
- Additional Discounts and Coupons of up to 25% off regular rates will be offered to County and City residents for various dates throughout the summer.
- Aggressive group pricing has been established to encourage use and enjoyment of the water park to social and corporate groups of all sizes.
- The water park will also be the summer headquarters for birthday fun with several great packages to choose from.
- Programs will be established utilizing corporate sponsorships and other sponsors to provide water park access to underprivileged children and families.

\* Season Pass is for unlimited visits for the operating season  
\*\* Family Season Pass is for up to four immediate family members.

Ordinary Income/Expense  
Income

4001 · Season Passes		
4001.10 · Season Passes Sold In Park	Season Pass Sales	
4001.20 · Season Passes Sold Online	Season Pass Sales	
4001.50 · Season Passes Sold in Prev Year	Future	
4001.60 · Gold Season Pass	Future	
Total 4001 · Season Passes	Total Season Passes Sold	
4002 · Day Passes		
4002.10 · Day Passes Sold In Park	Transient Park Sales	
4002.20 · Day Passes Sold Online	Transient Park Sales	
4002.30 · Group Sales	Group Sales - Groups over 10	
4002.40 · Consignment Accounts	Consignment Sales to Hotels, Corporations, Fundraisers	
Total 4002 · Day Passes		
4009 · Facility Fee	Rental Of Whole Facility or Portion Thereof	
4003.10 · Registrations at Park		
4080 · Locker Rentals	Locker Rental Sales	
4083 · Cabana Rentals	Private Cabana Rentals - Future	
4091 · Other Rentals	Misc Sales	
4100 · Food & Beverage	Concession Sales- All F&B Sales	
4150 · Gift Shop Merchandise	Concession Sales - All Retail Merchandise	
4010 · Revenues Offset		
4042 · Coupons & Discounts	Coupons & Discounts Redeemed	
4043 · Returned Checks & Chargebacks	Non Recovered Returned Checks or Chargebacks	
4044 · Refunds & Returns	Refunds and or Returns	
4045 · Cash Over/Short	Cashier Over / Short	
4048 · Discount Adjustment	Open	

4910 · Sponsorship Contract  
4950 · Commissions

Sponsorship Contracts  
Future

**Total Income**  
**Cost of Goods Sold**

5100 · Food & Beverage  
5102 · Food & Beverage Equip & Other  
5150 · Gift Shop Merchandise

Cost of Food & Beverage Sales  
Cost of Food & Beverage Misc Smallwares and Small Equipment  
Cost of Retail Merchandise

**Gross Profit**  
**Expense**

6002 · Bank Service Charges  
6003 · ACH & Credit Card Process Fees  
6005 · Dues & Subscriptions  
6006 · Office Supplies  
6007 · Postage and Delivery  
6008 · Equipment Rental-G&A  
6009 · Automobile Expense  
6012 · Meals & Entertainment  
6013 · Admin Travel & Lodging  
6015 · Office Printing & Reproduction  
6016 · Consulting Expense  
6018 · Legal & Professional Fees  
6019 · Vendor Charges & Fees  
6023 · Ticketing Supplies & Costs  
6027 · G&A Equipment & Supplies < \$500  
6028 · Security and Patrols  
6035 · Miscellaneous G&A Expenses  
6036 · Meals for Employer Convenience

Service Charges from Financial Institution  
Fees for Credit Card Processing  
Fees to belong to local COC or other similar  
Office Supplies - Stationary, Writing Utensils  
Postage or Freight Fees  
Mileage Reimbursement  
Meal Reimbursement for Sales and other Official Business  
Management Company Travel Expense  
Office Printing - Employee handbooks, notices etc...  
Future if Necessary  
Legal or Outside Accounting Fees  
Future if Necessary  
Wristbands, season pass cards, or similar media  
Small office supplies non printing - Label Maker (for name tags),  
Security for events and larger crowds  
Misc

6121 · In Park Radios  
6122 · Park Telephone  
6125 · Music Service

Upkeep and Replacement of IN Park Radios, Earpieces, batteries  
Fee for park telephone service  
Programmed Music Service To Park

6131 · Web Site Development & Hosting  
6135 · Ticketing Software & Support  
6136 · Computer Services & Repairs  
6138 · Technology Supplies < \$500  
6140 · Equipment Parts & Repairs

Website Development and Hosting  
POS Software and Support  
Misc Computer Repairs and Service  
Keyboards, mouse, replacement monitor  
Repairs

6181 · Insurance-Workers Compensation  
6182 · Insurance-EPLI/Crime  
6184 · Equipment/Mechanical  
6185 · Insurance-General Liability  
6186 · Insurance-Excess Gen Liability  
6187 · Insurance Property  
6191 · Finance Charge  
6195 · Insurance-Other

Insurance Workers Comp  
Part of Insurance Package covering Property / Liability  
Not Used

6401 · Television  
6403 · Radio  
6404 · Magazine  
6405 · Billboards  
6406 · Other Media  
6407 · Direct Mail  
6408 · Internet  
6410 · Materials & Collateral  
6411 · Production Fees  
6412 · Marketing & Agency Fees  
6414 · Promotions & Partnerships  
6416 · Marketing Travel and Exp Reimb

Television Media Buy  
Radio Media Buy  
Magazine Media Buy  
Outdoor Billboards or Mall Displays  
  
Direct Mail Sent To Potential Customers With Offers  
SEO, Banner Campaigns other Electronic Campaigns  
Misc Materials needed for sales and marketing efforts - Rack Cards, Brochures  
Fees to produce collateral pieces  
Ad agency feeds  
  
Mileage and meal reimbursements for sales and marketing related travel/expos

6442 · Live Entertainment  
6443 · Appearance & Agency Fees  
6445 · Other Event Costs

Fees for any live entertainment or acts  
Fees for production of live events or similar

6450.10 · Training

6503 · Employee Uniforms	Employee Uniforms and Nametags
6504 · Employee Training Fees & Costs	Labor and associated fees with Hiring, Orientation, Lifeguard Training
6505 · Training & Uniforms Reimbursed	Money recovered through deductions for lifeguard training and uniforms
6510 · Payroll Services	Fees for processing payroll
6520 · Director Salaries	General Manager, Director of Sales, Director of Maintenance
6530 · Manager Salaries	Aquatic Supervisor, Sales Administration
6540 · Seasonal Wages	
6540.22 · Aquatics	Lifeguards, Head Guards,
6540.24 · Park Services	Cleaning Staff, Attendants
6540.26 · First Aid	First Aid Staff on volume days
6540.30 · Maintenance	Maintenance Staff
6540.44 · Cashier & Accounting	Accounting with additional ticketing and services support
6540.60 · Guest Services	Ticketing Staff
6540.72 · Food & Beverage	Food & Beverage Staff
6540.74 · Gift Shop	Retail Staff
6540.80 · Marketing	Marketing Person to support Director of Sales

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Total 6540 · Seasonal Wages

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6580 · Payroll Taxes

6581 · Employer SS & MI

6582 · FUTA

6583 · SUTA-MS

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Total 6580 · Payroll Taxes

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6595 · Employee Health Insurance

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6701 · Janitorial Supplies	Supplies for cleaning and upkeep of bathroom and guest areas
6703 · Pest Control	Pest control if necessary
6704 · Equipment & Supplies < \$500	Small equipment and supplies - Small hand tools etc...
6705 · Equipment Repairs & Maintenance	Routine Maintenance costs for pumps, filters and similar
6706 · Attraction Repairs & Maintenance	Routine Maintenance and Repairs of Slides, Pools
6710 · Facilities Repairs & Maintenance	Routine Maintenance and Repairs of Bathroom, Offices, Concessions etc...
6712 · Locker Service Fees	Fees to locker Rev-Share provider
6713 · Locker Supplies & Fees	Misc Simple Locker Repairs - Locks, hinges, handles
6720 · Safety Equipment < \$1,000	Rescue Tubes, Life Rings, Whistles etc...
6721 · Life Safety Park Certification	3rd Party Safety Certification
6730 · Chemicals & Water Conditions	Chemicals for all pool systems
6732 · Furnishings & Signage < \$500	Needs for deck chairs, small signs, roping

Band-aids, Icepacks similar

6733 · First Aid Supplies  
6740 · Miscellaneous Expenses

6751 · Electric Utility  
6752 · Gas Utility  
6753 · Water Utility  
6754 · Waste Disposal Waste Disposal

6801 · Property Taxes  
6802 · License Tax/Fee  
6804 · Use Taxes

7101 · Base Lease-City or County None

-16 Expense  
Net Income

Other Income/(Expense)

8001 · MTIP Sales Tax Rebates  
8010 · Other Income

8020 · Misc Interest Income  
8040 · Gain/Loss on Asset Dispositions

Total Other Income  
Other Expense

8200 · Depreciation Expense  
8210 · Amortization Expense

8250 · Management Incentive Bonus  
8300 · Expansion Fund

8400 · Capital Replacement Reserve  
Total Other Expense

Net Other Income/(Expense)

Net Income

## MANAGEMENT AGREEMENT

This Management Agreement is entered into by and between the City of Fort Smith, Arkansas and Sebastian County, Arkansas, Arkansas municipal corporations hereinafter jointly referred to as the "Owners," and American Resort Management, LLC, a Pennsylvania Limited Liability Company ("Manager").

### Recitals

WHEREAS, Owners are the owners of **an outdoor water park and associated ancillary revenue centers** (the "Property");

WHEREAS, Manager is in the business of providing management services for water parks, hotels, resorts and facilities which are ancillary thereto, including (but not limited to) restaurants, gift shops and so forth;

WHEREAS, Owners desire to retain Manager to operate and manage the Property; and

WHEREAS, Owners and Manager desire to set forth their agreement with respect to the operation and management of the Property.

NOW, THEREFORE, in exchange of the mutual undertakings set forth in this Management Agreement ("Agreement"), which the Parties acknowledge to be good, valuable and sufficient to support their respective undertakings in the Agreement and intending to be legally bound hereby, the parties agree as follows:

### I. Definitions and Related Matters

#### 1. Definitions and Related Matters.

1.1. Definitions. Unless the context already otherwise requires, for purposes of this Agreement, the terms set forth in Section 1.1.1 through 1.1.15, below, shall have the meanings indicated therein.

1.1.1. Agreement. The term "Agreement" means this Management Agreement and any exhibits or schedules thereto. The term "Agreement" also includes any amendments to this Agreement which may be entered into by the parties.

1.1.2. Commencement Date. The term "Commencement Date" means the date on which Manager takes over the management and operation of the Property, as set forth in Section 2.2, below.

1.1.3. Annual Budget. The term "Annual Budget" means the budget which is agreed upon by the Owners and Manager with respect to each Fiscal Year. The Annual Budget is more completely described in Section 3.1, below.

1.1.4. Corporate Employee or CE. The terms "Corporate Employee" or "CE" mean a person who is employed or otherwise retained by the Manager and who does not render services exclusively with respect to the Property. CEs include, but are not limited to: (1) accounting personnel employed by the Manager to provide accounting and other financial services to clients of the Manager generally; (2) human relations managers employed by the Manager to provide personnel services with respect to facilities managed by Manager for clients of the Manager generally; and (3) Marketing Advisor to provide services relating to marketing and promoting the facility.

1.1.5. Effective Date. The term "Effective Date" means, the date on which this Agreement is fully executed by the authorized representatives of the Parties.

1.1.6. Fiscal Year. The term "Fiscal Year" means the calendar year period commencing January 1, 2015 and ending December 31, 2016 and following calendar years. The term "Fiscal Year" also includes a "Short Fiscal Year", as defined in Section 1.1.14, below.

1.1.7. Manager. The term "Manager" means American Resort Management, LLC, a Pennsylvania limited liability company and a party to this Agreement.

1.1.8. Operating Account. The term "Operating Account" means the account established pursuant to Section 3.2, below, into which all revenues generated by the Property shall be deposited and from which all expenses associated with the operation of the Property shall be paid.

1.1.9. Owner. The term "Owners" means the City of Fort Smith and Sebastian County, Arkansas, government entities located in the State of Arkansas, which are collectively a party to this Agreement.

1.1.10. Property. The term "Property" means the water park located in Ben Geren Park, 7300 Zero Street, Fort Smith, Arkansas 72903. The term "Property" does not include any facility or activity of the Owners which is not described in this Section 1.1.10.

1.1.11. Parties. The term "Parties" is a collective reference to the Manager and the Owners.

1.1.12. Property Specific Employee or PSE. The terms "Property Specific Employee" or "PSE" mean a person who is employed by Manager and whose duties relate exclusively to providing services with respect to the Property. PSEs would normally include, but are not limited to, maintenance personnel, aquatics personnel, housekeeping personnel, admissions personnel, restaurant personnel, and so forth.

1.1.13. Reimbursable Expenses. The term "Reimbursable Expenses" means expenses incurred by Manager in performing its duties under this Agreement with respect to the

Property and which are identified as Reimbursable Expenses in this Agreement. "Reimbursable Expenses" are more specifically described in Article V, below.

1.1.14. Short Fiscal Year. The term "Short Fiscal Year" means those periods of time (1) from the Commencement Date to the beginning of the next Fiscal Year and (2) from the end of the prior Fiscal Year to the termination of this Agreement, and which do not encompass a full Fiscal Year, *i.e.*, a full twelve months.

1.1.15. Term. The term "Term" means the time period that this Agreement is in effect. The term "Term" includes the initial term and any renewal term, as more specifically described in Section 7.1, below.

1.2. Recitals and Schedules. The recitals and schedules to this Agreement shall be considered a part of this Agreement, as if fully set forth herein.

1.3. Number. For purposes of this Agreement, the singular shall include the plural and the plural the singular, as the context may require.

1.4. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings and agreements of the parties with respect thereto. For the sake of clarity and the avoidance of doubt, this Agreement does not relate to any pre-opening or similar services with respect to the Property. If the Owners and Manager have agreed upon the rendering of pre-opening services by the Manager to the Owners with respect to the Property, such agreement shall be set forth in a separate written agreement between the parties.

1.5. Amendment. This Agreement may only be amended by a writing which has been executed by and authorized representatives of each party.

## II. Retention of Manager

### 2. Retention of Manager.

2.1. Generally. Owners hereby engage Manager on an exclusive basis to operate and manage the Property on behalf of the Owners during the term of this Agreement. Manager hereby accepts such engagement.

2.2. Commencement Date. The date on which the Manager shall commence to operate and manage the Property (the "Commencement Date") shall be the first day on which the Property opens for business. The date shall be confirmed in a writing signed by the Parties within ten (10) days of the Commencement Date.

2.3. No Representation or Warranty of Financial Performance. Owners acknowledge and understand that the financial performance of the Property will be affected by many factors which are beyond the reasonable control of the Manager, and which are unpredictable. Accordingly, Owners understand and agree that: (1) Manager has not made, and Manager

cannot make, any representations or warranties as to the financial performance of the Property during the term of this Agreement; and (2) the Agreement of the Owners and Manager as to the Annual Budget, as contemplated by Section 3.1, below, does not and will not constitute a representation or warranty by the Manager as to the financial performance of the Property during the Fiscal Year to which such Annual Budget relates.

2.4. Manager shall use its best efforts and provide services under this Agreement in good faith and in accordance with accepted industry standards. Specifically, the Manager shall train and supervise Project staff:

2.4.1. So as to maintain a safe environment for both staff and visitors. Water safety, ride safety, food preparation, handling chemicals, and other safety areas will be managed with best practices;

2.4.2. So that staff will engage with visitors in a positive upbeat manner creating an atmosphere on the Property as one expects at a well-run theme park;

2.4.3. So that the Property is maintained at a high level of cleanliness. Pre-opening cleaning must assure that the restrooms, pools, decks, and amenities are sanitized and ready for use. During the day of operation, the litter will be picked up, trash emptied, and restrooms inspected and cleaned as necessary;

2.4.4. So that the water chemistry will be managed at optimal levels to assure safety of swimmers. A minimum of three water tests per day will be performed and recorded by trained staff on each body of water. A minimum of two saturation indexes on each body of water will be performed and recorded by trained staff each week;

2.4.5. So that marketing efforts will encourage attendance throughout the swimming season and into future years to provide for the financial needs of the Property;

2.4.6. So that the care and maintenance of the Property and equipment will be of the highest standard. Manufacturers' scheduled maintenance will be followed and recorded on all equipment including but not limited to motors, pumps, chemical feeders, and concession equipment. Maintenance of the facilities, such as painting and other off-season work, shall maintain the appearance of the Property; and,

2.4.7. So that all applicable plumbing, electrical and safety codes shall be followed.

2.5. Manager shall provide to Owners and maintain in effect throughout the term of this Agreement a fidelity bond in the amount of at least \$\_\_\_\_\_, the cost of which fidelity bond shall be paid from the Operating Account provided for in Section 3.2 below.

### III. Financial Matters

3. Financial Matters.

3.1 Annual Budget.

3.1.1. Adoption.

3.1.1.1. Generally. Not less than 90 days prior to the beginning of each Fiscal Year, Manager shall prepare and submit to Owners for Owners' approval a budget for such Fiscal Year (the "Annual Budget"). The Annual Budget shall set forth in reasonable detail all revenues projected to be generated and all expenses projected to be incurred, in the operation and management of the Property. The Annual Budget shall also include a depreciation allocation and capital budget identifying any capital expansions, improvements or replacements (such as, but not limited to, fixtures, furnishings and equipment) to be paid for or reserved from operating revenues during the Fiscal Year in question. The Owners shall approve or disapprove the proposed Annual Budget as soon as practicable following its receipt. If the Owners disapprove the proposed Annual Budget, the Owners and the Manager will consult for the purposes of reaching agreement on the Annual Budget. If the Owners and the Manager fail to reach agreement on the Annual Budget, the Manager shall operate the Property on the basis of the previous year's Annual Budget.

3.1.1.2. First Fiscal Year. The Annual Budget for the 2015 Short Fiscal Year commencing on the Commencement Date is attached hereto as Schedule 3.1.1.2.

3.1.2. Amendment of Annual Budget. An Annual Budget may be amended at any time by the mutual written agreement of the Owners and the Manager.

3.1.3. Adherence to Annual Budget. The Manager will adhere to the Annual Budget in the operation and management of the Property. In particular, the Manager will exercise commercially reasonable efforts to hold or reduce costs in the event that revenues do not attain the budgeted levels, so as to maintain the profitability of the Property to the extent reasonably possible. Notwithstanding the foregoing, Owners acknowledge, understand and agree that: (1) certain components of the Annual Budget, including, without limitation, overall revenues, utility costs, costs associated with events of *force majeure*, and so forth, are not within the control of Manager; (2) certain expenses are either fixed or are not otherwise subject to the control of the Manager; and (3) Manager cannot guarantee that, and Manager makes no representation or warranty with respect to, (a) the gross revenues of the Property, (b) the overall expenses to be incurred in the operation and management of the Property, and (c) the profitability of the Property.

3.2 Operating Account.

3.2.1 Establishment. The Owners shall establish an operating account at a bank selected by the Owners which shall be the "Operating Account" for the Property. The Operating Account shall be in the name of the Owners, and shall be the property of the Owners. The Operating Account shall be subject to the terms, conditions and limitations set forth in this Agreement. The Operating Account shall be a single account, but may have such sub-accounts (including, but not limited to, reserve accounts for depreciation and capital, expansions, repairs and improvements) as determined by the Owners. Subject to the Owners' rights upon

termination and subject to Owners' rights to inspect and audit, the Manager shall have the sole authority to withdraw funds from the Operating Account during the term of this Agreement.

3.2.2 Expenses Incurred Prior to Commencement Date. It is understood that, following the Effective Date of this Agreement, the Manager shall incur expenses prior to the Commencement Date which relate to the operation and management of the Property on and after the Commencement Date, and which are necessary to enable the Manager to effectively and efficiently operate and manage the Property on and after the Commencement Date. Such expenses include, but are not limited to, the hiring of PSEs, pre-Commencement Date wages of PSEs, and so forth. Such expenses shall be Reimbursable Expenses. The reimbursement of such expenses shall be in addition to, but shall not be duplicative of, any amounts paid by Owners to Manager pursuant to a pre-opening services agreement between Owners and Manager. Unless authorized in the Annual Budget for the 2015 Short Fiscal Year, all pre-commencement expenses must be pre-approved in writing by the Owners.

3.2.3. Operation of Operating Account.

3.2.3.1. Revenues. The Manager shall cause all revenues derived from the operation of the Property to be deposited into the Operating Account: *Provided, however,* that the Manager shall keep such petty cash on hand at the Property as is reasonable and necessary to operate the facilities located at the Property on a day-to-day basis, including, but not limited to, guest shops, restaurants and so forth. The total petty cash amount shall not exceed \$\_\_\_\_\_.

3.2.3.2. Expenses. The Manager shall cause all expenses incurred in the operation and management of the Property to be paid from the Operating Account. The payment of expenses from the Operating Account shall be subject to the requirements and limitations set forth in Section 4.1 below. To the extent that any sub-accounts may have been established by the Owners, funds from such sub-accounts shall only be used by Manager pursuant to adopted Annual Budget.

3.2.3.3. Minimum Balance. The Owners and the Manager agree that the operation of the Property requires a minimum amount of working capital. Accordingly, unless otherwise agreed upon by the Manager and Owners, there shall at all times be maintained in the Operating Account (exclusive of funds placed in sub-accounts for dedicated purposes) an amount equal to \$\_\_\_\_\_. If the balance in the Operating Account (exclusive of funds placed in sub-accounts for dedicated purposes) falls below such minimum balance, the Manager shall so advise the Owners and the Owners shall, within three (3) business days, deposit an amount in the Operating Account sufficient to cause the balance of the Operating Account to be equal to or greater than such minimum required balance.

3.2.3.4. Disbursement of Excess Funds to Owners. The Manager shall disburse to the Owners funds in the Operating Account which are in excess of the minimum balance requirement set forth in Section 3.2.3.3, above. At a minimum, such disbursements shall be made on a quarterly basis, and disbursements shall be made at such other times as may be agreed upon by the Owners and the Manager, or as may be set forth in the Annual Budget.

3.2.3.5. Initial Funding. Not later than ten (10) days following the Effective Date or such later date as may be agreed upon by the Owners and the Manager, the Owners shall initially fund the Operating Account by depositing therein not less than \$ \_\_\_\_\_.

3.3. Obligation of Owners to Fund Operations. Under no circumstances shall the Manager be obligated to fund the operations and expenses of the Property, and Manager shall have no obligation to advance funds for such purposes.

#### IV. Management Obligations and Authority of Manager

#### 4. Management Obligations and Authority of Manager.

4.1. Generally. Subject to the terms and conditions of this Agreement, Manager shall have the exclusive right, authority and discretion to direct, supervise, manage and operate the Property on a day-to-day basis during the term of this Agreement. Such authority shall include the authority to contract to purchase such goods and services, within the authorizations of the Annual Budget and in compliance with all purchasing and personnel laws and procedures applicable to the City of Fort Smith, as may be reasonable and appropriate to operate the Property in an effective and efficient manner. This general statement is applicable to each of the Manager's obligations and authorizations stated in this Article IV (and in Section 3.2.3.2.).

#### 4.2. Specific Obligations and Authority.

4.2.1. Operations. Manager shall have the authority to make all determinations relating to the day-to-day operations of the Property.

#### 4.2.2. Collection of Revenues.

4.2.2.1. Generally. Manager shall have the authority and shall use commercially reasonable efforts to collect all revenues due with respect to the Property.

4.2.2.2. Certain Tax Obligations. Manager shall have the obligation to collect, account for and remit to the appropriate taxing authorities, any taxes levied upon the operation of the Property, including, without limitation, sales and use taxes, amusement taxes, franchise tax and so forth. For the sake of clarity and the avoidance of doubt, Manager shall not be responsible for collecting and remitting any income taxes or similar tax obligations, if any, of the Owners arising out of or relating to income generated by the Property; however, Manager shall be responsible for the payment of any income taxes or similar taxes of the Manager arising out of or relating to any fees due or paid to the Manager pursuant to this Agreement.

4.2.3. Utilities. Manager shall have the authority to contract with electrical, water, gas, sewer, cable/satellite television, internet and other utility providers to provide utilities to the Property. Sanitary waste services shall be contracted with the City of Fort Smith.

4.2.4. Cleaning and Related Services. To the extent not provided by the Manager directly through PSEs, Manager shall have the authority to contract with third party vendors to provide cleaning and related services to the Property.

4.2.5. Maintenance. To the extent not provided by the Manager directly through PSEs, Manager shall have the authority to contract with third party vendors to provide maintenance services to the Property.

4.2.6. Supplies. Manager shall have the authority to contract with third party vendors to acquire all necessary supplies and related services necessary for the operation of the Property. Such supplies and related services include, but are not limited to, aquatic supplies, linen services, cleaning materials, restroom supplies, and articles normally and customarily furnished to guests as part of the aquatic, food and beverages, tableware, furnishings, restaurant supplies and guest shop inventory. Manager may utilize the purchasing actions and resulting supplies of the Parks Department of the City of Fort Smith.

4.2.7. FFE Replacement. Manager shall have the authority to contract with third party vendors to acquire (by purchase and/or lease) furnishings, fixtures and equipment for use in the operation of the Property in the ordinary course of business. Such items include, but are not limited to: (1) cash registers; (2) kitchen equipment; (3) cleaning equipment; (4) furniture and furnishings; and (5) office equipment.

4.2.8. Public Relations, Advertising and Promotion. Manager shall have the authority to contract for the provision of advertising and promotional materials and services with respect to the Property. Such advertising and promotional materials and services include, but are not limited to: (1) television, radio and other media forms of advertising; (2) participation in reservation services; (3) entering into arrangements with third parties to create promotional packages in which the Property participates; and (4) engaging in or otherwise supporting community and/or charitable activities which promote the image and presence of the Property among potential customers and referral sources. The Manager shall develop, implement and periodically update an on-going marketing program for the Property.

4.2.9. Licenses and Permits. Manager shall obtain and keep in full force and effect, as may be required by applicable law, any and all licenses and permits necessary for the operation of the Property. Owners shall fully cooperate with the Manager in applying for, and maintaining in effect, all such licenses and permits.

#### 4.3. Contracting Authority.

##### 4.3.1. Limitations on Contracting Authority.

4.3.1.1. Monetary Limitation. Notwithstanding any other provision of this Agreement, the Manager shall not enter into any contract relating to the operation and/or management of the Property which reasonably can be expected to exceed, in any Fiscal Year, \_\_\_\_\_ in value, without the prior written consent of the Owners.

4.3.1.2. Notwithstanding any other provision of this Agreement, the Manager shall not enter into any contract relating to the operation and/or management of Property, the term of which extends beyond the initial term of this Agreement or any renewal term then in effect, without the prior written consent of the Owners. In determining the term of any such contract, the term will be deemed to expire on the earliest date as of which the contract may be terminated by Manager, without penalty or other early termination charges.

4.3.1.3. Consent Through Approval of Annual Budget. For purposes of this Section 4.3.1., any required consent of the Owners shall be deemed to have been given if the contract in question has been accounted for and disclosed in the Annual Budget for the Fiscal Year in question and such Annual Budget has been approved by the Owners. Any dispute regarding contract authority shall be determined by the Owners and shall be binding on the Manager.

4.4. Employees.

4.4.1. Generally. The Owners and the Manager acknowledge that the Property shall be operated and managed solely by the Manager utilizing Corporate Employees (CEs) and Property Specific Employees (PSEs).

4.4.2. Hiring. The Manager shall have the obligation and authority, in the Manager's sole-discretion, to hire, train, promote, supervise, direct the work of and discharge all CEs and PSEs providing services with respect to the Property.

4.4.3. Compensation and Benefits. Consistent with the applicable Annual Budget, Manager shall have the right to fix the terms of compensation, to pay incentive compensation, and to provide employee benefits to all CEs and PSEs providing services with respect to the Property. Such employee benefits may include, but are not limited to, pension plans, health insurance, life insurance, disability insurance and similar employee benefit plans. For the sake of clarity and the avoidance of doubt, the Owners and the Manager expressly acknowledge and agree that it is their intent that such compensation and benefits be reasonably sufficient to attract and retain employees in, and to otherwise remain competitive within, the employee workforce market in which the Property is located. Manager may contract to utilize pension, insurance and other employee benefit plans operated by the City of Fort Smith to the extent permitted by law.

4.4.4. Certain Tax Matters Related to Employees. It is expressly understood and agreed that all CEs and PSEs providing services to the Property will be the employees of the Manager for all purposes, including, without limitation, federal, state and local tax and reporting purposes. Owners acknowledge and agree that Manager, as the employer of all of the CEs and PSEs providing services to the Property, shall be entitled to all federal, state and/or local tax credits or benefits allowed to employers relating to the CEs and PSEs, including, without limitation, the Work Opportunity Tax Credit, The Targeted Jobs Tax Credit, and similar tax credits: *Provided, however*, that Manager shall pay all incremental fees, if applicable, to qualify for such tax credits.

4.4.5. Reimbursement of Expenses Related to PSEs and CEs.

4.4.5.1. Generally. Except as set forth in Section 4.4.5.2, below, with respect to CEs, all expenses incurred by the Manager with respect to CEs and PSEs shall be Reimbursable Expenses. Such expenses include, but are not limited to: (1) wages; (2) benefits of any type, including, without limitation, workers compensation insurance and benefits, pension benefits, health insurance, disability insurance, life insurance, sick benefits, severance pay and vacation pay; (3) the Manager's share of employee trust fund taxes, including (without

limitation) FICA, FUTA and similar federal, state and local taxes or impositions paid by the Manager with respect to the CE or PSE; (4) employee expense reimbursement owed by the Manager to CEs and PSEs; and (5) professional expenses, including (without limitation) legal, accounting and actuarial services required by the Manager with respect to any employee matters including (without limitation) workers compensation claims, unemployment compensation claims, other employment based claims and pension administration.

4.4.5.2. CEs. The parties acknowledge that CEs shall normally provide services with respect to multiple facilities managed by the Manager. That portion of all expenses incurred by the Manager with respect to CEs shall be Reimbursable Expenses equitably based upon the amount of time spent by the CE in question providing services to the Property and as allocated in the Annual Budget.

4.4.5.3. Manager shall comply with each of the following listed federal and state laws and regulations:

- (1) Title VII of the Civil Rights Act of 1991 (42 U.S.C. §§ 2000(e), et seq);
- (2) The Discrimination in Employment Act of 1967, as amended (29 U.S.C. § 621 et seq.);
- (3) The Civil Rights Acts of 1866, 1871, 1964 and 1991;
- (4) The Americans with Disabilities Act of 1990 (42 U.S.C. § 1211, et seq.);
- (5) The Rehabilitation Act of 1973 (29 U.S.C. § 701, et seq);
- (6) The Fair Labor Standards Act (29 U.S.C. § 201, et seq);
- (7) The Equal Pay Act of 1973 (29 U.S.C. Chapter 8, §§ 206(d), et seq.);
- (8) The Consolidated Omnibus Budget and Reconciliation Act of 1985, (29 U.S.C. § 1161, et seq. as amended);
- (9) The Employee Retirement Income and Security Act (29 U.S.C. § 1001, et seq. as amended);
- (10) The Older Workers' Benefit Protection Act;
- (11) The Arkansas Civil Rights Act
- (12) The Family and Medical Leave Act (29 U.S.C. § 2601 et seq.);
- (13) The Arkansas Workers' Compensation Act (Ark. Code Ann. § 11-9-101 et seq.);
- (14) Any other federal, state or local law or ordinance governing discrimination in employment or public facilities.

4.4.5.4. Certain Employee Expenses Related to Termination of this Agreement. The Owners and Manager acknowledge and agree that: (1) the Manager will be required to terminate all PSEs upon termination of this Agreement; and (2) the Manager will incur certain expenses related to the termination of the employment of such PSEs. The Owners and the Manager agree that such termination related expenses shall be Reimbursable Expenses. Termination related expenses include, but are not limited to: (1) compensation in lieu of vacation pay and sick leave; (2) reasonable severance pay; (3) unemployment benefit obligations; (4) COBRA liability; (5) WARN Act liability; and (6) such other termination benefits as are due the terminated employee pursuant to law and/or which arise under benefit

plans established by the Manager pursuant to Section 4.4.3, above. The provisions of this Section 4.4.5.4 shall be applicable regardless of the basis upon which this Agreement is terminated, or the reason(s) therefor.

## V. Reimbursement of Expenses of Manager

### 5. Reimbursement of Expenses of Manager.

5.1. Generally. It is the agreement of the Owners and Manager that the following, as budgeted, shall be paid from the Operating Agreement: (1) all direct, out-of-pocket expenses incurred by the Manager in the performance of the Manager's obligations under this Agreement; and (2) to the extent expressly provided for in this Agreement, indirect expenses (such as, but not limited to, allocations for services provided by CEs) incurred by the Manager in the performance of the Manager's obligations under this Agreement.

#### 5.2. Specific Items Reimbursable.

5.2.1. Generally. The provisions of this Section 5.2 are not intended to limit the application or generality of Section 5.1, above, but rather are set forth herein for the purposes of clarity and the avoidance of doubt.

#### 5.2.2. Property Specific Employer Expenses.

5.2.2.1. Wages, Benefits and Related Items. All expenses incurred by the Manager with respect to PSEs shall be Reimbursable Expenses, as more specifically set forth in Section 4.4.5.1, above.

5.2.2.2. Termination Expenses. All expenses incurred by the Manager in connection with the termination of PSEs, as more specifically described in Section 4.4.5.4, above, shall be Reimbursable Expenses.

#### 5.2.3. Corporate Employee Expenses.

5.2.3.1. Wages, Benefits and Related Items. Subject to the limitations set forth in Section 4.4.5.2, above, all expenses incurred by the Manager with respect to work performed by CEs with respect to the Property shall be Reimbursable Expenses.

5.2.4. Professional Expenses. Within budget, all expenses incurred by the Manager to retain professional advisors (including, without limitation, legal, accounting, engineering, and environmental advisors) with respect to matters arising out of or relating to the operation and management of the Property shall be paid from the Operating Account.

5.2.5. Manager will be reimbursed for travel at City government per-diem and for standard class rental cars and coach fares.

5.3. Mechanism for Reimbursement.

5.3.1. Generally. The Manager shall be entitled to receive reimbursement for Reimbursable Expenses by making draws directly from the Operating Account. The Manager may make such draws in advance of the actual expenditure in question to the extent that such expenses are reasonably ascertainable and such advance is no more than five (5) business days prior to the date on which such expense shall be paid by the Manager. Such advance draws include, but are not limited to, transfers from the Operating Account to the Manager's payroll account to cover weekly wages for PSEs and Reimbursable Expenses (including, without limitation, the Manager's portion of applicable payroll taxes) associated therewith.

5.3.2. Refund of Excess Reimbursements. In the event that reimbursements for Reimbursable Expenses should exceed the amount of such Reimbursable Expenses, or the Manager makes a recovery (through insurance or otherwise) with respect to Reimbursable Expenses previously reimbursed to the Manager, the Manager shall promptly refund to the Operating Account any such excess amounts and/or recoveries. Such refunds may be made by the Manager through a deposit thereof in the Operating Account or as may otherwise be agreed upon by the Owners and the Manager.

VI. Compensation to Manager

6. Compensation to Manager.

6.1. Base Compensation. In consideration for the services rendered by the Manager pursuant to this Agreement, the Owners agree to pay to the Manager base compensation in accordance with the provisions of Schedule 6.1 to this Agreement. The Manager shall submit an invoice to the Owners monthly for and, when approved by Owners, shall have the right to withdraw such base compensation from the Operating Account, as and when specified in Schedule 6.1.

6.2. Incentive Compensation. In additional consideration for the services rendered by the Manager pursuant to this Agreement, the Owners agrees to pay to the Manager Incentive compensation in accordance with the provisions of Schedule 6.2 to this Agreement. The Manager shall submit an invoice to the Owners at end of the Fiscal Year along with the Annual Fiscal Report and, when approved by Owners, shall have the right to withdraw same from the Operating Account as and when specified in Schedule 6.2.

6.3. Nature of Compensation. The compensation described in this Article VI is in consideration for the obligations undertaken and performed by the Manager under this Agreement. Such compensation is in addition to, and not in lieu of, any Reimbursable Expenses under this Agreement.

VII. Term and Termination

7. Term and Termination

7.1. Term.

7.1.1. Initial Term. The initial term of this Agreement shall begin on the Effective Date and shall continue through December 31, 2017, unless earlier terminated pursuant to Section 7.2, below.

7.1.2. Renewal Term. This Agreement shall automatically renew for successive one year renewal terms following the initial term and each subsequent renewal term for a total term of 3 years, unless: (1) a notice of non-renewal shall have been timely given by either party as set forth in Section 7.2.2, below; or (2) this Agreement is otherwise terminated prior to the completion of the initial term or the renewal term then in effect, as the case may be, pursuant to the provisions of Section 7.2, below.

7.2. Termination.

7.2.1. Mutual Written Agreement. This Agreement may be terminated at any time by mutual written agreement of the parties.

7.2.2. Expiration of Initial Term or Renewal Term Following the Giving of Notice of Non-Renewal. This Agreement shall automatically terminate upon the expiration of the initial term or the renewal term then in effect if either party shall have given to the other party a written notice of non-renewal in accordance with this Section 7.2.2. Such notice of non-renewal shall be identified as a notice of non-renewal which is being given pursuant to this Section 7.2.2 and must be given no later than sixty (60) days prior to the expiration of the initial term or renewal term in question, as the case may be. Such notice of non-renewal may not be revoked. No other action on the part of either party shall be necessary following the giving of a notice of non-renewal to cause the termination of this Agreement to be effective upon the expiration of the initial term or the renewal term in question, as the case may be.

7.2.3. Destruction or Loss of the Property. Either party may terminate this Agreement upon sixty (60) days written notice to the other party if the Property is substantially destroyed or the Property is taken by any governmental or other entity pursuant to the power of eminent domain.

7.2.4. By Owners for Cause.

7.2.4.1. Generally. The Owners may terminate this Agreement for cause at any time upon the commission of an event of default by the Manager. For purposes of this Section 7.2.4, an "event of default by the Manager" shall consist of one or more of the following events: (1) an act of fraud by the Manager with respect to the Owners; (2) embezzlement or misappropriation by Manager of funds or property of the Owners; and (3) any breach of this Agreement by Manager which remains uncured for a period of sixty (60) days following receipt by Manager of a written notice from the Owners describing such breach in reasonable detail and demanding the cure thereof. Termination pursuant to this Section 7.2.4 shall be effectuated by the Owners giving the Manager written notice thereof. Such written notice of termination must be separate from any notice given pursuant to clause (3) of the preceding sentence.

7.2.4.2. Theft by Employees Not Attributed to Manager. For the purposes of this Section 7.2.4, acts of fraud, embezzlement and/or misappropriation by PSEs and CEs which are solely for the personal benefit of the PSE or CE in question and are undertaken without the knowledge or consent of the senior management of the Manager, shall not be attributed to the Manager and shall not serve as a basis for terminating this Agreement pursuant to this Section 7.2.4. Without limiting the generality of the preceding sentence, the parties acknowledge that the purpose of this Section 7.2.4.2 is to exclude petty theft on the part of employees as a basis for terminating the Manager for cause. The provisions of this Section 7.2.4.2 shall not, however, be construed as limiting the obligation of the Manager to take reasonable and appropriate measures to reduce and discourage employee theft.

7.2.4.3. Wrongful Termination for Cause. In the event that the Owners wrongfully terminate this Agreement for cause pursuant to Section 7.2.4.1, above, such termination shall be treated as a termination without cause pursuant to Section 7.2.6, below. In such case, the Manager shall be entitled to receive the termination payment described in Section 7.3.3.

7.2.4.4. Safety Matters not Cured. The Owners may take immediate, temporary control of the management and operation of the Property due to matters of safety that are not cured within three (3) days of notice. The Owners shall notify the Manager of such conditions verbally and in writing. Matters of safety include but are not limited to water quality, best practices for lifeguards, and best practices for food service. This Agreement may be terminated with cause in the event safety matters are not cured within three (3) days of notice. Additionally, Owners reserve the right to direct immediate safety measures, and Manager shall follow and implement the directed safety measures.

7.2.5. By Manager for Cause. The Manager may terminate this Agreement for cause at any time upon the commission of an event of default by the Owners. For purposes of this Section 7.2.5, an "event of default by the Owners" shall consist of one or more of the following events: (1) the Owners fail to comply with their obligation under Section 3.2.2.3, above, relating to the maintenance of a minimum balance in the Operating Account; (2) the Owners fail to comply with Section 3.2.3.5, above relating to the initial funding of the Operating Account; (3) the failure of the Owners to timely pay the Manager base and incentive compensation as provided in Article VI, above; and (4) any breach of this Agreement by Owners which remains uncured for a period of sixty (60) days following receipt by the Owners of a written notice from the Manager describing such breach in reasonable detail and demanding the cure thereof. Termination pursuant to this Section 7.2.5 shall be effectuated by the Manager giving the Owners written notice thereof. Such written notice of termination must be separate from any notice given pursuant to clause (4) of the preceding sentence.

7.2.6. By the Owners without Cause. The Owners shall have the right to terminate this Agreement without cause at the Owners' discretion, upon sixty (60) days prior written notice to the Manager.

### 7.3. Effect of Termination.

7.3.1. Generally. Except as otherwise provided in this Agreement, upon termination of this Agreement all obligations of the parties under this Agreement shall terminate in their entirety. Notwithstanding the foregoing, those obligations and rights of the parties accruing prior to termination or as a result of the termination, shall survive termination of this Agreement. Those provisions of this Agreement which, by their express terms or by their operation, are intended to survive termination, shall survive termination of this Agreement. Such provisions include, but are not limited to, Article VI, above, this Article VII, and Article X, below.

7.3.2. Compensation and Reimburse Reimbursable Expenses. The obligation of the Operating Fund to provide base and incentive compensation pursuant to Article VI of this Agreement, and to reimburse Reimbursable Expenses, as set forth in Article V and any other provisions of this Agreement relating to the reimbursement of Reimbursable Expenses, shall survive termination.

7.3.3. Termination Payment. If the Owners terminate this Agreement without cause pursuant to Section 7.2.6, above, the Owners shall pay to the Manager a termination payment in the amount of **\$15,000.00**. Such payment shall be in addition to, and shall not be in lieu of, any other amounts which are payable by the Operating Fund to the Manager under this Agreement, including, without limitation, base compensation, incentive compensation, and the reimbursement of Reimbursable Expenses up to the date of termination. Such termination payment shall be paid to the Manager not more than **60** days following the date on which the Owners gave the Manager notice of the termination of this Agreement without cause. The Manager shall have the right to withdraw such termination payment from the Operating Account.

7.3.4. Operating Fund. Upon termination and payment of all obligations of this Agreement, the Operating Fund shall revert to Owners and the Manager shall have no claim to or right of ownership in the Operating Fund.

## VIII. Insurance

### 8. Insurance.

8.1. Insurance Placed by Manager. The Manager shall keep in effect during the term of this Agreement those insurance policies and coverages which are described in Schedule 8.1 to this Agreement. Unless otherwise agreed upon by the Owners and the Manager in writing, the Owners shall not have the responsibility for procuring the insurance policies and coverages described in Schedule 8.1. Such insurance policies shall provide the following:

1. The Owners shall be named as an additional insured and any right of subrogation against the Owners and the Owners' employees shall be waived by the insurer.
2. The policies shall not be cancellable except upon thirty (30) days prior written notice to the Owners.

3. The loss payees (to the extent applicable) shall be the Owners and the Manager, as their interests may appear.

The Manager shall, from time to time, provide to the Owners certificates of insurance evidencing the insurance policies and coverages required by this Section 8.1. Unless otherwise noted on Schedule 8.1, the insurance premiums paid by the Manager for such insurance policies and coverages shall be Reimbursable Expenses.

## IX. Accounting and Reporting

### 9. Accounting and Reporting.

9.1. Maintenance of Records. The Manager shall maintain accurate, complete and separate records showing income and expenditures relating to the operation of the Property, and from which accounts payable and accounts receivable, available cash, and other assets and liabilities pertaining to the Property can be readily identified and the amounts determined at any time. The Owners shall have the right at any reasonable time by their employees or through other Owners' representative(s), to inspect the records kept by the Manager pertaining to the Property, including, but not limited to, all checks, bills, invoices, contracts, statements, vouchers, cash receipts, correspondence, and all other records dealing with the management and operation of the Property. The Owners shall have access to all electronic records at all times, including real time inspection. The Owners shall have the further right to have an audit made at Owners' expense of all account books and records pertaining to the management and operation of the Property. The operation of the Property, specifically including the Operating Account, shall be subject to an annual audit conducted by certified public accounting firm selected by the Owners. The expenses of the audit shall be an Operating Fund expense.

### 9.2. Reports.

9.2.1. Annual Financial Report. With respect to each Fiscal Year, the Manager will cause an annual financial report to be prepared showing all revenues, costs and expenses in detail. The report will be certified by the Manager as complete and accurate, and will be submitted to the Owners no later than sixty (60) days following the Fiscal Year in question.

9.2.2. Annual Physical Condition Report. The Manager will furnish an annual report with respect to the physical and operational condition of the Property and its equipment on or about ~~January 30~~ October 15 of each year.

9.2.3. Profit/Loss Statements. The Manager will furnish monthly to the Owners a profit/loss statement detailing all receipts and disbursements for each month, such statement to be furnished on or before the eighteenth (18th) day of each month for the preceding month. Such statement shall show the status of income and expenses and shall be supported by bank statements, canceled checks, vouchers, duplicate invoices, and similar documentation covering all items of income and expense, the originals of which shall be kept in the Manager's office and be available for inspection by the Owners or Owners' representative(s) at all reasonable times.

9.2.4. Operating Statements. The Manager shall provide quarterly operating statements showing income and expense for the Fiscal Year quarter and Fiscal Year to date and for the same period of the preceding year.

9.3. Record Retention. The Manager shall retain all records required to be created and/or maintained by the terms of this Agreement for a period of five (5) years.

9.4. Survival. Except as set forth in this Section 9.4, the provisions of this Article IX shall survive the termination of this Agreement. Sections 9.2.1, 9.2.3 and 9.2.4 shall survive with respect to the last Fiscal Year during the Term of this Agreement, it being the intent of the parties that the Manager shall provide such reports for the periods of time running through the end of the Term of this Agreement. Section 9.2.2 shall not survive termination of this Agreement.

## X. Other Provisions

### 10. Other Provisions.

10.1. Representations and Warranties of Manager. Manager represents, warrants and covenants with Owners as of the Effective Date as follows:

(a) Due Organization, Etc. Manager is duly organized, validly existing, and in good standing, is duly qualified to do business in the state in which the Property is located, and has full power, authority and legal right to execute, perform, and timely observe all of the provisions of this Agreement. Manager's execution, delivery and performance of this Agreement have been duly authorized.

(b) Valid and Binding Obligations. This Agreement constitutes a valid and binding obligation of Manager and does not and will not constitute a breach of or default under the corporate documents or bylaws of Manager or the terms, conditions or provisions of any law, order, rule, regulation, judgment, decree, agreement or instrument to which Manager is a party or by which it or any of its assets is bound or affected.

(c) No Third Party Approval Required. No approval of any third party is required for Manager's execution and performance of this Agreement that has not been obtained prior to the execution of this Agreement.

(d) Maintaining Legal Existence. Manager shall, at its own expense, keep in full force and effect throughout the Term of this Agreement its legal existence and the rights required for it timely to observe all of the terms and conditions of this Agreement.

(e) No Litigation. There is no litigation or proceeding pending or, to the knowledge of the Manager, threatened against Manager that could adversely affect the validity of this Agreement or the ability of Manager to comply with its obligations under this Agreement.

10.2. Representations and Warranties of Owners. Owners represent, warrant and covenant to Manager as of the Effective Date and the Commencement Date, as follows:

(a) Due Organization, Etc. Owners are duly organized, validly existing, and in good standing in the state in which the Property is located, and have full power, authority and legal right to execute, perform and timely observe all of the provisions of this Agreement. Owners' execution, delivery and performance of this Agreement have been duly authorized.

(b) Valid and Binding Obligation. This Agreement constitutes valid and binding obligations of Owners and do not constitute a breach of or default under the corporate documents or bylaws of Owners or the terms, conditions or provisions of any law, order, rule, regulation, judgment, decree, agreement or instrument to which Owners is a party or by which it or any of its assets is bound or affected.

(c) No Third Party Approval Required. No approval of any third party (including any holder of any Mortgage) is required for Owners' execution and performance of this Agreement that has not been obtained prior to the execution of this Agreement.

(d) Continued Legal Existence. Owners shall, at its own expense, keep in full force and effect throughout the Term of this Agreement their legal existence and the rights required for them timely to observe all of the terms and conditions of this Agreement.

(e) Required Approvals. Owners shall maintain throughout the term of this Agreement all approvals that are required to be in their name and that are necessary to own and the Property , but the foregoing shall not relieve Manager from obtaining permits, licenses, authorizations and other approvals required hereunder.

(f) No Adverse Litigation/Condemnation. There is no litigation or proceeding pending or threatened against Owners, or to the knowledge of Owners, against the Property, that could adversely affect the validity of this Agreement or the ability of Owners to comply with its obligations under this Agreement. Owners are not aware of any condemnation proceeding pending or threatened against the Property or any portion thereof.

(g) Environmental. Except as disclosed in Schedule 10.3(g) to this Agreement, Owners have no actual knowledge that the Property violates any environmental legal requirement or any law or regulation relating to environmental conditions or safety.

(h) Rights to Purchase. Owners have not granted any other person the right to purchase the Property.

10.3. Joint Representation and Warranty.

No Hazardous Materials. Neither Manager nor Owners shall knowingly use or occupy, or knowingly permit the Property or any part thereof to be used or occupied, for any unlawful, or ultra hazardous use (including the prohibited or unlawful use or storage of hazardous materials, or any disposal of hazardous materials), or operate or conduct the business of the Property in any manner known to constitute or give rise to a nuisance of any kind.

10.4. Use of Affiliates by Manager. Subject to the terms of this Agreement, in fulfilling its obligations under this Agreement, the Manager may, from time to time, delegate certain of its obligations to one or more affiliates, provided that, if an affiliate performs services which the Manager is required to provide pursuant to this Agreement, the Manager shall be ultimately responsible to the Owners for the affiliate's performance, and the Owners shall not pay more for the affiliate's services and expenses than the Manager would have been entitled to receive pursuant to this Agreement had the Manager performed the services. If an affiliate otherwise performs services for or provides goods to the Property, such goods or services shall be of a quality and supplied at prices and on terms at least as favorable to the Property as generally available in the relevant market. For purposes of this Section 10.5, the term "affiliate of the Manager" means any entity controlling, controlled by, or under common control with, the Manager. The Manager will notify the Owners in writing and obtain the Owners' approval (exercised in the reasonable discretion of Owners) of the use of Affiliates.

10.5. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Arkansas, without reference to any applicable principles of conflicts of law which would direct the application of the laws of another jurisdiction. Any dispute, controversy, claim or other matter arising out of or relating to the negotiation, execution, delivery or performance of this Agreement, or the breach thereof, regardless of whether such dispute, controversy, claim or other matter is characterized as arising in contract, tort (including, without limitation, fraud, fraudulent misrepresentation, negligence and/or negligent misrepresentation), strict liability, statutory liability, indemnity, contribution or otherwise, shall be governed by, and determined and resolved in accordance with, the laws of the State of Arkansas, without reference to any applicable principles of conflicts of law which would direct the application of the laws of another jurisdiction.

10.6. Waivers, Modifications, Remedies. No failure or delay by a party to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. Neither this Agreement nor any of its terms may be changed or modified, waived or terminated (unless otherwise provided hereunder) except by an instrument in writing signed by the party against whom the enforcement of the change, waiver or termination is sought.

10.7. Severability of Provisions. If a court of competent jurisdiction ~~or an arbitrator~~ determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

10.8. Notices. Notices, consents, determinations, requests, approvals, demands, reports, objections, directions and all other communications required or permitted to be given under this

Agreement shall be in writing and shall be deemed to have been duly given and to be effective on the date on which such communications are delivered by personal delivery, by facsimile transmission (with telephonic confirmation of receipt), DHL, Federal Express or other similar courier service or by the United State Postal Service or its successor after being deposited with the United States Postal Service as Express Mail or as registered or certified matter, postage prepaid, return receipt requested, addressed to the parties at the addresses specified below, or at such other address as the party to whom the notice is sent has designated in accordance with this Section 10.9. All such communications shall be deemed to have been received by the intended recipient (i) in the case of air courier services, on the next Business Day after deposit with such air courier service with a request for next day service; (ii) in the case of a facsimile transmission, on the Business Day such transmission was sent, or if not a Business Day or if transmitted after 4:00 p.m. local time, then on the next Business Day; and (iii) in the case of first-class mail, three Business Days after the deposit with the United States Postal Service. Until a party provides a change in address in accordance with this Section 10.9, notices will be sent to the following addresses:

To Owners:

City of Fort Smith:  
City Administrator  
P.O. Box 1908  
Fort Smith, AR 72902-1908  
Fax: (479)784-2256

Sebastian County:  
County Judge  
35 South 6<sup>th</sup> Street, Rm. 106  
Fort Smith, AR 72901  
Fax: (479) 784-1550

To Manager:

Richard Coleman, CHA  
Senior Vice President  
American Resort Management, LLC  
3614 West 12<sup>th</sup> Street  
Erie, PA 16505  
Fax: 814-833-2667

10.9. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party, which consent may be withheld in the other party's sole discretion.

10.10. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

10.11. Relationship of the Parties. Manager and Owners acknowledge and agree that they are not joint venturers, partners, or joint owners with respect to the Property, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture, or similar relationship between Manager and Owners with respect to the Property or the operation thereof.

The Parties acknowledge and agree that Manager is an independent contractor, is not an employee of the Owners and is not an agent under the control or supervision of the Owners. This Agreement shall not be construed at any time to be an interest in real estate or a lien or security interest of any nature against the Property or any other land used in connection with the Property, or any equipment, fixtures, inventory, motor vehicles, contracts, documents, accounts, notes, drafts, acceptances, instruments, chattel paper, general intangibles or other personal property now existing or that may hereafter be acquired or entered into with respect to the Property or the operation thereof. Notwithstanding anything to the contrary in this Agreement or otherwise, in no event shall the Manager have any right to bind the Owners.

10.12. Confidentiality.

10.13. Further Assurances. The parties shall do and procure to be done all such acts, matters and things and shall execute and deliver all such documents and instruments as shall be required to enable the parties to perform their respective obligations under, and to give effect to the transactions contemplated by, this Agreement.

10.14. No Third Party Beneficiaries. None of the obligations hereunder of either party shall run to or be enforceable by any party other than the party to this Agreement or by a party deriving rights hereunder as a result of an assignment permitted pursuant to the terms hereof. There are no third party beneficiaries with respect to this Agreement.

10.15. LIMITATIONS ON FIDUCIARY DUTIES. TO THE EXTENT ANY FIDUCIARY DUTIES ARE INCONSISTENT WITH, OR WOULD HAVE THE EFFECT OF MODIFYING, LIMITING OR RESTRICTING, THE EXPRESS PROVISIONS OF THIS AGREEMENT: (A) THE TERMS OF THIS AGREEMENT SHALL PREVAIL; (B) THIS AGREEMENT SHALL BE INTERPRETED IN ACCORDANCE WITH GENERAL PRINCIPLES OF CONTRACT INTERPRETATION WITHOUT REGARD TO THE COMMON LAW PRINCIPLES OF AGENCY; AND (C) ANY LIABILITY BETWEEN THE PARTIES SHALL BE BASED SOLELY ON PRINCIPLES OF CONTRACT LAW AND THE EXPRESS PROVISIONS OF THIS AGREEMENT. FOR PURPOSES OF ASSESSING MANAGER'S FIDUCIARY DUTIES AND OBLIGATIONS UNDER THIS AGREEMENT, THE PARTIES ACKNOWLEDGE THAT THE TERMS AND PROVISIONS OF THIS AGREEMENT AND THE DUTIES AND OBLIGATIONS SET FORTH HEREIN, ARE INTENDED TO SATISFY THE FIDUCIARY DUTIES WHICH MAY EXIST AS A RESULT OF THE RELATIONSHIP BETWEEN THE PARTIES, INCLUDING WITHOUT LIMITATION ALL DUTIES OF LOYALTY, GOOD FAITH, FAIR DEALING, FULL DISCLOSURE OR ANY OTHER DUTY DEEMED TO EXIST UNDER THE COMMON LAW PRINCIPLES OF AGENCY OR OTHERWISE. THE PARTIES HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE AND RELEASE ANY RIGHT, POWER OR PRIVILEGE EITHER MAY HAVE TO CLAIM OR RECEIVE FROM THE OTHER PARTY ANY PUNITIVE, EXEMPLARY, STATUTORY OR TREBLE DAMAGES OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY BREACH OF FIDUCIARY DUTIES.

IN WITNESS WHEREOF, the duly authorized representatives of the Owners and Manager have executed this Agreement effective as of the Effective Date.



rentals of space outside the four walls of the Water Park (arising from items like sales or rentals of outparcels or portions of the parking lot, lease of rooftop space for cell phone towers, solar panels and similar items) additional venues established within the Water Park after the date of this Agreement if they are leased to a third party and not run by the Manager (such as a check cashing business, a gift shop, etc.), chargeback's from disputed credit card payments, gratuities paid to employees of the Water Park; federal, state or municipal excise, sales or use taxes or any other taxes collected directly from customers, patrons or guests or included as part of the sales price of any rentals, goods or services; interest received or accrued with respect to funds in Advertising Accounts, the Reserve Accounts or the Operating Accounts of the Water Park; any refunds, rebates, discounts and credits of a similar nature, given, paid or returned in the course of obtaining Gross Revenues or components thereof; or insurance proceeds; condemnation proceeds, or revenues derived through sales of real estate.

## Schedule 6.2

### Incentive Compensation of Manager

- a. **Performance Bonus Incentive.** As additional consideration for the services to be rendered to the Owners by the Manager under this Agreement, Owners agrees to pay Manager an annual incentive bonus based on meeting certain operational performance goals. The performance bonus shall be based on operating profits for each year, the first year running from the Commencement Date through and including December will be pro-rate based on the number of months open. Thereafter the annual Incentive Bonus will be based on a full twelve (12) months starting with January and including December and will continue for each twelve (12) month period thereafter during the term of this Agreement. The performance bonus for 2015 will be based upon a budget attached hereto as Schedule 3.1.1.2.

<u>Operating Profit* GOAL</u>	<u>% OF Operating Goal Met</u>	<u>Percentage of Bonus Paid on Operating Profit</u>
<u>TBD</u>	<u>110%+</u>	<u>10%</u>
	<u>105.1% - 109.9%</u>	<u>7.5%</u>
	<u>100.1% - 105%</u>	<u>5%</u>

For example, in year 2, if operating profit goal is \$1,000,000.00 and actual operating profit is \$ 1,050,000.00 the operating profit would fall between the 100% and 105% scale and Manager would be entitled to a performance bonus of .5% in addition to the standard management fee paid to Manager under Schedule 6.1. In this example, Manager would be entitled to a performance bonus of \$50,000.00 x 5% or \$2,500.00. If, for example, in year 2, the operating profit \$970,000.00, because operating profits are below 99.99% of budget, Manager would not be entitled to any performance bonus. Any performance bonus due and payable to Manager must be paid by Owners to Manager within sixty (60) days of the completion of the year for which the performance bonus is calculated.

\*Operating Profit is calculated on Gross Revenues less operating expenses and management fees and before the following Fixed Costs: depreciation and other budgeted reserves.

## **Schedule 8.1**

### **Insurance to be Placed by Manager**

**[Need assistance of insurance advisor]**

**ADDITION TO MANAGEMENT AGREEMENT**

\_\_\_\_\_ With a mailing address of \_\_\_\_\_  
(hereinafter referred to as "Owners"),

-and-

**American Resort Management, LLC**, with a mailing address of 3614 W 12<sup>th</sup> Street, Erie, Pennsylvania 16505 (hereinafter referred to as "Agent").

**WHEREAS**, Owners owns a parcels of real property located in \_\_\_\_\_, \_\_\_\_\_, and is conducting business under the d.b.a. \_\_\_\_\_, that consists of a building containing a outdoor water park, with various other support venues including a food concession, retail concession, to be developed and estimated to open Spring 2015 and numerous other amenities, facilities and activities for guests (collectively, the "Property")

**WHEREAS**, Owners has hired Agent to operate and manage Owners' Water Park upon terms and conditions set forth in that certain Management Agreement, dated as of \_\_\_\_\_, 2014, between Owners and Agent.

**NOW, THEREFORE**, the parties hereto mutually agree as follows:

1. In order that Agent may act as Owners' exclusive agent in managing and operating the Water park, Agent shall have the authority to establish bank accounts in the name of Owners.
  - a. Specifically, Owners agrees that Agent may establish deposit accounts at \_\_\_\_\_ Bank in Owners' name and authorized signatories on the account will be:
    - i. Jeffrey Mona;
    - ii. Richard Coleman;
    - iii. \_\_\_\_\_; and
    - iv. Any other authorized representative of Owners, as designated by \_\_\_\_\_.
  - b. Any of the individuals whose names are set forth in 1(a) above, whose genuine signatures appear on the separate cards dated and filed with \_\_\_\_\_ Bank, are hereby authorized to act individually on behalf of Owners and in its name to; (i) sign checks, drafts, notes, or other instruments or orders for payment of funds from any account maintained by Agent on Owners' behalf; and (ii) endorse checks, drafts, notes, bills, certificates of deposit or other instruments owned by or held by Owners for deposit in any such account, or for collection or discount by \_\_\_\_\_ Bank.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals.

**OWNERS:**

\_\_\_\_\_

By: \_\_\_\_\_



Date: December 08, 2014

Document Number:

Re: Potential Logo Update

**Potential Logo (12/8 Update)**

Names under consideration:

**Parrot Island**

**Flamingo Falls**

**Coral Bay**

Parrot Island Logos:

1)



2)



3)



4)





## Flamingo Falls Waterpark

1)





2)



**FLAMINGO FALLS**  
waterpark

## Coral Bay Waterpark

1)



2)





3)



*Coral Bay*  
WATERPARK