JOINT MEETING OF THE SEBASTIAN COUNTY QUORUM COURT AND THE CITY OF FORT SMITH BOARD OF DIRECTORS
THURSDAY, OCTOBER 9, 2014
TOUR OF AQUATICS FACILITY CONSTRUCTION SITE AT 5:30 PM
AND JOINT MEETING TO FOLLOW AT 6:30 PM
BEN GEREN SAFE SHELTER
7700 SOUTH ZERO
FORT SMITH, ARKANSAS

AGENDA

I. Aquatics Facility Tour 5:30-6:30 PM
(Dinner available beginning at 6:15 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. Review and Discuss Pre-Opening and Operating Agreements with American Resort Management for the Aquatics Center--for Consideration at the October 21 Quorum Court and City Board Meetings

IV. Public Comments

V. 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

October 1, 2014

MEMO

To: Quorum Court

From: County Judge DH.

Subject: Aquatics Facility Management Agreement

City/County Joint Meeting, Thursday, October 9

A tour of the Aquatics Facility site is scheduled for 5:30 PM at Ben Geren Park. A joint meeting will begin shortly thereafter to review the Aquatics Facility management plan and budget.

Recommendation to Approve Aquatics Management Agreement

Proposals for Aquatics Facility Management Services were reviewed by County and City Administration. After evaluation it is recommended that an agreement be entered into with American Resort Management (ARM) for the Ben Geren Aquatics Facility.

ARM - Reasons for Selection

Presentation

American Resort Management's (ARM) representative Richard Coleman was professional and enthusiastic during his initial presentation for submittal of their proposal to serve as the Ben Geren Aquatic Center management contractor. The information package submitted had all the information requested, presented in a format which was easy to understand, while being thorough enough to see a level of detail we would expect from a management firm. Richard Coleman himself exuded a great depth of knowledge on all the information presented, requested and questioned during the interview process. The confidence he has in his firm's ability and business model shown through in his demeanor and responses.

Company

The company profile and portfolio is also broad and complimentary in the realm of customer service in leisure activities. ARM has experience in Aquatic Facility management as well as other leisure activities which should prove useful in marketing our facility. During the interview process, ARM referred to the Disney-like experience as a model for customer service, which is the type of environment we would expect from a professional management firm. ARM's experience with point of sale data is in depth and highly detailed. They have experience with software that can provide data down to the hour. This type of detail would be beneficial for marketing and product placement. This type of detail provides information on a daily basis on what elements are producing and which ones are not.

Other Services

ARM also presented a Pre-Opening service that was thorough and detailed as to what steps should be taken up to the date of opening. ARM has also shown a willingness to work with our management team to produce an agreement that is advantageous to both groups as we move towards a business relationship. ARM also has multiple person teams that would work both at their headquarters, as well as a model that would have onsite management for a team approach, without relying too much on one individual for the services provided, reducing the chance of having a major adjustment due to company turnover. ARM also presented a management consultant structure which would make resources available to come to the site when necessary.

The ARM agreement involves two contracts, a pre-opening agreement and a management agreement.

The pre-opening agreement would begin in 2014 and includes marketing, facility manning, branding, safety, and development of an operations plan for the Aquatics Facility. This agreement fee is $88,000. It is anticipated that $44,000 will be expended in 2014 and $44,000 in 2015. The County and City will need to fund $22,000 in 2014 to initiate the pre-opening agreement. The County appropriation is recommended from the Aquatics earmark in the Capital Sales Tax Fund.

A "draft" copy of the management agreement and "draft" of the pre-opening agreement are included (see Attachments 1 and 2).

Ben Geren Aquatics Center Operations Study

As a part of the City/County Agreement with Larkin Aquatics for the design of the Aquatics Facility, the operational plan for the Aquatics Facility, as expanded and redesigned, was updated.

The initial operations study for the Aquatics Facility was published and reviewed in January, 2010, as prepared by Ballard King, a subcontractor with Larkin Aquatics. Ballard King has completed an updated operations study based upon the 2014 facility design and current market conditions.

A copy of this study is enclosed [see Attachment 3].

Based upon the updated facility design, the operational budget and projected revenues for the Aquatics Facility project that the facility will be able to operate from revenues without subsidy. It recommends that the City and County establish an "Enterprise Fund" for this program. An "Enterprise Fund" is established to record revenues and expenses as an independent operation, which does not rely upon City or County general funds.

The Ballard King study considers staffing and operations of the Aquatics Facility based upon the current design and projects revenues exceeding operational costs for this program.

Aquatics Facility Enterprise Fund

The Aquatics Facility is being planned as an "Enterprise Fund" for the accounting of revenues and expenses from the facility.

The management agreement involves development of a 2015 operating budget. This budget will be completed working closely with American Resort Management, Inc. by the County and City, for review and approval in November or December for the 2015 Budget.

It is important to note the Aquatics Facility Budget Plan as an Enterprise Fund and the separation of this Budget and operation from County and City General Funds.

The Aquatics Facility represents a significant enhancement to recreational services for our region. The project enjoys strong public support and is greatly anticipated by families throughout the County for opening Memorial Day weekend, 2015. These agreements will help ensure a first class, family-oriented recreational experience.

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Attachments: 1) "Draft" Management Agreement with American Resort Management
2) "Draft" Pre-opening Agreement
3) Ballard King Ben Geren Aquatics Center Operations Study

Attachment 1

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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.

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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) **[other?]**. [Maintenance Superintendent?] [Marketing Advisor?]

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, 2016 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, 7200 Zero Street, Fort Smith, Arkansas 72903 **[describe in reasonable detail the facility which is subject to this Agreement, including, if possible, references to real estate records]**. 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.

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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

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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.

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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

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(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, if any, 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 ~~be entitled to~~ 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

DRAFT

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.

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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) vehicles for guest transportation; (5) furniture and furnishings; and (6) 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

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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.

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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,

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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-diems 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 for have the right to withdraw such incentive compensation 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

DRAFT

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 for successive one year renewal terms following the initial term and each subsequent renewal term for a total term of ___ 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

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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 terminates 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.

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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 Section 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:

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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. [time of submission]

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. Sale of Alcoholic Beverages. In the event that the sale of alcoholic beverages shall occur on the Property, the obligations of the parties with respect to such sales and compliance with all applicable legal and regulatory requirements are as set forth in Schedule 10.1 to this Agreement.

10.2. 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.

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(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.

10.3. 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

DRAFT

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.

10.4. 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.

10.5. 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.

10.6. 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.

10.7. 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

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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.

10.8. 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.

10.9. 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:
Mayor
City Clerk
P.O. Box 1908
Fort Smith, AR 72902-1908
Fax: (479)784-2256
Sebastian County:
County Judge
35 South 6th 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 12th Street
Erie, PA 16505
Fax: 814-833-2667

10.10. 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.

10.11. 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.

10.12. 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.

10.13. Confidentiality.

10.14. 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.

10.15. 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.

10.16. 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

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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.

AMERICAN RESORT MANAGEMENT, LLC

Date: _____

By: _____
[Name] [Title]

CITY OF FORT SMITH, ARKANSAS

By: _____
Mayor Date

Attest: _____
City Clerk

SEBASTIAN COUNTY, ARKANSAS

By: _____
County Judge Date

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Schedule 6.1

Base Compensation of Manager

a. **Compensation**. In consideration for the services to be rendered to the Owners by the Manager under this Agreement, the Owners agrees to pay the Manager a management fee based on the following schedule:

Years 1 (partial year) - 3 (full year) fee shall be Five Percent (5.0%) of gross revenue

Gross Revenues (hereinafter defined) from the Water Park actually collected, deducted monthly from the Operating Account (herein defined) on the tenth (10th) day of the month following for which Gross Revenues are calculated. "Gross Revenues" shall mean all revenues, fees, rentals and receipts of every kind derived from operating the Water Park and all departments and parts thereof, including, but not limited to, income (from both cash and credit transactions) revenues, fees, rentals and receipts from: Water Park admissions, rentals of facility, ancillary revenue center(s) income, telephone charges, stores, offices, exhibit or sales space of every kind; license, lease and concession fees, and rentals (not including gross receipts of licensees, lessees and concessionaires); income from vending machines; income from parking; health club membership fees; admission fees; food and beverage sales; wholesale and retail sales of merchandise; and service charges; provided, however, that Gross Revenues shall not include the following: sales or 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.

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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.

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

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.

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Schedule 8.1

Insurance to be Placed by Manager

[Need assistance of insurance advisor]

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Schedule 10.1

Provisions Relating to Sale of Alcoholic Beverages

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Schedule 10.3(g)

Environmental Disclosures

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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 12th 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:_____

Attachment 2

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Consulting and Pre-Opening Development Agreement

This Agreement made and entered into this __ day of October, 2014, by and between American Resort Management, LLC, hereinafter ARM, and Sebastian County, Arkansas and City of Fort Smith, Arkansas, Arkansas municipal entities hereinafter jointly referred to as the Owners. ARM and the Owners are sometimes referred to collectively as the "Parties."

WHEREAS, the Parties desire to enter into this Agreement for the purpose of ARM providing consulting services to the Owners in the development of an outdoor water park (the "Project");

WHEREAS, the Owners recognize that ARM does not provide architectural, engineering, technical or other professional services requiring a license or permit, and, likewise, ARM shall not act as a general contractor or project manager for the purpose of performing or managing construction work on the Project;

NOW, THEREFORE, in exchange of the mutual undertakings set forth in this Agreement, which the Parties acknowledge to be good, valuable and sufficient to support their respective undertakings under the Agreement, it is agreed as follows:

1. ARM shall perform the consulting duties and functions described in this Agreement commencing on the date of execution of the Agreement and continuing for a period ending thirty (30) days subsequent to the public opening of the Project, which the Parties currently anticipate to occur on or about May __, 2015. The Parties acknowledge that circumstances might warrant a time extension, and the Parties agree to discuss and jointly determine whether there should be a time extension to this Agreement in the future and, if so, agree to place in writing the extension, the duties to be performed during the extended time and the compensation to be paid for the extended duties.

2. For the duties described in paragraph 3 and otherwise in this Agreement, the Owners agree to pay a consideration to ARM in the amount of $88,000.00 subject to the following conditions.

a. Any travel related expenses of representatives of ARM incurred after written notice to the Owners will be billed to the Owners and paid by the Owners based on the actual incurred cost demonstrated by appropriate invoices or other payment records;

b. Within ___ days of full execution of this Agreement, the Owners shall make a $15,000.00 deposit payment to ARM, which deposit payment shall be applied against the total contract fee of $88,000.00.

c. On a monthly basis thereafter, ARM shall bill the Owners and the Owners shall pay a pro rata monthly part of the remaining contract fee ($88,000.00 less $15,000.00 = $73,000.00), based upon the anticipated eight (8) monthly periods in which services will be provided. Each monthly payment shall be paid by the Owners within fifteen (15) days of receipt of the monthly billing from ARM.

d. If the Owners entered into a comprehensive management agreement with ARM prior to May, 2014, the Owners shall be entitled to a twenty percent (20%) reduction in the consulting fee of $88,000.00. The parties will discuss appropriate payment reductions or rebates as is necessary depending on the remaining contract sum due at the time of entry into the Project management agreement.

3. ARM shall use its best efforts and provide, in good faith and in accordance with accepted industry standards, the following consulting services with reference to the Project:

Administrative and General

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1.) Communication – Consultant will make sure key members of ARM staff are available as needed. Phone communications to key members of ARM is 24 hours a day. Emails are addressed and answered with sensitivity to time as called for or speculated. Scheduling of conference calls and site visits will be scheduled with as advance notice as possible but Consultant commits to making necessary arrangements as needed.

Communication is Key to a successful relationship between Consultant and Client. Consultant will participate in any routine communications as requested and at a minimum will produce a weekly update advising on status of Consultants efforts.

2.) Develop multi-year financial projections. Consultant will work with designated CFO/Accounting department to provide guidance and assist in producing financial projections for Water Park (to include other ancillary revenue centers).

Within the financial projections that will be provided by the consultant will be projected operating costs. All financial projections will be supported by narrative(s) describing/demonstrating the calculations, formulas and theories used regarding same.

3.) Assist with the development, and or refinement of chart of accounts and Profit and Loss format regarding the addition of new revenue centers.

4.) Develop and deliver to ownership:

a. Organizational Charts –Consultant will develop and submit for approval organizational structure starting at senior management level to include recommendations for all areas under consultant review (Water Park, Food & Beverage, Reservation Center, Sales & Marketing, concessions).
    i. Along with the organizational chart structure consultant will provide recommendations for timing in staffing the organizational chart.
b. Senior Management / Key Personnel – Consultant will search, recruit and prescreen candidates for key positions including: (titles of positions/actual positions will based upon approved Organizational Chart) Park Manager, Aquatics Manager, Director of Engineering, Director of Food and Beverage and or other positions as determined. Consultant will follow procedures agreed to with Client regarding all steps of the process. CLIENT HAS SHARED FINAL APPROVAL. Consultant will provide documentation to entire process.
c. Additional HR Activities – The following tasks / functions are recapped here but may additionally be listed under each department:
    i. Job Descriptions – Consultant will provide job descriptions for each new position created from water park development.
    ii. Training Guidelines/Checklists – Provide training guidelines & checklists for any positions that have been newly created.
    iii. Advise on working with aquatic life safety – Consultant will work with HR department to develop policies and procedures for hiring life guards including reviewing employee handbook, minor tracking etc....

5.) Consultant will develop initial Business Plan and Sales and Marketing Plan(s) for the Project.

6.) Consultant will be on site as required throughout engagement. As needed, Consultant may bring additional staff during the time of large staff training or during the "launch" of the Water Park. Consultant will have representation on site for up to seven (7) days after opening. Additional days of operational assistance and line level support are available at an additional cost. After the seven days of on-site post opening coverage consultant will be available as needed to discuss park operations for up to 30 days post opening.

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DEPARTMENTAL SERVICES RECAP:

Review and Consultation, Aquatic Areas

Duties of Consultant

1.) Review and analyze plans for the facility. Provide comments regarding any concerns regarding same and propose operational "solutions".

2.) Draft Performance Projections (See Administrative and General)

3.) Package and pricing – Provide recommendation for packaging and pricing for water park components as well as participate in general discussions regarding packaging and pricing with other attractions and area lodging.

4.) Review attraction locations, capacity, traffic flow, public space layout, safety and security and guest access points. Develop operational strategies and discuss with Client regarding impact on financial projections.

5.) Review architectural design plans for back of house functionality and storage. Provide feedback on space and accommodations proposed for the money room, proportionate ratio of storage space, sales and marketing staff and management offices.

6.) Analyze accommodations for citizens with disabilities.

7.) Participate in discussions regarding thematic designs making recommendations as to functionality and its effects on the overall guest experience as well as potential operating costs.

8.) If requested, assist in the procurement FF& E for the aquatics floor and public spaces.

9.) Discuss and review with engineer, mechanical engineering specifications in regards to the filtration and other mechanical systems analyze projected economical impact.

10.) Discuss review with engineer proposed attraction plumbing schematics ensuring a redundancy system for ease of serviceability and to minimize attraction down time.

11.) Review all proposed control systems using historical performance as a benchmark in any necessary discussions with relevant vendors etc...

12.) Consultant to work with owner, engineers and others to develop preventative and routine maintenance programs as well as develop strategies to maximize life cycles of all equipment.

13.) Review proposed mix and placement of revenue centers including lockers, kiosks, food and beverage, retail etc.

14.) Identify and make recommendations as to revenue centers having a high level of profitability and guest satisfaction making sure demographics and operational functionality are considered.

15.) Review gate admission areas from a safety, security and loss control standpoint.

16.) Analyze the guest experience in regards to traffic flow and control.

17.) Review and make recommendations regarding Information Technology (I.T.), Point of Sale (POS) and telecommunication systems, appropriate space and environmental is created for computer servers as well as to cabling needs for current configuration as well as for future expansion. Recommendations will also be made regarding proposed fire and security panels including monitoring contracts.

18.) Provide written reports and comments after reviewing each set of prints and other documents.

19.) Keep open lines of communication with the architects and contractors.

20.) Make regular site visits and attend project meetings as requested during the term of the contract.

Aquatics Operations Development

Duties of Consultant

1.) During the park operations development phase we focus our efforts on pre-opening activities of the aquatics and public space areas.

2.) Efforts include the development and staffing of aquatics areas, including coordination of certification of life safety systems.

3.) Develop operational strategies based on volumes for all attractions and operational areas of Water Park / Food and Beverage, Retail etc…

4.) Implementation of Aquatics safety program.

5.) Recruitment and prescreening of key management positions and key staff.

6.) Creation and implementation of guest service experiences training programs.

7.) Design of zone validation and verification of insurance/regulatory requirements.

8.) Assist in development of all Orientation and training programs for all operational area(s).

9.) Implementation of I.T. systems and P.O.S. systems.

10.) Writing of all operational policies and procedures specific to the needs of your development.

11.) Creation of operational S.O.P.

12.) Assist as requested in the development of signage package for aquatic and public space areas.

13.) Development of all cash control and reporting procedures.

14.) Assist the HR department in the creation of Water Park Associate Handbook.

15.) Provide Initial training of all water park, concession and other management staff.

16.) Assist in the commissioning and trial periods of all attractions.

17.) Establish operating standards for all mechanical areas.

18.) Set-up accounting procedures & financial reporting standards for onsite staff.

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19.) Work with owner's risk department in developing necessary reports and information needed to obtain required insurance.

20.) Available for regular site visits as needed during the term of the contract.

SALES AND MARKETING

Duties of Consultant

1.) Propose and develop Sales and Marketing team and organizational structure. Make recommendations and provide suggested organizational chart and job descriptions/scope of responsibility for positions within.

2.) Develop Sales and Marketing plan, submit for approval and assist on site team with implementation.

3.) Assist in developing all goals and standards for Sales staff members including reporting standards for same.

4.) Assist in the pre-opening coordination of a marketing campaign developing budget and placement of advertising.

5.) Assist in creating an advertising campaign to appeal to targeted demographics and that promotes the theme of the water park.

6.) Assist with recruiting and prescreening for an agreed upon sales staff based on the size and direction of the water park and assist with targeting key accounts and high impact audiences.

7.) Assist as requested with selection and be the owner's representative to the Ad Agency, facilitating all pre-opening buys, coordination of media placement, planning the Opening Gala, solicit and recruit, when possible, free publicity.

8.) Identify and recommend sources of "most impact advertising".

9.) Develop S.O.P. Manuals for the sales and marketing office.

10.) Develop strategy and assist in securing corporate sponsorships and make recommendations regarding long term sponsorship goals.

11.) Assist as requested in developing logos and collateral graphic materials (we can provide full graphic development for an additional fee).

12.) Assist in website design (we can provide full website design services and Hosting for an additional fee).

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Retail Consultation and Development Aquatic Area Only

Duties of Consultant

1.) Analyze site plans for retail space(s).

2.) Make recommendations for additional revenue center opportunities

3.) Produce to scale Plan-O-Grams that detail the traffic flow and merchandise equipment required in the operation of the retail space(s).

4.) Develop budget for suggested merchandising equipment.

5.) Assist in procuring equipment.

6.) Make recommendations regarding required I.T. / P.O.S. systems.

7.) Assist in the installation of I.T. / P.O.S. systems.

8.) Determine the most suitable and profitable merchandise to sell.

9.) Establish contacts with wholesale vendors.

10.) Develop par levels and ordering guides for all merchandise

11.) Develop and write a procedural S.O.P.

12.) Recruit, hire and train key staff members and assist with general staffing.

13.) Produce staffing and labor guidelines.

14.) Provide pricing suggestions that achieve desired gross profit margins.

15.) Assist in initial retail location(s) set up and stocking,

16.) Develop accounting and reporting standards.

Aquatic Food and Beverage Consultation and Development

Duties of Consultant

17.) Analyze site plans for food and beverage space(s).

18.) Make recommendations for additional revenue center opportunities.

19.) Assist in producing menu(s) that deliver a variety of quality offerings to the resort guests.

20.) Review and make comments regarding kitchen and equipment layouts.

21.) Review and make suggestions regarding budget for suggested equipment, F.F. & E. and small wares.

22.) Assist as requested in procuring equipment.

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23.) Assist in setting up required I.T. / P.O.S. systems.

24.) Determine the most suitable and profitable items to sell.

25.) Assist in developing par levels and ordering guides for all ingredients.

26.) Review existing or assist in development of recipe cards and theoretical food and beverage costs.

27.) Review existing and or develop and procedural S.O.P.

28.) Recruit, prescreen and train key staff members and assist with general staffing.

29.) Assist HR in produce staffing and labor guidelines.

30.) Provide pricing suggestions that achieve desired gross profit margin.

31.) Assist in initial food and beverage location(s) set up and stocking,

32.) Assist in modifying or develop accounting and reporting standards.

4. Merger. All the negotiations regarding the Project between the parties prior to the execution of this Agreement have been merged into the provisions of this Agreement. No change or amendment to the provisions of this Agreement may be made without the prior written approval of the Parties.

5. Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining terms of the Agreement.

6. Representative Authority. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the parties to this Agreement.

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

AMERICAN RESORT MANAGEMENT, LLC

Date: _____

By:_____
Richard Coleman, Senior Vice President
of Development and Operations

SEBASTIAN COUNTY, ARKANSAS

DRAFT

Date: _____ By:_____
David Hudson, County Judge

CITY OF FORT SMITH, ARKANSAS

Date: _____ By:_____
Sandy Sanders, Mayor

Ben Geren Aquatic Center Operations Pro-forma

The following operations pro-forma has been developed for the new Ben Geren Aquatic Center. The following are the parameters for the project.

- 2015 will be the first year of operation and the center will be operated by the City of Ft. Smith.
- This facility being built and will be utilized by both Sebastian County and the City of Ft. Smith.
- The aquatic center will operate on a traditional Memorial Day to Labor Day schedule.
- Swim lessons, aqua exercise programs and other water based activities will be offered at the facility.
- No revenues have been shown from organized use by other outside organizations (school district, etc.).
- These pro-forma estimates are based on the design concepts developed by Larkin Aquatics.
- The facility will be located at Ben Geren Park.
- The proposed fee structure is aggressive but it is anticipated that there will be a number of discounts available. The financial impact of these discounts have been factored into the revenue numbers from daily and 10 pass sales.
- A reasonably aggressive approach to estimating use and revenues for the facility has been used for this pro-forma.
- Use numbers were based on 2017 projections of population in the Primary Service Area (143,504) and the Secondary Service Area (289,546).
- Strong consideration should be given to establishing the Ben Geren Aquatic Center as an enterprise fund.

Operating Expenditures

Expenditures have been formulated based on the costs that are normally included in the operating budget for such a facility. The figures are based on the size of the center, the specific components of the facility and the projected hours of operation. Actual costs were utilized wherever possible and estimates for other expenses were based on similar facilities in other areas of the country. All expenses were calculated as accurately as possible but the actual costs may be more or less based on the final design, operational philosophy, and programming considerations adopted by staff.

Aquatic Center – An outdoor family aquatic center with a toddler pool, plunge pool with 4 slides, lazy river, activity pool, concessions area, bath house and office area plus other support spaces. **Bather Load – 1,800**

Operation Cost Model:

Personnel	**Facility Budget**
Full-Time	$147,150
Part-Time	$445,062
TOTAL	**$592,212**

Commodities	**Facility Budget**
Office Supplies (forms, paper)	$5,000
Chemicals (pool/mech)	$60,000
Maint./Repair/Mat.	$15,000
Janitor Supplies	$12,000
Rec. Supplies (fitness, pool, etc.)	$5,000
Uniforms	$5,000
Printing/Postage	$15,000
Food (concessions)	$65,000
Resale Items	$10,000
Other	$5,000
TOTAL	**$197,000**

Contractual	Facility Budget
Utilities[1] (gas & electric)	$80,000
Water/Sewer	$25,000
Insurance (Prop. & Liab.)	$40,000
Communications (phone)	$2,000
Contract Services[2]	$20,000
Rental Equipment	$3,500
Advertising	$40,000
Training	$5,500
Conference	$500
Membership/Dues/Subscriptions	$500
Trash Pickup	$1,000
Bank Charges	$500
Other	$3,000
TOTAL	**$221,500**

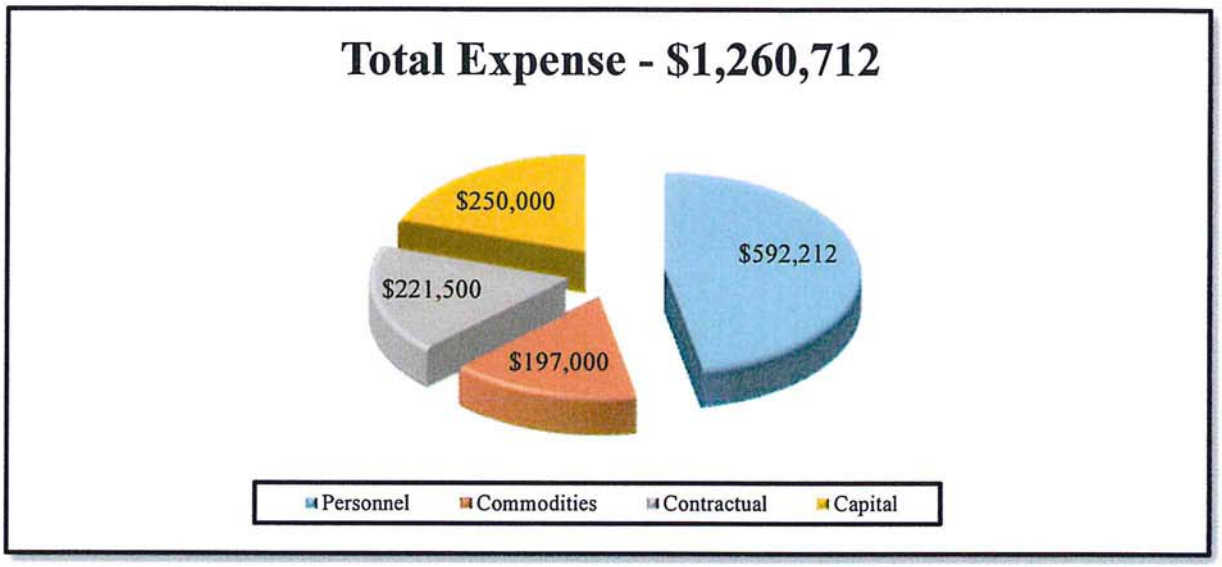
Capital	Facility Budget
Replacement Fund[3]	$50,000
Capital Reserve[4]	$200,000
TOTAL	**$250,000**

All Categories	Facility Budget
Personnel	$592,212
Commodities	$197,000
Contractual	$221,500
Capital	$250,000
GRAND TOTAL	**$1,260,712**

Note: *Line items not included in this budget are exterior site maintenance and vehicle costs. These items are being paid from other central sources. Estimates for chemicals, utilities and water and sewer were based in part on figures supplied by Larkin Lamp Rynearson.*

[1] It should be noted that at the time of this report utility rates were very volatile and could result in a higher energy rate for the center once it opens.
[2] Contract services cover maintenance contracts, control systems work and contract labor.
[3] This is yearly capital funding for equipment replacement and other similar items. This funding will not cover major capital improvements.
[4] It should be expected that every 3-5 years additional amenities will need to be added to the facility. These costs could range from $500,000 to $1,000,000. This is a reserve account for these items.

Graphic Representation of Total Expenses:



Staffing Levels:

Full -Time	Salary
Aquatic Center Manager	$45,000
Marketing Manager	$35,000
Maintenance Worker	$29,000
Wages	$109,000
Benefits (35% of wages)	$38,150
TOTAL FULL-TIME WAGES	**$147,150**

Seasonal Part-Time	Hourly Rate	Hrs/wk
Assistant Aquatic Ctr Manager	$11.00	84
Lead Lifeguard	$8.75	280
Lifeguard	$7.75	2,039
Cashier	$8.50	189
Custodian/Grounds	$7.75	264
Concession Manager	$8.75	56
Assistant Concession Man.	$8.50	56
Concession Attendant	$7.75	378
Program Instructors[5]		
Aquatics		$10,043
Wages		$387,011
Benefits (15% of wages)		$58,052
TOTAL PART-TIME WAGES		**$445,062**

Note: Pay rates were determined based on the City of Ft. Smith's wage scales. The positions listed are necessary to ensure proper staffing for the center's operation as well as provide for basic programming for the facility. **The wage scales for the part-time staff positions reflect an anticipated wage for 2014.**

[5] Program instructors are paid at several different pay rates and some are also paid per class or in other ways. This makes an hourly breakdown difficult. Aquatics includes learn to swim, aquatic exercise and special activities.

Revenues

The following revenue projections were formulated from information on the specifics of the project and the demographics of the service area as well as comparing them to national statistics, other similar facilities and the competition for aquatic services in the area. Actual figures will vary based on the size and make up of the components selected during final design, market stratification, philosophy of operation, fees and charges policy, and priorities of use.

Revenue Projection Model:

Fees	Facility Budget
Admissions[6]	$1,169,700
Corporate/Group	$50,000
Rentals[7]	$23,500
TOTAL	**$1,243,200**

Programs	Facility Budget
Aquatics	$43,250
TOTAL	**$43,250**

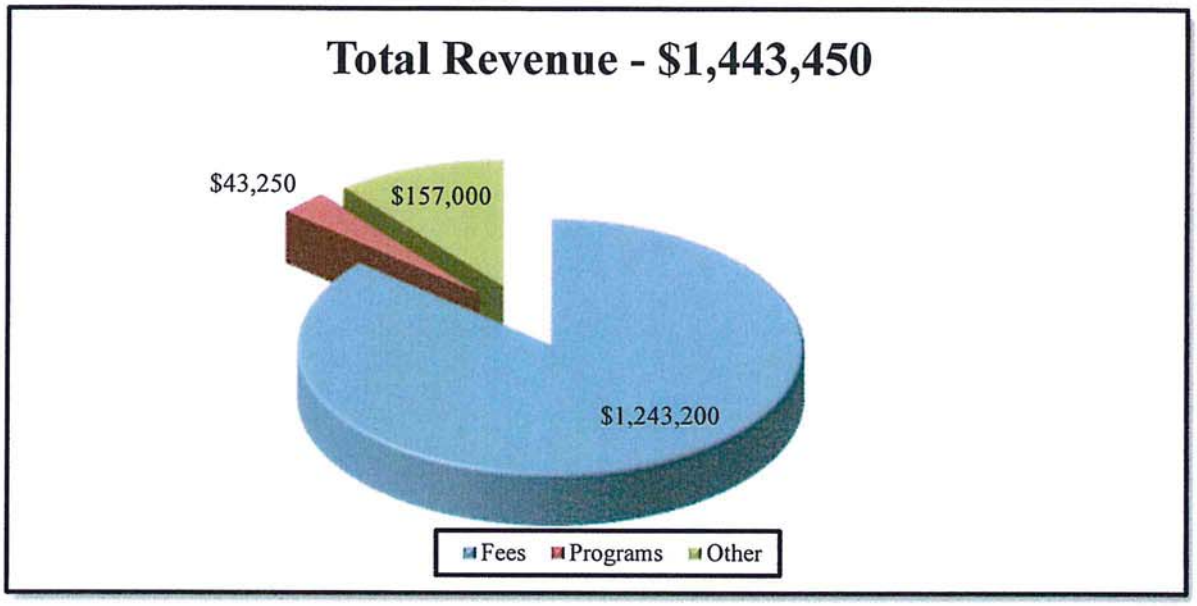
Other	Facility Budget
Resale Items (150% of cost)	$15,000
Special Events	$3,000
Concessions	$135,000
Vending	$4,000
TOTAL	**$157,000**

All Categories	Facility Budget
Fees	$1,243,200
Programs	$43,250
Other	$157,000
GRAND TOTAL	**$1,443,450**

[6] Figures are based on an active program to promote the sale of daily passes.

[7] Rentals - Toddler Pool, $200 x 5hrs = $1,000
Plunge Pool, $200 x 5hrs = $1,000
Activity Pool, $250 x 10hrs = $2,500
Wave Pool, $350 x 10 = $3,500
Lazy River, $350 x 10hrs = $3,500
Entire Center, $1,000 x 4hrs = $4,000
Umbrella/Pavilion, $25 x 320hrs = $8,000

Graphic Representation of Total Revenue:



Expenditure - Revenue Comparison

Category	Facility Budget
Expenditures	$1,260,712
Revenues	$1,443,450
Difference	$182,738
Recovery %	114%

It should be noted that the financial performance of an outdoor aquatic center is directly related to the weather over the course of the season.

This operations pro-forma was completed based on the best information available and a basic concept plan for the project. As a result there is no guarantee that the expense and revenue projections outlined above will be met as there are many variables that affect such estimates that either cannot be accurately measured or are not consistent in their influence on the budgetary process.

Future Years: Expenditure - Revenue Comparison: Expenses for the first year of operation of the center should be slightly lower than projected with the facilities being under warranty and new. Revenue growth in the first three years is attributed to increased market penetration and in the remaining years to continued population growth. In most aquatic facilities the first three years show tremendous growth from increasing the market share of patrons who use such facilities, but at the end of this time period revenue growth begins to flatten out. Additional revenue growth is then spurred through increases in the population within the market area, a specific marketing plan to develop alternative markets, the addition of new amenities or by increasing user fees.

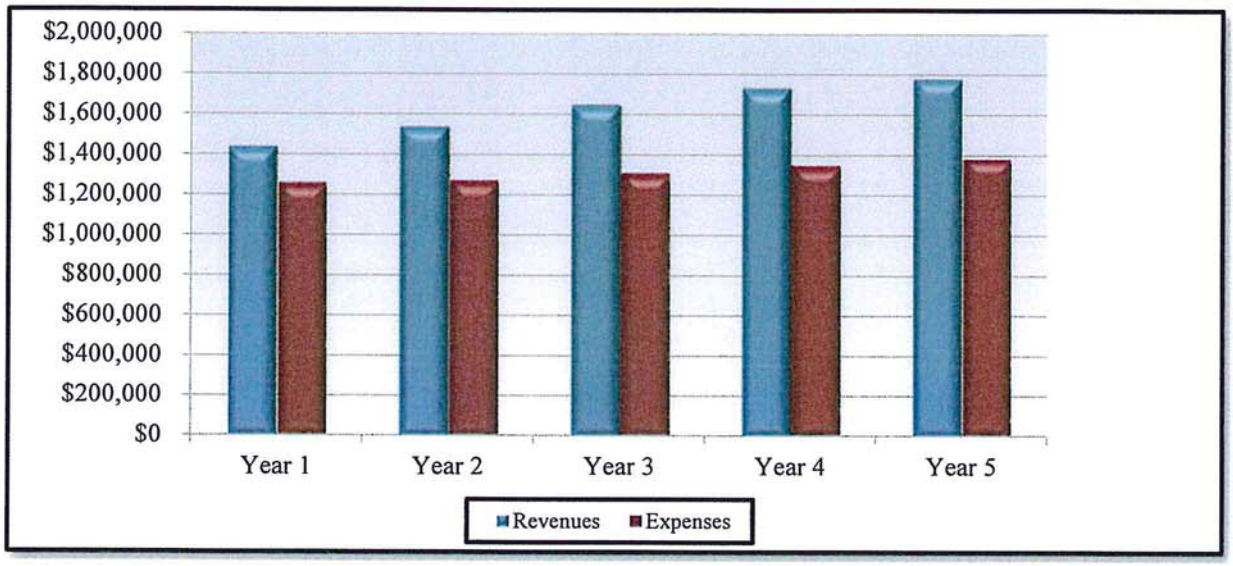
Exponential Percent Increase from Year to Year:

Category	Year 1	Year 2	Year 3	Year 4	Year 5
Expenditures	0%	1%	3%	3%	3%
Revenues	0%	7%	7%	5%	3%

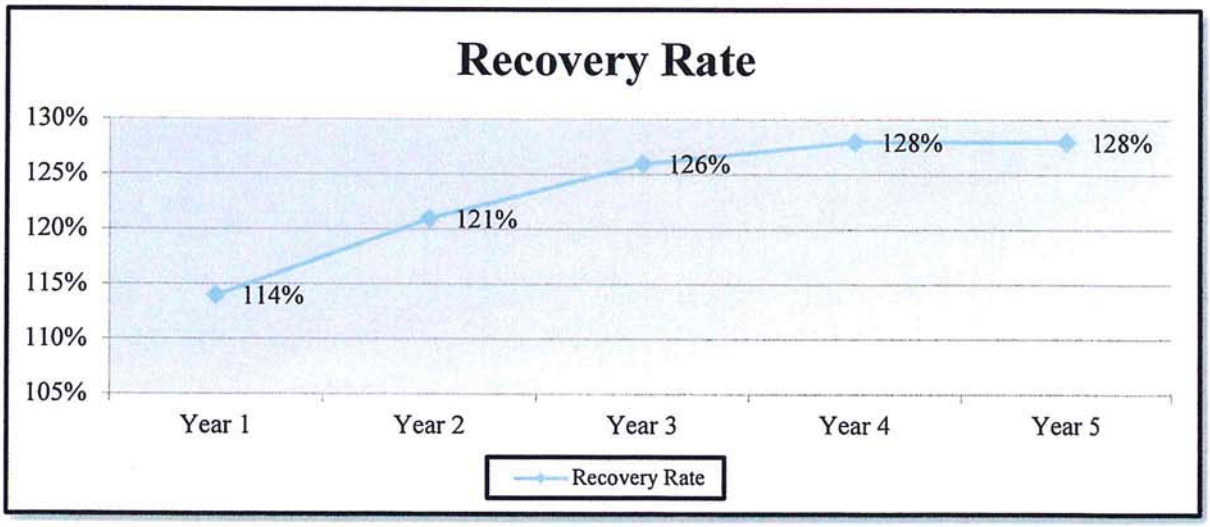
5 Year Budget Comparison

Category	Year 1	Year 2	Year 3	Year 4	Year 5
Expenditures	$1,260,712	$1,273,319	$1,311,519	$1,350,864	$1,391,390
Revenues	$1,443,450	$1,544,492	$1,652,606	$1,735,236	$1,787,293
Difference	$182,738	$271,172	$341,087	$384,372	$395,903
Recovery %	114%	121%	126%	128%	128%

Revenue/Expense Comparison Chart



Percent Recovery Rate



Fees and Attendance

Projected Fee Schedule: The following fee schedule is the basis for the revenue projections and attendance numbers that have been calculated.

Category	Daily	10-Pass
48" and Up	$15.00	$112.00
Below 48"	$10.00	$75.00
Under Age 3	Free	Free

Note: 10 pass admissions are based on an approximate 25% discount from the daily admission rate.

It is expected that there will be a number of discounts available for daily and 10-pass rates. This could include a twilight rate, pre-season sales, and discount coupons.

Rentals	
Entire Center	$1,000/hr
Toddler Pool	$200/hr
Plunge Pool	$200/hr
Activity Pool	$250/hr
Lazy River	$350/hr
Wave Pool	$350/hr
Umbrella/Pavilion	$25/hr

Admission Rate Comparisons: The above rates were determined based on the rates paid at similar facilities in the area (in 2014).

Creekmore Park Swimming Pool

Category	Daily	Season
Adults	$2.00	$40.00
Child (Under 7)	$1.00	$30.00
Family	N/A	$60.00

The Rogers Aquatic Center

Category	Daily		4-7pm		10-Pass	
	Res.	Non.Res.	Res.	Non.Res.	Res.	Non.Res.
48" and Up	$12	$15	$10	$10	$85	$99
Below 48"	$8	$10	$6	$6	$65	$75
Below 36"	Free	Free	Free	Free		
Senior (62+)	$8	$8				

Alma Aquatic Park

Category	Daily
3 Years – Adult	$7.00
Under 2	$1.00

Springdale Aquatic Center

Category	Daily
Age 5 & Up	$4.00
Age 4 & Under	$2.00
50, $1.00 Tickets	$40.00
Deck Fee	$2.00

Attendance Projections: The following attendance projections are the basis for the revenue figures that were identified earlier in this report. The admission numbers are affected by the rates being charged, the facilities available for use, and the competition within the service area. These are averages only and are based on 80 days of operation.

	Daily	Season
Daily (# daily admissions x 80 days)	1,350	108,000
10 Admissions (1,200 sold x 10 admissions)		12,000
Total Season	1,350	120,000

Outdoor pools are heavily utilized during afternoon and early evening hours (seven days a week) from early June to early August. **Attendance is heavily impacted by the weather and can vary considerably as a result.**

Hours of Operation: The projected hours of operation of the Ben Geren Aquatic Center are as follows:

Days	Hours
Monday-Sunday	11:00A-7:00P
Hours per Week	56

It is anticipated that the outdoor leisure pool would be open for lessons and aqua exercise classes from 8:00am until 10:30am on weekdays and after hours time would also be available for rentals.

The basic season will be from Memorial Day to Labor Day, with the strongest use between early June and the first part of August.

Appendix

Part-Time Staff Hours

Revenue Worksheets

Lifeguard Positioning

Part-Time Staff Hours:

Title	Days	Time	Hours	Employees	Days	Total/Wk
Assistant Manager (16 wks)	Mon-Fri	7:30A-2:00P	6.5	1	5	32.5
		1:30P-8:00P	6.5	1	5	32.5
	Sat-Sun	10:30A-8:00P	9.5	1	2	19
					TOTAL	84

Title	Days	Time	Hours	Employees	Days	Total/Wk
Lead Lifeguard (14 weeks)	Mon-Sun	10:00A-8:00P	10	4	7	280
					TOTAL	280

Title	Days	Time	Hours	Employees	Days	Total/Wk
Cashier (14 weeks)	Mon-Sun	10:00A-7:00P	9	3	7	189
					TOTAL	189

Title	Days	Time	Hours	Employees	Days	Total/Wk
Custodian/Grounds (14 weeks)	Mon-Sun	6:00-10:00A	4	2	5	40
	Mon-Sun	Noon-8:00P	8	3	7	168
	Mon-Sun	6:00-10:00P	4	2	7	56
					TOTAL	264

Title	Days	Time	Hours	Employees	Days	Total/Wk
Concession Man. (16 weeks)	Mon-Sun	Noon-8:00P	8	1	7	56
					TOTAL	56

Title	Days	Time	Hours	Employees	Days	Total/Wk
Asst. Concession Sup. (14 weeks)	Mon-Sun	10:00A-6:00P	8	1	7	56
					TOTAL	56

Title	Days	Time	Hours	Employees	Days	Total/Wk
Concession Attendant (14 weeks)	Mon-Sun	11:00A-8:00P	9	6	7	378
					TOTAL	378

Title	Days	Time	Hours	Employees	Days	Total/Wk
Lifeguard (14 weeks)	Mon-Fri	8:00-10:30A	2.5	4	5	50
	Mon-Fri	10:30A-8:00P	9.5	29	5	1,378
	Sat-Sun	10:30A-8:00P	9.5	29	2	551
	Rentals		6/wk	10		60
					TOTAL	2,039

Program Staffing

Aquatics

This is a representative sample of possible aquatic programming at the center.

Swim Lessons (weekday classes meet four days a week for two weeks)

Infant & Preschool (Mon.-Thurs.)

Lessons/Day	Staff Rate/Class	Days	Sessions	Total
10	$4.00	8	4	$1,280
TOTAL				**$1,280**

Learn to Swim (Mon.-Thurs.)

Lessons/Day	Staff Rate/Class	Days	Sessions	Total
16	$4.00	8	4	$2,048
TOTAL				**$2,048**

Note: Instructors are paid $8/hour classes are 30 minutes in length.

Private Swim Lessons

Lessons/Week	Staff Rate/Lesson	Weeks	Total
10	$10.00	8	$800
TOTAL			**$800**

Other

Miscellaneous

Classes	Staff Rate/Class	Classes/Week	Sessions	Total
2	$20.00	4	2	$320
TOTAL				**$320**

Water Exercise

Classes	Staff Rate/Class	Classes/Week	Weeks	Total
3	$15.00	2	8	$720
3	$15.00	3	8	$1,080
TOTAL				**$1,800**

Lifeguard Training

Staff	Staff Rate/Class	Hours/Class	Sessions	Total
1	$15.00	33	3	$1,485
TOTAL				**$1,485**

Birthday Parties

Staff	Staff Rate/Party	Parties/Week	Weeks	Total
1	$15.00	14	11	$2,310
TOTAL				**$2,310**

Total Aquatics Programs **$10,043**

Program Revenue Estimates

This is a representative sample of possible aquatic programming and revenue at the center.

Aquatics

Swim Lessons

Title	Classes	Fee	Sessions/ Weeks	Total Revenue
Infant & Preschool	10 classes/4 per class	$30.00	4 sessions	$4,800
Learn to Swim	16 classes/4 per class	$30.00	4 sessions	$7,680
Private Lessons	10 lessons/wk	$15.00/cl.	8 weeks	$1,200
			TOTAL	$13,680

Other

Title	Classes	Fee	Sessions/ Weeks	Total Revenue
Misc.	2 classes/5 per class	$50.00	2 sessions	$1,000
Water Exercise	3 classes/8 per class	$40.00	2 sessions	$1,920
Water Exercise	3 classes/8 per class	$60.00	2 sessions	$2,880
Lifeguard Training	1 class/10 per class	$125.00	3 sessions	$3,750
Birthday Parties	14 per week	$130.00/pty.	11 weeks	$20,020
			TOTAL	$29,570

Aquatics Program Revenue **$43,250**

Admission Revenues

Daily

Category	Daily Fee	# per Day	Revenue
48" and Up	$15.00	900	$13,500
Below 48"	$10.00	450	$4,500
	TOTAL	1,350	$18,000
		DAYS per SEASON	80
		TOTAL	$1,440,000

10 Pass

Category	Daily Fee	# Sold	Revenue
48" and Up	$112.00	800	$89,600
Below 48"	$75.00	400	$30,000
	TOTAL	1,200	$119,600
		TOTAL	$119,600

Total Revenue

Category	Revenue
Daily	$1,440,000
10 Pass	$119,600
TOTAL	$1,559,600
Discount Sales (25% of Total)	($389,900)
ADJUSTED TOTAL	$1,169,700

Note: These work sheets were used to project possible revenue sources and amounts. These figures are estimates only, based on basic market information and should not be considered as guaranteed absolutes. This information should be utilized as a representative revenue scenario only and to provide possible revenue target ranges.