

**FACILITY MANAGEMENT AGREEMENT ADDENDUM**

This Facility Management Agreement Addendum ("Addendum") is made and entered into as of this \_\_ day of December, 2019, by and between the The City of Myrtle Beach, South Carolina (the "Owner") and Sports Facilities Management, LLC, formerly known as Sports Facilities Advisory Management, LLC (the "Manager") (the Owner and Manager are sometimes collectively referred to herein as the "Parties" and individually as a "Party") as an Addendum to the Facility Management Agreement entered into by the Parties on or about September 9, 2013 (the "Agreement").

**RECITALS:**

WHEREAS, Owner owns the land, infrastructure, buildings, parking, lighting, equipment and all other hard assets associated with the sports complex as the same exist now or may exist in the future including improvements related thereto located at 2115 Sports Center Way, Myrtle Beach, South Carolina 29577, in the corporate limits of Myrtle Beach, South Carolina as the same exist now or may exist in the future, known as the Myrtle Beach Sports Center, or any other name that may be identified in the future (collectively, the "Facility");

WHEREAS, Manager has expertise in providing management services for youth and amateur sports complex facilities throughout the United States; and

WHEREAS, Owner and Manager desire for Manager to continue to operate and manage the Facility subject to the terms and conditions set forth in the Agreement and affirm, clarify, modify certain terms previously agreed upon, through this Addendum.

NOW THEREFORE, in consideration of the promises and covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner and Manager further agree as follows:

1. **Term.**

The Parties agree that the Term of the Agreement shall renew for an additional five (5) years and four months the first "Renewal Term" to begin on February 26, 2020 and end on June 30, 2025 unless automatically renewed or sooner terminated pursuant to the terms of the original Agreement.

2. **Amendments to Exhibit B.**

The Parties agree to modify the following terms in Exhibit B of the Agreement as follows:

a. **Base Management Fee.** March through June 2020 the management fee will remain at current \$12,000 per month. Beginning July 1, 2020 (Year 6) and for the remainder of the Term, Owner shall pay to Manager the sum of Twelve Thousand Five Hundred Dollars (\$12,500) per month as the "Base Management Fee."

b. **Deferred Management Fees.** The following "Deferred Management Fees" language shall be added as Numerical Paragraph 6, "Deferred Management Fees":

**"6. Deferred Management Fees.** For each full Operating Year and for each year subsequent year during the remainder of the Term, Manager shall be entitled to Additional Deferred Management Fees over and above the Base Management Fee and any other incentives, which Deferred Management

Fees shall be determined, paid, and subject to the following terms and conditions:

- Owner will pay to Manager a Net Income Deferred Management Fee each Operating Year on Net Income growth. This fee is equal to ten percent (10%) of the amount of increase in Net Income for the facility over the baseline Net Income results of the 2018-19 Fiscal Year (this baseline amount is \$120,000). The 2018-19 baseline amount of \$120,000 will be the figure used for the term of this contract. Such calculations shall be made by Manager within thirty (30) days of the ending of any Operating Year and paid to Manager within thirty (30) days of such calculation being delivered to Owner.”

- Owner will pay to Manager an Economic Impact Growth Deferred Management Fee each Operating Year on Economic Impact growth for the facility. This Economic Impact Growth Deferred Management Fee is equal to twenty percent (20%) of the amount of increase in taxes generated for the City of Myrtle Beach by activities hosted at the Facility, as reported publicly by the City’s Parks, Recreation, and Sports Tourism Department, specifically the Sports Tourism Division, using the same formulas for the taxes generated reported for the 2018-19 Fiscal Year (This baseline amount is \$450,000). Such calculations shall be made by Manager within thirty (30) days of the ending of any Operating Year and paid to Manager within thirty (30) days of such calculation being delivered to Owner.”

c. **Payroll Compensation.** The following “Payroll Compensation” language shall replace and be substituted for Numerical Paragraph 4, “Salary of Employees” and Numerical Paragraph 5, “Management Payroll Compensation” in their entirety:

“4. **Payroll Compensation.** During the Term, Owner shall pay to Manager in equal monthly installments, the Employment Costs for all employees at the Facility (collectively, the “Payroll Compensation”) to the extent those costs are approved by Owner in the Annual Operations Budget. Manager will compensate all of its employees on a monthly basis and therefore each Payroll Compensation payment will become due and payable to Manager on the first (1st) day of each successive month. For purposes of this Agreement, the term “Employment Costs” shall mean the salary for the Manager’s Employees including health insurance (the actual costs per employee for health insurance up to \$750 per month), etc., as well as any annual bonus to be paid.”

3. **Amendments to Notices.**

The following “Notices” language shall replace and be substituted for Numerical Paragraph 13.8, in its entirety:

“13.8 **Notices.** All notices provided for in this Agreement shall be sent in writing and served by registered or certified mail, return receipt requested, postage prepaid, at the following addresses until such time as written notice or a change of address is given to the other party:

- If to Owner: John Pederson, City Manager  
P.O. Box 2468  
Myrtle Beach, SC 29578
- with a copy to: Fox Simons, Deputy City Manager  
P.O. Box 2468  
Myrtle Beach, SC 29578
- If to Manager: Sports Facilities Management, LLC  
Attention: Jason Clement, CEO  
600 Cleveland Street, Suite 910

Clearwater, FL 33755  
Email: jclement@sportadvisory.com

with a copy to:

Sports Facilities Management, LLC  
Attention: Bruce Rector, General Counsel  
600 Cleveland Street, Suite 910  
Clearwater, FL 33755  
Email: brector@sportadvisory.com”

IN WITNESS WHEREOF, the Parties have caused this Addendum to be made and entered into effective as of the date above written.

CITY OF MYRTLE BEACH  
“OWNER”

\_\_\_\_\_  
BY:

\_\_\_\_\_  
ITS: (PRINT)

\_\_\_\_\_  
DATE:

SPORTS FACILITIES MANAGEMENT, LLC  
“MANAGER”

\_\_\_\_\_  
BY:

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DATE:

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**POST-OPENING FACILITY MANAGEMENT AGREEMENT**

**between**

**CITY OF MYRTLE BEACH, SOUTH CAROLINA**

**and**

**SPORTS FACILITIES ADVISORY MANAGEMENT, LLC**

**Dated: September 9, 2013**



1           **Annual Operations Budget:** The term “Annual Operations Budget” shall have the  
2 meaning ascribed to such term in Exhibit A to this Agreement.

3  
4           **Approved Policies:** The term “Approved Policies” shall have the meaning ascribed to  
5 such term in Section 2.2 of this Agreement.

6  
7           **Base Management Fee:** The term “Base Management Fee” shall have the meaning  
8 ascribed to such term in Exhibit B to this Agreement.

9  
10          **Booking Incentive Fee:** The term “Booking Incentive Fee” shall have the meaning  
11 ascribed to such term in Exhibit B to this Agreement.

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13          **Budget:** The term “Budget” shall have the meaning ascribed to such term in Exhibit A to  
14 this Agreement.

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16          **Capital Expenditures:** All expenditures for building additions, alterations, repairs or  
17 improvements and for purchases of additional or replacement furniture, machinery, or  
18 equipment, where the cost of such expenditure is greater than \$5,000 and the depreciable life of  
19 the applicable item is, according to generally accepted accounting principles, in excess of one (1)  
20 year.

21  
22          **Capital Expenditures Budget:** The term “Capital Expenditures Budget” shall have the  
23 meaning ascribed to such term in Exhibit A to this Agreement.

24  
25          **Commercial Rights:** Naming rights, pouring rights, advertising, sponsorships, the  
26 branding of food and beverage products for resale and memorial gifts at or with respect to the  
27 Facility.

28  
29          **Effective Date:** “Effective Date” shall have the meaning ascribed to such term in the  
30 preamble of this Agreement.

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32          **Emergency Expenditure:** The term “Emergency Expenditure” shall have the meaning  
33 ascribed to such term in Exhibit A to this Agreement.

34  
35          **Existing Contracts:** Service Contracts, Revenue Generating Contracts, and other  
36 agreements relating to the day-to-day operation of the Facility existing as of the Opening Day.

37  
38          **Facility:** The “Facility” shall have the meaning ascribed to such term in the Recitals to  
39 this Agreement.

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41          **Facility Operating Account:** A separate interest-bearing account in the name of the  
42 Owner at a licensed bank in the State of South Carolina, to be designated by the Owner, where  
43 Revenue is deposited and from which Operating Expenses are paid.

44  
45          **Facility Operating Budget:** A line item budget for the Facility that includes a projection  
46 of Revenues and Operating Expenses, presented on a monthly and annual basis.

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2       **Facility Operating Expenses:** All expenses incurred by Manager in connection with its  
3 operation, promotion, maintenance and management of the Facility, including but not limited to  
4 the following: (i) employee payroll, bonuses and benefits (including payments to any national  
5 benefit system), reasonable relocation costs, termination costs (including severance costs and  
6 payments in lieu of termination other than those paid in settlement of asserted or potential claims  
7 against the Manager), and related costs, (ii) cost of operating supplies, including general office  
8 supplies, (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning  
9 expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) printing  
10 and stationary costs, (viii) postage and freight costs, (ix) equipment rental costs, (x) minor  
11 repairs, maintenance, and equipment servicing, not including expenses relating to performing  
12 capital improvements or repairs, (xi) security expenses, (xii) telephone and communication  
13 charges, (xiii) reasonable travel and entertainment expenses of Manager employees, to the extent  
14 reimbursable hereunder, (xiv) cost of employee uniforms and identification, (xv) exterminator  
15 and trash removal costs, if applicable (xvi) computer, software, hardware and training costs,  
16 (xvii) parking expenses, (xviii) utility expenses, (xix) office expenses, (xx) fees of auditors and  
17 accountants approved by Owner under Section 10.2(i) hereof, (xxi) fees of attorneys approved by  
18 Owner under Section 10.2(i) hereof, (xxii) all bond and insurance costs, including but not limited  
19 to personal property, liability, and worker's compensation insurance, (xxiii) commissions and all  
20 other fees payable to third parties (e.g. commissions relating to food, beverage and merchandise  
21 concessions services and commercial rights sales), (xxiv) cost of complying with any Laws,  
22 (xxv) costs incurred by Manager to settle or defend any claims asserted against Manager arising  
23 out of its operations at the Facility on behalf of Owner not involving negligence of willful or  
24 wanton misconduct on the part of Manager, its employees or agents; (xxvi) loss, costs, damage,  
25 liability and any other obligations arising under or incurred under Service Contracts and other  
26 agreements relating to Facility operations, and (xxvii) Taxes. The term "Operating Expenses"  
27 does not include debt service on the Facility, Capital Expenditures or the management fees (all of  
28 which shall be the responsibility of the Owner).

29  
30       **FF&E:** Furniture, fixtures and equipment to be procured for use at the Facility.

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32       **General Manager:** The employee of Manager acting as the full-time on-site general  
33 manager of the Facility.

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35       **Intellectual Property:** The term "Intellectual Property" shall have the meaning ascribed  
36 to such term in Section 13.18 to this Agreement.

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38       **Laws:** Means all applicable laws, statutes, rules, regulations and ordinances.

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40       **Manager:** The term "Manager" shall have the meaning ascribed to such term in the  
41 Recitals to this Agreement.

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43       **Manager Credit Card:** The term "Manager Credit Card" shall have the meaning  
44 ascribed to such term in Exhibit A to this Agreement.

1           **Opening Day:** The date when customers will first be engaged in activities within the  
2 Facility.

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5           **Operating Expense Minimum:** The term “Operating Expense Minimum” shall have the  
6 meaning ascribed to such term in Exhibit A to this Agreement.

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8           **Operating Year:** Each twelve (12) month period during the Term, commencing on July  
9 1 and ending on June 30, provided that the first Operating Year shall be a shortened year  
10 commencing on the Effective Date and ending on June 30 of such calendar year, and the last  
11 Operating Year shall be a shortened year, ending upon the expiration of this Agreement.

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13           **Operations Manual:** The document to be developed by Manager which shall contains  
14 terms regarding the management and operation of the Facility, including detailed policies and  
15 procedures to be implemented in operating the Facility, as agreed upon by both the Owner and  
16 the Manager.

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18           **Owner:** The term “Owner” shall have the meaning ascribed to such term in the Recitals  
19 to this Agreement.

20  
21           **Owner’s Advances:** The term “Owner’s Advances” shall have the meaning ascribed to  
22 such term in Exhibit A to this Agreement.

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24           **Payroll Account:** The term “Payroll Account” shall have the meaning ascribed to such  
25 term in Exhibit A to this Agreement.

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27           **Payroll Expense Minimum:** The term “Payroll Expense Minimum” shall have the  
28 meaning ascribed to such term in Exhibit A to this Agreement.

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30           **Pre-Opening Agreement:** The term “Pre-Opening Agreement” shall have the meaning  
31 ascribed to such term in the Recitals to this Agreement.

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33           **Recruitment Fee:** The term “Recruitment Fee” shall have the meaning ascribed to such  
34 term in Section 6.3 of this Agreement.

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36           **Renewal Term:** The term “Renewal Term” shall have the meaning ascribed to such term  
37 in Section 4.1 of this Agreement.

38  
39           **Revenue:** All revenues generated by Manager’s operation of the Facility, including but  
40 not limited to event ticket proceeds income, rental and license fee income, merchandise income,  
41 gross food and beverage income, gross income from any sale of Commercial Rights, gross  
42 service income, equipment rental fees, box office income, and miscellaneous operating income,  
43 but shall not include event ticket proceeds held by Manager in trust for a third party and paid to  
44 such third party, and sponsorship fees that are subject to a commission to the Manager under this  
45 Agreement.





1 athletic complexes, programs, and other rules and regulations affecting the Facility or the  
2 operation thereof.

3  
4 (b) Manager hereby accepts such appointment, and shall perform the services  
5 described herein, subject to the limitations expressly set forth in this Agreement.

6  
7 2.2 Owner's Rights. Manager acknowledges and agrees that in accordance with the  
8 annual review and approval of the Annual Business Plan, the Owner shall have the right to  
9 approve certain operating policies and procedures; standards of operation; service and  
10 maintenance; pricing and other general policies, general rules and regulations affecting the  
11 Facility and the operation and maintenance thereof (collectively, the "Approved Policies"). In  
12 conjunction with the administration of the Approved Policies, Manager shall have the right to  
13 cause its employees to perform any act on behalf of Owner deemed by Manager to be necessary  
14 or desirable for the marketing, operation and maintenance of the Facility, provided in no event  
15 shall Manager break any laws or act grossly negligent or willfully or wantonly in regard to the  
16 discharge of its duties under this Agreement.

17  
18 If Owner is named as a party with respect to any claim, loss, lawsuit proceeding, or  
19 cause of action relating to or arising out of Manager's management of the Facility, Manager, or  
20 Manager's Affiliate agree to cooperate and help coordinate the defense of Owner in conjunction  
21 with the applicable insurance companies. Further, except as set forth in herein, in the event of a  
22 matter in which it is first determined that Manager, its employees, or agents were grossly  
23 negligent or acted wantonly, to the extent that the insurance coverages maintained by Owner and  
24 Manager in accordance with this Agreement are insufficient to cover the asserted claim, loss,  
25 lawsuit proceeding, or cause of action, Manager, or Manager's Affiliates agree to retain counsel  
26 to defend Owner and reimburse Owner for all resulting litigation costs, reasonable attorneys'  
27 fees judgements, verdicts, settlements and appeals costs related to the defense of such matter(s).

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29 2.3 Use of the Property.

30  
31 (a) General. Owner hereby grants to Manager the exclusive right to manage  
32 the Facility during the Term for the operation of an athletic facility including athletic space, food  
33 service, meeting areas and such other uses as shall be compatible for the operation of a state of  
34 the art athletic facility, including, by way of illustration, athletic and wellness programs and a  
35 sports tournaments and events, family-oriented entertainment functions facility, including all  
36 activities associated or related thereto.

37  
38 (b) Vacating of Property; Relationship. Manager shall, upon the Termination  
39 Date or earlier termination of the Term, immediately vacate the Facility. The parties agree that  
40 in no event is the relationship established herein one of landlord and tenant, or licensor and  
41 licensee, and Manager has no right to operate the Facility other than for the purposes set forth in  
42 this Agreement.

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44  
45 2.4 Limitations on Manager's Duties. Manager's obligations under this Agreement  
46 are contingent upon and subject to the Owner making available, in a timely fashion, the funds

1 budgeted for and/or reasonably required by Manager to carry out such obligations during the  
2 Term. Manager shall not be considered to be in breach or default of this Agreement, and shall  
3 have no liability to the Owner or any other party, in the event Manager does not perform any of  
4 its obligations hereunder due to failure by the Owner to timely provide such funds.

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6 **ARTICLE III**  
7 **COMPENSATION**  
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9 3.1 **Compensation Payments.** In consideration of Manager's performance of its  
10 services provided hereunder, Owner shall pay Manger from time to time those payments as  
11 further set forth in Exhibit B attached hereto.  
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13 **ARTICLE IV**  
14 **TERM; TERMINATION**  
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16 4.1 **Term.** The term of this Agreement (the "Term") shall begin on the Opening Day  
17 of the Facility and, unless sooner terminated pursuant to the provisions of Section 4.2 below,  
18 shall expire on the fifth (5<sup>th</sup>) anniversary of the Opening Day, at which time this Agreement shall  
19 automatically renew for additional periods of one (1) year (each a "Renewal Term") unless either  
20 party provides the other party with at least ninety (90) days notice before the expiration of the  
21 Term or any Renewal Term. Upon any renewal of this Agreement as provided herein, the Term  
22 shall be extended to include any such Renewal Term(s).  
23

24 4.2 **Termination.** This Agreement may be terminated by Owner or Manager at any  
25 time by providing the other party with written notice on or before the date such terminating party  
26 wishes to terminate this Agreement (the "Termination Date").  
27

28 4.3 **Effect of Termination.**  
29

30 (a) Upon termination by the Owner for any reason other than for "cause" due  
31 to Manager's breach of any material provision herein, without cure following written notice from  
32 Owner detailing such breach of this Agreement or by operation of Section 4.1 or if there shall  
33 occur a "change in control" of Manager, Owner shall pay to Manager a termination fee (the  
34 "Termination Fee") on the Termination Date that is equal to (a) the greater of: (i) one half (1/2)  
35 of the -preceding twelve (12) months' fees due to Manager hereunder or (ii) six (6) times the  
36 average monthly payment due to Manager during the Term; plus (b) any bonus or incentive  
37 payments that the Manager has earned through the Termination Date; plus (c) up to six (6)  
38 months' salary for all full-time employees that have been employed pursuant to the terms of this  
39 Agreement; plus (d) any severance payments and/or relocation expenses which are incurred by  
40 Manager related to the Manager's terminating or relocating full-time employees that have been  
41 assigned to the Facility provided that any Termination Fee shall be prorated if the remaining  
42 term is less than twelve (12) months at time of termination; and further provided, that any  
43 amount due by way of a Termination Fee shall be reduced of any prepaid and unearned amounts  
44 of base Management Fee or employee compensation. Term is less than six months at time of  
45 termination; and further provided, that any amount due by way of a Termination Fee shall be  
46 reduced of any prepaid and unearned amounts of Base management Fee or employee

1 compensation. In the Event that Owner terminates this Agreement, Owner shall have the right to  
2 request that Manager vacate the property and cease all management activities related to the  
3 Facility, in which case Owner shall pay Manager the Termination Fee as set forth above.  
4 Notwithstanding anything contained herein to the contrary, in the event that Owner provides  
5 Manager with one hundred eighty (180) days' notice of termination, Manager and Owner hereby  
6 acknowledge and agree that the Termination Fee shall be waived.

7  
8 (b) Upon termination or expiration of this Agreement for any reason, (i)  
9 Manager shall vacate the property and promptly discontinue the performance of all services  
10 rendered hereunder related to the Facility; (ii) the Owner shall promptly pay Manager all fees  
11 due Manager up to the date of termination or expiration (subject to proration if the Term ends  
12 other than at the end of the Operating Year) and Manager shall promptly pay to Owner all  
13 prepaid and unearned amounts of Base Management Fee and employee compensation; (iii)  
14 Manager shall make available to the Owner all data, electronic files, documents, procedures,  
15 reports, estimates, summaries, and other such information and materials with respect to the  
16 Facility as may have been accumulated by Manager in performing its obligations hereunder,  
17 whether completed or in process; and (iv) without any further action on part of Manager or  
18 Owner, the Owner shall, or shall cause the successor Facility Manager to, assume all obligations  
19 arising after the date of such termination or expiration, under any Service Contracts, Revenue  
20 Generating Contracts, booking commitments and any other agreements entered into by Manager  
21 in furtherance of its duties hereunder. Notwithstanding the foregoing, Manager is under no duty  
22 to provide certain proprietary confidential materials or intellectual property to the Owner,  
23 including but not limited to national benchmarking formulas, key performance indicators reports,  
24 employee performance evaluations, financial forecasting formulas, or Manager's internal  
25 databases, and/or other intellectual property developed by and maintained by the Manager. Any  
26 obligations of the parties that are specifically intended to survive expiration or termination of this  
27 Agreement shall survive expiration or termination hereof.

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29 **ARTICLE V**  
30 **OWNERSHIP; USE OF FACILITY**  
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32 5.1 **Ownership of Facility, Data, Equipment and Materials.** The Owner will at all  
33 times retain ownership of the Facility, including but not limited to real estate, technical  
34 equipment, furniture, displays, fixtures and similar property, including improvements made  
35 during the Term, at the Facility. Any data, equipment, software or materials furnished by the  
36 Owner to Manager or acquired by Manager as an Operating Expense shall remain the property of  
37 the Owner, and shall be returned to the Owner when no longer needed by Manager to perform  
38 under this Agreement. Notwithstanding the above, Owner shall not have the right to use any  
39 third party software licensed by Manager for general use by Manager at both the Facility and  
40 other facilities managed by Manager, the licensing fee for which is proportionately allocated and  
41 charged to the Facility as an Operating Expense, such software may be retained by Manager  
42 upon expiration or termination hereof. Furthermore, the Owner recognizes that the Operations  
43 Manual to be developed and used by Manager hereunder is proprietary to Manager, and shall  
44 belong solely to Manager at the end of the Term and the Owner shall not use or maintain copies  
45 of the Operations Manual upon the end of the Term for any reason whatsoever.



1 the right to agree or deny such a request. In the event that Manager elects to permit Owner to  
2 hire Manager's employee(s), Owner shall provide Manager with a one-time fee (the  
3 "Recruitment Fee") equal to six (6) months' gross salary and benefits; provided, however, where  
4 Owner has waived the Termination Fee following one hundred eighty (180) days' notice  
5 pursuant to Section 4.3, the Recruitment Fee for any employee shall be equal to four (4) months'  
6 gross salary and benefits.

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8 **ARTICLE VII**  
9 **PROCEDURE FOR HANDLING INCOME**

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11 **7.1 Operating Account.** Except as otherwise agreed to by the parties in writing, all  
12 Revenue derived from operation of the Facility shall be deposited by Manager into the Operating  
13 Account as soon as practicable upon receipt (but not less often than once each business day).  
14 The specific procedures (and authorized individuals) for making deposits to and withdrawals  
15 from such account shall be set forth in the Operations Manual, but the parties specifically agree  
16 that Manager shall have authority to sign checks and make withdrawals from such account,  
17 subject to the limitations contained in this Agreement, without needing to obtain the co-signature  
18 of an employee, agent or representative of the Owner. At the end of any Operating Year, if the  
19 amount on deposit in Operating Account is greater than the budgeted Operating Expense  
20 Minimum, the difference shall be paid or transferred to Owner.  
21

22 **ARTICLE VIII**  
23 **FUNDING**

24  
25 **8.1 Source of Funding.** Manager shall pay all items of expense for the operation,  
26 maintenance, supervision and management of the Facility from the funds in the Operating  
27 Account, which Manager may access periodically for this purpose. The Operating Account shall  
28 be funded with amounts generated by operation of the Facility or otherwise made available by  
29 the Owner. To ensure sufficient funds are available in the Operating Account, Owner will  
30 deposit into the Operating Account, on or before the Effective Date, the budgeted or otherwise  
31 approved expenses for the month beginning on the Effective Date. The Owner shall thereafter,  
32 on or before the first (1<sup>st</sup>) day of each succeeding month following the Effective Date, deposit (or  
33 allow to remain) in the Operating Account the budgeted or otherwise approved expenses for each  
34 successive month. Manager shall have no liability to the Owner or any third party in the event  
35 Manager is unable to perform its obligations hereunder, or under any third party contract entered  
36 into pursuant to the terms hereof, due to the fact that sufficient funds are not made available to  
37 Manager to pay such expenses in a timely manner.  
38

39 **8.2 Advancement of Funds.** Under no circumstances shall Manager be required to  
40 pay for or advance any of its own funds to pay for any Operating Expenses. Notwithstanding the  
41 foregoing, in the event that Manager agrees to advance its own funds to pay any Operating  
42 Expenses, Owner shall promptly reimburse Manager for the full amount of such advanced funds,  
43 plus interest at a rate to be mutually agreed upon.  
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**ARTICLE IX**  
**FACILITY CONTRACTS; TRANSACTIONS WITH AFFILIATES**

9.1 **Existing Contracts.** The Owner shall provide to Manager, on or before the Opening Day, full and complete copies of all Existing Contracts related to the Facility. Manager shall administer and use reasonable commercial efforts to assure compliance with such Existing Contracts to the extent provided such Existing Contracts are provided to Manager, but shall assume no liability thereunder and shall be held harmless by the Owner for any actions taken on behalf of the Owner in furtherance of such Existing Contracts.

9.2 **Execution of Contracts.** Manager shall have the right to enter into Service Contracts, Revenue Generating Contracts and other contracts related to the operation of the Facility, as agent on behalf of the Owner. Any such contracts shall contain standard indemnification and insurance obligations on the part of each vendor, licensee or service provider, as is customary for the type of services or obligations being provided or performed by such parties. Manager shall obtain the prior approval of the Owner (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term that expires after the Term of this Agreement, unless such contract, by its express terms, can be terminated by the Owner or a successor manager within ninety (90) days of the Owner or successor manager's decision to so terminate.

9.3 **Transactions with Affiliates.** In connection with its obligations hereunder relating to the purchase of goods or procurement of services for the Facility (including without limitation food and beverage services, ticketing services and Commercial Rights sales), Manager may purchase or procure such goods or services, or otherwise transact business with, an Affiliate of Manager, provided that the prices charged and services rendered by such Affiliate are competitive with those obtainable from any unrelated parties providing such goods or rendering comparable services. Manager shall, at the request of the Owner, provide reasonable evidence establishing the competitive nature of such prices and goods and/or services, including, if appropriate, competitive bids from other persons seeking to deliver such goods or render such services at the Facility.

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**ARTICLE X**  
**RESPONSIBILITIES OF PARTIES**

10.1 **General Responsibilities of Manager.** Manager is hereby charged with the sole and exclusive Management Services of the Facility and shall provide Owner with the services customarily provided for in such instances. It is expressly understood and agreed that so long as this Agreement is in force and effect, Owner shall not interfere with the day-to-day operations of the Facility and shall at no time give or communicate orders or instructions to employees or personnel employed about the Facility.

10.2 **Specific Responsibilities of Manager and Owner.**

(a) **Contract Administrator.** Each party shall appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement. Manager's

1 contract administrator shall be its General Manager at the Facility, unless Manager notifies the  
2 Owner of a substitute contract administrator in writing. Owner shall notify Manager of the name  
3 of its contract administrator within thirty (30) days of execution hereof. Any and all references  
4 in this Agreement requiring Manager or Owner participation or approval shall mean the  
5 participation or approval of such party's contract administrator, unless otherwise provided  
6 herein.

7  
8 (b) Collection of Monies. Manager shall collect all rental and other charges  
9 due from user groups, tenants, and all other revenues relating to the Facility. Owner authorizes  
10 Manager to request, demand, collect, receive, and receipt for all such rent, Facility use charges,  
11 other charges, and revenues, for the collection thereof and for the dispossession of tenants, guests  
12 and other persons from the Facility. Owner shall not require Manager to incur any expenses in  
13 this effort. Manager may not incur any expenses fulfilling its duties hereunder without the prior  
14 express written consent of Owner. Should Manager incur expenses that have been previously  
15 approved by Owner in writing, Owner shall reimburse the expenses of such proceedings, and  
16 such expenses may include the engaging of counsel or collection services for any such matter.  
17 All monies collected by Manager shall be forthwith deposited in the Operating Account.

18  
19 (c) Books and Records. Manager shall maintain at the Facility adequate and  
20 separate books and records in connection with its management and operation of the Facility.  
21 Such books and records shall be kept in accordance with generally accepted accounting  
22 principles at Manager's sole expense. Owner shall have the right and privilege of examining  
23 said books and records at and the Facility during operating hours. Manager shall render to  
24 Owner, on or before the 20th day of each month, on a cash basis, a detailed profit and loss  
25 statement conforming to Manager's chart of accounts, for the preceding month. Said profit and  
26 loss statement shall include both current month and year- to-date figures for the following: actual  
27 revenues and expenses, budget revenues and expenses (approved annual Budget, variances  
28 between the actual and budget numbers. Manager shall submit, on or before the twentieth (20<sup>th</sup>)  
29 day of each month, a full balance sheet and cash reconciliation statement, as of the last day of the  
30 preceding month.

31  
32 (d) Furnishings, Equipment, Etc. Owner shall furnish, equip and install at the  
33 Facility all such furniture, fixtures, equipment and operating supplies so as to make the Facility  
34 operational or shall request Manager to do same at Owner's expense.

35  
36 (e) Inventory. Owner shall provide Manager with an inventory of personal  
37 property, materials and equipment at the commencement of this term. At Owner's expense,  
38 Manager shall maintain a current inventory of all personal property, materials and equipment  
39 used in connection with the Facility.

40  
41 (f) Taxes and Assessments. Owner shall be responsible for, and promptly  
42 pay, all real estate and personal property taxes, improvement assessments, and other like charges  
43 related to the Facility and the property on which the Facility is located.

44  
45 (g) Compliance with Legal Requirements. Owner shall take such actions as  
46 may be necessary to comply with any and all laws, orders, or requirements affecting Owner or



1 the Facility by any federal, state, county or municipal agency, or authorities having jurisdiction  
2 thereover.

3  
4 (h) Use and Maintenance of Property. Manager agrees not to knowingly  
5 permit the use of the Facility for any purpose which might void any policy of insurance relating  
6 to the Facility, or which might render any loss thereunder uncollectible, or which would be in  
7 violation of any government restriction. Owner, at Owner's sole expense, hereby covenants and  
8 agrees to keep the Facility in good condition and repair. Manager agrees to make regular  
9 inspections of the Facility and notify Owner of necessary repairs and maintenance. Any  
10 expenses previously approved by the Owner in writing and incurred by Manager in keeping the  
11 Facility in good condition and repair shall be immediately reimbursed by Owner.

12  
13 (i) Fees and Costs. The expenses, costs, fees, compensation, and other  
14 remuneration of any persons engaged by Manager from outside of its organization with the prior  
15 consent of Owner to perform duties of a specialist nature such as attorneys, auditors, or the like  
16 shall be an expense of Owner.

17  
18 **ARTICLE XI**  
19 **INSURANCE**  
20

21 11.1 Types of Coverage; Certificates of Insurance. Manager and Owner agree to  
22 obtain insurance coverage in the manner and amount as set forth herein. Owner and Manager  
23 shall upon execution of this Agreement furnish to the other party certificates of all of the  
24 insurance as well as certificates of renewal no later than thirty (30) days prior to the expiration of  
25 each policy. Such insurance policies (as reflected by certificate) held by Owner shall provide  
26 that that Manager is an additionally named insured and no cancellation or non-renewal can take  
27 effect without thirty (30) days' prior written notice by registered mail to Owner.

28  
29 11.2 Owner's Policies. Owner shall be responsible for obtaining and administering  
30 insurance in connection with the Facility as follows:

31  
32 (a) General Liability. Owner shall procure and maintain at its sole expense a  
33 general liability policy which insures Owner and which includes Manager as an additional  
34 named insured or loss payee in an amount not less than the amount required for governmental  
35 entities under applicable South Carolina state law.

36  
37 (b) Property Insurance. Owner shall also procure and maintain fire and  
38 extended coverage casualty insurance, and (if appropriate) flood insurance, regarding the Facility  
39 in amounts and with companies acceptable to Owner in its sole discretion.

40  
41 11.3 Manager's Policies. Manager shall be responsible for obtaining and  
42 administering insurance in connection with the Facility as follows:

43  
44 (a) General Liability. Manager shall procure and maintain at its own expense  
45 a general liability policy (including contractual liability insurance) which insures Owner as an  
46 additional named insured, with a combined single limit of \$1,000,000 per occurrence and a

1 general annual aggregate limit of \$3,000,000. All such insurance shall be on an occurrence  
2 basis.

3  
4 (b) Workers Compensation. Manager shall procure and maintain at its  
5 expense all workers compensation insurance required under applicable South Carolina state law.

6  
7 **ARTICLE XII**  
8 **COVENANTS AND REPRESENTATIONS**

9  
10 12.1 Owner's Covenants and Representations. Owner makes the following  
11 covenants and representations to Manager, which covenants and representations shall, unless  
12 otherwise stated herein, survive the execution and delivery of this Agreement:

13  
14 (a) Owner's Status. Owner is municipality chartered under South Carolina  
15 state law and authorized to transact business in South Carolina, with full power and authority to  
16 enter into this Agreement.

17  
18 (b) Authorization. The making, execution, delivery, and performance of this  
19 Agreement by Owner has been duly authorized and approved by requisite action, and this  
20 Agreement has been duly executed and delivered by Owner and constitutes a valid and binding  
21 obligation of Owner, enforceable in accordance with its terms and applicable laws.

22  
23 (c) Effect of Agreement. To Owner's best knowledge, without duty of  
24 inquiry, neither the execution and delivery of this Agreement by Owner nor Owner's  
25 performance of any obligation hereunder: (i) will constitute a violation of any law, ruling,  
26 regulation, or order to which Owner is subject; or (ii) shall constitute a default of any term or  
27 provision or shall cause an acceleration of the performance required under any other agreement  
28 or document (A) to which Owner is a party or is otherwise bound, or (B) to which the Facility or  
29 any part thereof is subject.

30  
31 (d) Ownership Rights. Owner shall obtain and retain the property interests in  
32 the Facility necessary to enable Manager to perform its duties pursuant to this Agreement  
33 peaceably and quietly. Owner represents and warrants that Manager's performance of the  
34 services required by this Agreement shall not violate the property rights or interests of any other  
35 Person.

36  
37 (e) Documentation. If necessary to carry out the intent of this Agreement,  
38 Owner agrees to execute and provide to Manager, on or after the Effective Date, any and all  
39 other instruments, documents, conveyances, assignments, and agreements which Manager may  
40 reasonably request in connection with the operation of the Facility.

41  
42 12.2 Manager's Covenants and Representations. Manager makes the following  
43 covenants and representations to Owner, which covenants and representations shall, unless  
44 otherwise stated herein, survive the execution and delivery of this Agreement:

1 (a) Corporate Status. Manager is a limited liability company duly organized,  
2 validly existing, and in good standing under the laws of the State of Florida and authorized to  
3 transact business throughout the United States, including within the State of South Carolina with  
4 full corporate power to enter into this Agreement and execute all documents required hereunder.  
5

6 (b) Authorization. The making, execution, delivery, and performance of this  
7 Agreement by Manager has been duly authorized and approved by all requisite action of the  
8 board of directors of Manager, and this Agreement has been duly executed and delivered by  
9 Manager and constitutes a valid and binding obligation of Manager, enforceable in accordance  
10 with its terms and applicable laws.  
11

12 (c) Effect of Agreement. To Manager's best knowledge, without duty of  
13 inquiry, neither the execution and delivery of this Agreement by Manager nor Manager's  
14 performance of any obligation hereunder (i) will constitute a violation of any law, ruling,  
15 regulation, or order to which Manager is subject; or (ii) shall constitute a default of any term or  
16 provision or shall cause an acceleration of the performance required under any other agreement  
17 or document to which Manager is a party or is otherwise bound.  
18

### 19 ARTICLE XIII 20 MISCELLANEOUS 21

22 13.1 Relationship. Manager and Owner shall not be construed as joint venturers or  
23 general partners of each other, and neither shall have the power to bind or obligate the other  
24 party except as set forth in this Agreement. Manager understands and agrees that the relationship  
25 to Owner is that of independent contractor, and that it will not represent to anyone that its  
26 relationship to Owner is other than that of independent contractor. Nothing herein shall deprive  
27 or otherwise affect the right of either party to own, invest in, manage or operate property, or to  
28 conduct business activities, which are competitive with the business of the Facility. Manager  
29 covenants and agrees that even though it may have a management responsibility for other similar  
30 properties, which from "time to time" may be competitive with the Facility, Manager shall  
31 always represent the Facility fairly and deal with Owner on an equitable basis.  
32

33 13.2 Continuing Effect of Pre-Opening Agreement. Nothing contained herein shall  
34 be construed to alter or amend the terms of the Pre-Opening Agreement, which shall continue in  
35 full force and effect until the Opening Day and the terms of which shall exclusively govern the  
36 relationship between the parties until Opening Day.  
37

38 13.3 Representations. Owner represents and warrants: (i) that Owner has full power  
39 and authority to enter this Agreement; (ii) that to the best of Owner's knowledge, the property on  
40 which the Facility is located is zoned for the intended use; (iii) that all permits for the operation  
41 of the Facility have or will be secured and are or will be current; (iv) that the Facility and its  
42 operation do not violate any applicable statutes, laws, ordinances, rules, regulations, orders, or the  
43 like (including, but not limited to, those pertaining to hazardous or toxic substances); and (v) that  
44 no unsafe condition exists.  
45

1           13.4 **Assignment.** This Agreement shall not be assigned by either party without the  
2 express written consent of the non-assigning party. Any such assignment made without proper  
3 consent shall be deemed void.  
4

5           13.5 **Benefits and Obligations.** The covenants and agreements herein contained shall  
6 inure to the benefit of, and be binding upon the parties hereto and their respective heirs,  
7 executors, successors, and assigns.  
8

9           13.6 **Fees for Legal Advice.** Subject to the prior written approval of the Owner,  
10 Owner shall pay reasonable expenses incurred by Manager in obtaining legal advice regarding  
11 compliance with any law affecting the Facility or any activities related to it.  
12

13           13.7 **Building Compliance.** Manager does not assume and is given no responsibility  
14 for compliance of the Facility or any equipment therein with the requirements of any building  
15 codes or with any statute, ordinance, law, or regulation of any governmental body or of any  
16 public authority or official thereof having jurisdiction, except to notify Owner promptly, or  
17 forward to Owner promptly, any complaints, warnings, notices, or summonses received by  
18 Manager relating to such matters. Owner represents that to the best of Owner's knowledge, the  
19 Facility and all such equipment contained therein comply with all such requirements, and Owner  
20 authorized Manager to disclose the ownership of the Facility to any such officials and agrees to  
21 indemnify and hold Manager, its representatives, servants, and employees, harmless of and from  
22 all loss, cost, expense, and liability whatsoever which may be imposed by reason of any present  
23 or future violation or alleged violation of such laws, ordinances, statutes, or regulations.  
24

25           13.8 **Notices.** All notices provided for in this Agreement shall be in writing and served  
26 by registered or certified mail, return receipt requested, postage prepaid, at the following  
27 addresses until such time as written notice of a change of address is given to the other party:  
28

29           If to Owner:           Tom Leath, City Manager  
30                                   P.O. Box 2468  
31                                   Myrtle Beach, SC 29578  
32

33           with copy to:           John Pedersen, Assistant City Manager  
34                                   P.O. Box 2468  
35                                   Myrtle Beach, SC 29578  
36

37           If to Manager:           Sports Facilities Advisory Management, LLC  
38                                   Attention: Dev Pathik or Jason Clement  
39                                   600 Cleveland Street, Suite 910  
40                                   Clearwater, FL 33755  
41                                   Email: [dev@sportadvisory.com](mailto:dev@sportadvisory.com)  
42                                   Email: [jason@sportadvisory.com](mailto:jason@sportadvisory.com)  
43

44  
45           with a copy to:           Macfarlane, Ferguson & McMullen, P.A.  
46                                   Attention: David R. Phillips

1 625 Court Street, Suite 200  
2 Clearwater, Florida 33756  
3 Email: [drp@macfar.com](mailto:drp@macfar.com)  
4

5 13.9 **Interest on Unpaid Sums.** Any sums due Manager under any provision of this  
6 Agreement, and not paid by Owner within forty-five (45) days after such sums have become due,  
7 shall bear interest at the rate of five percent (5.0%) per month.  
8

9 13.10 **Owner Responsible for Payments.** Upon termination of or withdrawal from this  
10 Agreement, Owner shall assume the obligations of any contract or outstanding bill executed by  
11 Manager under this Agreement for and on behalf of Owner and responsibility for payment of all  
12 unpaid bills, provided that such obligation has been approved by Owner as set forth herein.  
13

14 13.11 **Headings.** All headings and subheadings employed within this Agreement and in  
15 the accompanying schedules and exhibits are inserted only for convenience and ease of reference  
16 and are not to be considered in the construction or interpretation of any provision of this  
17 Agreement.  
18

19 13.12 **Force Majeure.** Any delays in the performance of any obligation of Manager  
20 under this Agreement shall be excused to the extent that such delays are caused by wars, national  
21 emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations,  
22 riots, adverse weather, and other similar causes not within the control of Manager and any time  
23 periods required for performance shall be extended accordingly.  
24

25 13.13 **Entire Agreement.** This Agreement, including any specified attachments,  
26 constitutes the entire agreement between Owner and Manager with respect to the management  
27 and operation of the Facility and supersedes and replaces any and all previous management  
28 agreements entered into or/and negotiated between Owner and Manager relating to the Facility  
29 covered by this Agreement. No change to this Agreement shall be valid unless made by  
30 supplemental written agreement executed and approved by Owner and Manager. Except as  
31 otherwise provided herein, any and all amendments, additions, or deletions to this Agreement  
32 shall be null and void unless approved by Owner and Manager in writing. Each party to this  
33 Agreement hereby acknowledges and agrees that the other party has made no warranties,  
34 representations, covenants, or agreements, express or implied, to such party, other than those  
35 expressly set forth herein, and that each party, in entering into and executing this Agreement, has  
36 relied upon no warranties, representations, covenants, or agreements, express or implied, to such  
37 party, other than those expressly set forth herein.  
38

39 13.14 **Rights Cumulative; No Waiver.** No right or remedy herein conferred upon or  
40 reserved to either of the parties to this Agreement is intended to be exclusive of any other right or  
41 remedy, and each and every right and remedy shall be cumulative and in addition to any other  
42 right or remedy given under this Agreement or now or hereafter legally existing upon the  
43 occurrence of an event of default under this Agreement. The failure of either party to this  
44 Agreement to insist at any time upon the strict observance or performance of any of the  
45 provisions of this Agreement, or to exercise any right or remedy or be construed as a waiver or  
46 relinquishment of such right or remedy with respect to subsequent defaults. Every right and

1 remedy given by this Agreement to the parties may be exercised from “time to time” and as often  
2 as may be deemed expedient by those parties.  
3

4 **13.15 Applicable Law.** The execution, interpretation, and performance of this  
5 Agreement shall in all respects be controlled and governed by the laws of the State of South  
6 Carolina. Any civil action or legal proceeding arising out of or relating to this Agreement shall  
7 be brought in the courts of record of the State of South Carolina in Horry County. Each party  
8 consents to the sole and proper jurisdiction of such court in any such civil action or legal  
9 proceeding and waives any objection to the laying of venue of any such civil action or legal  
10 proceeding in such court.  
11

12 **13.16 Acknowledgement.** The parties hereto acknowledge that they have been  
13 provided with a copy of this Agreement for review prior to signing it, that they have been given  
14 the opportunity to review it prior to signing it, that they has been given the opportunity to have  
15 this Agreement reviewed by their attorney prior to signing it, and that they understand the  
16 purposes and effect of this Agreement.  
17

18 **13.17 Severability.** If any provision or provisions of this Agreement shall be held to be  
19 invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions  
20 of this Agreement, and this Agreement shall be construed and enforced as if such provision or  
21 provisions had not been included.  
22

23 **13.18 Intellectual Property.** Owner acknowledges that Manager has certain  
24 intellectual property, trade secrets and proprietary business techniques (“Intellectual Property”)  
25 that it will use on behalf of the Owner to meet its obligations under this Agreement. Owner  
26 acknowledges that it obtains no ownership rights whatsoever in the Intellectual Property and,  
27 upon termination of this Agreement, Manager shall retain all rights to the Intellectual Property  
28 and remove such Intellectual Property from the Facility and its operations. For purposes of this  
29 Agreement, the term Intellectual Property shall include, without limitation, analytical tools and  
30 documented procedures for forecasting, performance tracking, operational and marketing  
31 systems that are unique to Manager’s approach, staff training programs, program curriculum and  
32 agendas, rights to certain discounts or programs that Manager has negotiated for Manager-  
33 operated facilities, and other intellectual property which Manager has previously introduced to  
34 the Facility and of which Manager is an author.  
35

36 [SIGNATURE PAGE TO FOLLOW]  
37  
38

1 IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of  
2 the day and year first above written.

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Attest: John Pederson  
John Pederson  
Print Name

**OWNER:**

By: Thomas E. Leath  
Name: Thomas E. Leath  
Title: City Manager

**MANAGER:**

SPORTS FACILITIES ADVISORY  
MANAGEMENT, LLC,  
a Florida limited liability company

Attest: James E. Sullivan  
JAMES E. SULLIVAN  
Print Name:

By: Dev K. Pathak  
Name: Dev K. Pathak  
Title: CEO & Founder

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**EXHIBIT A**

**POST-OPENING MANAGEMENT SERVICES**

This Exhibit A describes those services to be provided during the period beginning on the Opening Day and continuing through the Term. These on-site and corporate oversight services are paid through the monthly management fees and through payment of the direct and actual compensation, insurance, and bonus pool for the employees overseen by Manager, as further set forth in Exhibit B

1. **Account Executive.** Manager will provide corporate oversight and resources through the leadership and on-going evaluation of the on-site management team. This will occur under the leadership of Manager's Account Executive based in Manager's national headquarters located in Clearwater, Florida. Manager's Account Executive reports directly to the Chief Operations Officer of Manager. The Account Executive is responsible for providing performance evaluation and coaching to the on-site management team. The Account Executive also provides oversight of financial and other reporting, Annual Business Plan, Operations Manuals and policy and procedures, and support for national marketing and sponsorship through Manager's corporate offices. The Account Executive will also act as a liaison between Manager and its partners in bringing national sponsorship, cost savings programs, marketing and other programs to the Facility where such programs do not conflict with existing programs or sponsors within the Facility.

2. **National Peer-to-Peer Network.** Through quarterly meetings, the General Manager and select other staff within the on-site management team will participate in the Manager's national network of sports facilities managers. This network provides General Manager (and other similarly situated individuals nationwide) with a peer-to-peer review process and best practices sharing across non-competitive markets. The Manager's national network is a resource for curriculum, contacts, marketing programs, sponsors, and tournament sales. The General Manager will attend required sessions with the network and will report on progress and learn from peers.

3. **Staff Development.** Through the Manager's national headquarters and the Account Executive, the on-site management team will have access to a broad and ever expanding development resource library. These resources include individual development planning overseen by the Account Executive for the Facility. Additionally, on-site management will be required to complete training programs specifically designed by, and/or licensed to, the Manager. The training programs required for the Owner's facility will be selected from Manager's training programs. They may include, without limitation:

- (a) Extraordinary customer service;
- (b) Facilitative leadership – building a culture of accountability;
- (c) program and events sales training and sales operations systems;
- (d) Marketing events and tournaments;
- (e) Facility operations;



- (f) Optimizing performance through stellar leadership;
- (g) Cost containment and proper expense tracking;
- (h) Financial reporting and presentation;
- (i) Eight (8) steps to strategic planning;
- (j) Tournament and event management;
- (k) Turn-it-around - how to improve lackluster performance; and
- (l) Managing focus time and energy to achieve "Max 1000!"

4. **Preparation of Annual Business Plan.** Manager will produce an "Annual Business Plan" for each Operating Year by the February 1 prior to the commencement of the Operating Year, and shall submit such Annual Business Plan to Owner for its review and approval (which shall not be unreasonably withheld). Owner shall give its comments and/or approval of the Annual Business Plan within twenty (20) days after receiving the Annual Business Plan from Manager. In the event of disapproval of the Annual Business Plan (or any portion thereof other than the Budgets), Manager shall use commercially reasonable efforts to operate the Facility pursuant to the general terms of this Agreement and the prior Annual Business Plan then in effect, until such time as the revisions to the Annual Business Plan are agreed upon. In the event of disapproval of the Budgets which are included within the Annual Business Plan, Manager shall continue operating the facility pursuant to the Budgets then in effect, subject to increases in Operating Expenses approved on an interim basis by Owner. However, in the event Owner disapproves of an Annual Business Plan or any Budget thereunder, and Manager and Owner fail to reach an agreement on a such Annual Business Plan or Budget within ninety (90) days of Owner's notice of disapproval of same, either party may terminate this agreement by providing the other party with written notice one hundred and eighty days (180) days prior to the date such party intends to terminate.

The Manager shall not be deemed to have made any guarantee or warranty in connection with the results of operations or performance set forth in the Annual Business Plan since the parties acknowledge that the Annual Business Plan is intended to set forth objectives and goals based upon the Manager's judgment and the facts and circumstances known by the Manager at the time of preparation. Owner and Manager agree to use good faith efforts to resolve any differences in opinion regarding the Annual Business Plan and any portion thereof so that agreement on the Annual Business Plan can be reached as soon as possible after the date Manager first submits the Annual Business Plan for such year to the Owner.

5. **Content of Annual Business Plan.** Each Annual Business Plan submitted by Manager as set forth herein, shall contain without limitation, a section or provision related to each of the following:

(a) **Employment Matters.** The Manager shall present the then current organizational chart, the incentive bonus plan for employees, and all salaries and payments to employees through the payroll account in the Annual Operations Budget.

(b) **Sales Strategy and Marketing Promotion.** Prior to implementation, the Manager shall develop and detail the marketing and advertising plan for the Facility for the Operating Year. Manager shall conduct market research, develop ongoing marketing and

1 advertising programs for the Facility and its programs, and shall define a schedule of marketing  
2 and advertising activities. In addition, if Manager shall develop marketing and advertising  
3 programs that it shall desire to have approved by the Owner prior to the date that an Annual  
4 Operations Budget is submitted, Manager will submit such marketing and advertising programs  
5 for Owner's review and approval prior to the date that the Annual Operations Budget is  
6 submitted. Manager agrees to submit sufficiently detailed information in regard to any  
7 marketing and advertising program in order to assist Owner in the effective evaluation thereof.  
8 Owner shall own all marks, identifications, facility specific advertising and marketing campaigns  
9 developed by the Manager to advertise and market the Facility. Prior to altering any Facility  
10 logo, letterhead, signage, or other related insignia or material (all trademark protected) to identify  
11 the Manager as the managing agent for Owner, the Manager shall obtain Owner's prior written  
12 consent to the design, size, materials, method of installation and location of any such identifying  
13 marks.

14  
15 (c) Food and Beverage. As a portion of the Annual Business Plan for Owner's  
16 approval, the Manager will develop food and beverage operating concepts (including operational  
17 plans, menus, and food and beverage control systems). This food and beverage plan will be  
18 presented in a narrative document not to exceed twenty (20) pages and may include a Microsoft  
19 Project Plan (or other similar format) which will detail timelines and action items with start dates  
20 and deadlines when appropriate. In addition, at the Owner's option, Owner shall have the right  
21 to request that the Manager reformulate such food and beverage plans for presentation to and  
22 approval of the Owner not more than two times during any Operating Year in order to maximize  
23 the quality and appeal to the consumer.

24  
25 (d) Budgets. All budgets contained in the Annual Business Plan (collectively,  
26 the "Budgets"), shall be prepared with the advice and counsel of Owner, based on what Manager  
27 believes to be reasonable assumptions and projections. All Budgets shall be presented in  
28 reasonable detail. Manager shall not be deemed to have made any guarantee or warranty in  
29 connection with the results of operations or performance set forth in the Budgets since the parties  
30 acknowledge that the Budgets are based solely upon the Manager's judgment and the facts and  
31 circumstances known by the Manager at the time of preparation.

32  
33 (i) Budget. Manager has previously submitted for Owner's review  
34 and comment a Pro Forma, which Manager researched and formulated based on Manager's  
35 previous experience and the currently available industry data. This Pro Forma is included in  
36 Exhibit C and sets forth the an initial Budget with projected income and projected costs  
37 associated with the operations of the Facility for the first five (5) full Operating Years.

38  
39 (ii) Annual Operations Budget. As a part of the Annual Business Plan  
40 for each Operating Year, Manager shall submit a budget setting forth all Operating Expenses  
41 associated with the operations of the Facility all projected Gross Receipts for the upcoming  
42 Operating Year or part thereof (the "Annual Operations Budget"). The Annual Operations  
43 Budget will include EBITDA margin targets and cost of goods sold (COGS) expense projections  
44 that the Owner will have the right to approve or disapprove as provided herein.

1 (iii) Emergency Expenditures. It is agreed that the Budget shall contain  
2 a line item for Emergency Expenditures ("Emergency Expenditures"), exclusive of all budgeted  
3 costs for personnel expenditures (including salaries and bonuses). In the event, at any time  
4 during an Operating Year, a condition should exist in, on, or about the Facility of an emergency  
5 nature that, in the Manager's sole and absolute discretion, requires immediate action to preserve  
6 and protect the Facility or improvements thereto or property thereon or to protect the Facility's  
7 customers, guests, or employees, Manager is hereby authorized to take all steps and to make all  
8 reasonable expenditures as necessary to repair and correct or avoid any such condition, provided  
9 that Manager shall first make take reasonable steps to obtain prior written approval from Owner  
10 for any Emergency Expenditure made for the purposes stated herein.

11  
12 (iv) Capital Expenditures Budget. As a part of the Business Plan for  
13 each Operating Year, Manager shall submit a budget setting forth the projected costs of proposed  
14 capital improvements within and to the Facility for the upcoming Operating Year or part thereof  
15 (the "Capital Expenditures Budget"). Such Capital Expenditures Budget shall be accompanied  
16 by Manager's recommended five-year capital improvement program, which shall also be updated  
17 annually. If this projection varies from the projections provided within the original Budget, the  
18 Owner will have the right to approve or deny such requests.

19  
20 6. Accounting and Reporting. Manager shall, if requested by Owner, hire an  
21 independent certified public accounting firm to be paid for out of the Annual Operating Budget  
22 of the Facility and to be selected by Owner to audit the financial statements required under this  
23 Agreement. During the Term the Manager shall maintain accounting records in a format  
24 consistent (in all material respects) with generally accepted accounting practices (GAAP).  
25 Without limiting the generality of the foregoing, Manager shall periodically provide (as further  
26 described herein) the following financial statements in a format reasonably specified by Owner:

27  
28 (a) Monthly. Manager shall submit to the Owner, within twenty (20) days  
29 after the close of each calendar month, a financial statement, including a twelve-month cash flow  
30 forecast, showing in reasonably accurate detail the financial activities of the Facility for the  
31 preceding calendar month and the Operating Year to date.

32  
33 (b) Annual. Manager shall submit to the Owner, within sixty (60) days after  
34 the close of each Operating Year, a financial statement showing in reasonably accurate detail the  
35 financial activities of the Facility for the Operating Year then ended.

36  
37 (c) Internal Control. Manager agrees to develop, install, and maintain  
38 reasonably appropriate accounting, operating, and administrative controls governing the financial  
39 aspects of the Facility, such controls to be consistent with generally accepted accounting  
40 practices.

41  
42 7. Bank Accounts; Expenses. The Owner shall establish, in Owner's name, at a  
43 banking institution or institutions reasonably selected by Owner in writing, utilizing the federal  
44 tax identification number of Owner, an Operating Account and a payroll account (the "Payroll  
45 Account"). On or before the respective due dates, Manager shall pay all Operating Expenses  
46 through payments from the Operating Account and all payroll and employment-related expenses

1 for the Facility from the Payroll Account. Manager shall also pay the costs of any approved  
2 capital improvement program shown in the approved Capital Expenditures Budget on or before  
3 the due date out of the Operating Account or such other account as Owner shall designate. Any  
4 payment made by the Manager from the Operating Account and/or the Payroll Account that  
5 exceeds \$5,000 must receive a dual signature including a signature from a designated  
6 representative of the Owner.

7  
8 (a) Account Funding; Payment of Expenses. Subject to Manager's written  
9 notices to the Owner as provided herein, the Owner acknowledges that it shall be solely  
10 responsible for all Operating Expenses and Capital Expenditures required for or on behalf of the  
11 Facility provided that such Operating Expenses and Capital Expenditures are made in accordance  
12 with the terms of this Agreement.

13  
14 (i) Owner's Advances. Promptly after Manager's written notice to the  
15 Owner accompanied by a written explanation of the sum required and need for such funding, the  
16 Owner shall advance funds to the bank accounts described herein to conduct the affairs of the  
17 Facility and maintain the Property (collectively the "Owner's Advances") as set forth below.  
18 Such Owner's Advances may be paid by check, wire transfer or authorization to apply funds  
19 from another of Owner's accounts towards the payment of such Owner's Advances. Owner  
20 acknowledges and agrees that, subject to Manager's notice required hereunder, it has sole  
21 responsibility for providing Owner's Advances and Manager shall have no responsibility to  
22 provide any funds for the payment of any Operating Expenses, debts or other amounts payable  
23 by or on behalf of the Facility or the Owner.

24  
25 (b) Operating Account. No later than fifteen (15) days after the closing date  
26 of the financing for the construction of the Facility and capitalization of pre-opening costs (and  
27 in any event, prior to the Manager's incurrence of any Operating Expenses), Owner shall remit to  
28 the Manager for deposit into the Operating Account, Owner's Advances equal to one (1) month's  
29 estimated Operating Expenses (as specified in the initial Budget) (the "Operating Expense  
30 Minimum"). Owner further agrees to maintain the Operating Expense Minimum in the  
31 Operating Account at all times; provided, however, Manager shall first notify the Owner in  
32 writing of the need for such funding as stated herein. Thereafter, on a bi-monthly basis, Manager  
33 shall provide the Owner with a statement containing a detailed list of expenses to be paid and  
34 gross receipts to be obtained for such period. Within five (5) days after Owner's receipt of such  
35 statement from Manager, Owner shall remit to the Operating Account the amount, which  
36 together with funds already existing in the Operating Account equals to the amount set forth in  
37 such statement. Owner may not offset amounts due pursuant to any such statement against the  
38 Operating Expense Minimum, as the Operating Expense Minimum shall be available solely for  
39 payment by the Manager of unanticipated Operating Expenses. Manager shall pay all Operating  
40 Expenses directly from the Operating Account. Manager shall have no liability for, and shall not  
41 be obliged to process or otherwise address, any and all expenses of the Facility incurred prior to  
42 the Effective Date and the Owner shall have full responsibility and shall hold Manager harmless  
43 for all such expenses.

44  
45 (c) Payroll Account. Commencing prior to the date Manager hires the first  
46 employees for the Facility (and in any event, prior to Manager's incurrence of any payroll

1 expenses), the Owner shall remit to Manager for deposit into the Payroll Account, Owner's  
2 Advances equal to one month's estimated payroll obligations (as specified in the initial Budget)  
3 (the "Payroll Expense Minimum"). The Owner shall maintain the Payroll Expense Minimum in  
4 the Payroll Account at all times; provided, however, Manager shall notify Owner in writing for  
5 the need for funding as stated herein. Thereafter, on a bi-monthly basis, Manager shall provide  
6 the Owner with a statement containing the projected payroll obligations of the Facility for the  
7 next two-week period. Within five (5) days after Owner's receipt of such statement from the  
8 Manager, the Owner shall remit to the Payroll Account the amount, which together with funds  
9 already existing in the Payroll Account equals the amount set forth in such statement.

10  
11 (d) Additional Expenses. The Owner agrees to pay the following items, as  
12 and when required, on or before the due date, from available funds in the Operating Account and  
13 other funds of Owner: (i) payments on purchase contracts for major items of furniture, fixtures,  
14 and equipment not included in Operating Expenses as approved by Owner in writing, provided  
15 the Manager agrees to notify Owner of when such payments are due; (ii) Owner's federal, state,  
16 and local income taxes; (iii) principal or interest payments on any indebtedness related to the  
17 Facility; (iv) any and all management fees as set forth in this Agreement; and (v) any other  
18 expenses which do not constitute Operating Expenses, provided Owner has knowledge of the  
19 same and the date by which such payment is due.

20  
21 (e) Unanticipated Expenditures: Reallocation of Funds. The Owner agrees  
22 that the Budgets are intended to be reasonable estimates, and, accordingly, in the event that it  
23 appears that any expenditures will occur that were unanticipated at the time of preparation of the  
24 Budgets, Manager shall notify the Owner in writing of the unanticipated expenditure as soon as  
25 practicable. In the event that any expenditure has occurred that was not anticipated at the time of  
26 preparation of the Budgets, and where as a result the Owner did not grant approval of an  
27 Emergency Expenditure as described herein, Manager shall notify Owner the next business day  
28 following payment of such expenditure. Manager agrees that it shall only make such  
29 expenditures when the circumstances dictate that such an expenditure would be reasonable and  
30 necessary to carry out the provisions of this Agreement; provided, however, that except as  
31 otherwise set forth in this Agreement, Manager shall be required to obtain Owner's prior written  
32 approval of any expenditures which would result in the total budgeted expenditures in any  
33 particular Budget category being exceeded by more than five percent (5%). Subject to the  
34 Budgets and the Annual Business Plan, Manager is authorized to take all action reasonably  
35 deemed necessary by the Manager to implement, perform, or cause the performance of the items  
36 set forth in the Budgets. Notwithstanding anything contained herein to the contrary, the Owner  
37 hereby acknowledges that Manager has not made any guarantee, warranty, or representation of  
38 any nature whatsoever concerning or relating to (i) the Budgets, or (ii) the amounts of gross  
39 receipts or Operating Expenses to be generated or incurred from the operation of the Facility.

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**EXHIBIT B**

**POST-OPENING MANAGER COMPENSATION**

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1. **Base Management Fee.** During the Term, the Owner shall pay to Manager in equal monthly installments, a base management fee (the “Base Management Fee”), as further set forth in Table B1. Notwithstanding the foregoing, the first six (6) installments for Year 1 of the Term shall be due and payable thirty (30) days prior to the scheduled Opening Day. Each successive installment shall become due and payable on the first (1<sup>st</sup>) day of each successive month. The Base Management Fee is a fixed monthly fee which declines each year or the Term as further provided in Table B1.

**Table B1**

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Beyond Year 5</b>
<b>Monthly Fee</b>	\$14,000	\$14,000	\$13,000	\$13,000	\$12,000	\$12,000
<b>Annual Total</b>	\$168,000	\$168,000	\$156,000	\$156,000	\$144,000	\$144,000

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2. **Post-Opening Reimbursed Expenses.** Manager shall be reimbursed, without prior written approval by the Owner, for travel and other expenses directly related to the management services, which shall not exceed \$24,000 during any Operating Year. All travel reimbursement will be based on receipts to be furnished by Manager to the Owner. Travel expenses may include but are not limited to airfare, rental cars, parking fees, lodging and meals. All fees and reimbursements shall be paid to Manager within thirty (30) calendar days of invoicing. Manager will make reasonable efforts to keep these travel expenses to a minimum.

3. **Booking Incentive Fee.** To encourage the Manager to grow the revenues generated by the Facility and to drive overnight stays into the market, a booking incentive program will provide additional compensation over the Base Management Fee identified above. This is the “Booking Incentive Fee,” which is accounted for in the Pro Forma. For each Operating Year, or portion thereof, Owner shall pay to Manager an incentive-based bonus payment equal to two percent (2%) of the total gross revenues of the Facility for revenues above \$500,000 (“Booking Incentive Fee Base”). Beginning on July 1, 2015 the Booking Incentive Fee Base shall be increased annually by the general rate of inflation as measured by the Consumer Price Index for Urban Consumers (CPI-U). The Booking Incentive Fee shall be paid to Manager in monthly installments, payable on the first day of each month, beginning with the month after the month in which (i) the Facility revenue deposits exceeds the Booking Incentive Fee Base in total gross revenues for such Operating Year or portion thereof, and (ii) the Facility has produced no fewer than 10,000 room nights. The “room nights” calculations will be based on the same equations and process used by the Myrtle Beach Conventions and Visitors Bureau as of the Effective Date of this Agreement. In the event that Manager has collected an amount equal to the Booking Incentive Fee Base for that year in total gross revenues for the Operating Year but the 10,000 room nights have not yet been achieved, the total Booking Incentive Fee will accrue

1 until such time as the Manager has demonstrated 10,000 room nights at which point the full  
 2 Booking Incentive Fee for all revenues over the Booking Incentive Fee Base for that year will be  
 3 due and payable in full as the first monthly installment. This payment will be factored on accrual  
 4 based accounting so that Manager is paid after the month in which an event takes place, not  
 5 during the month when a deposit or initial payment is made.

6  
 7 Such calculations shall be made by Manager within sixty (60) days of the ending of any  
 8 Operating Year or portion thereof and paid to Manager within fifteen (15) days of such  
 9 calculation being delivered to Owner. The Owner will be required to approve all Booking  
 10 Incentive Fees by confirming to the Owner's satisfaction that the revenues reported have been  
 11 deposited into the Operating Account.

12  
 13 4. **Salary of Employees.** Manager will provide five (5) full-time on-site staff placed  
 14 and compensated at salaries not to exceed the maximum pre-opening and maximum annual  
 15 salaries as further set forth below. Manager will use reasonable efforts to negotiate salaries at  
 16 lower levels than those provided within the maximum allowable budget for each position.  
 17 Additionally, Manager will be required to receive Owner's approval for each candidate before a  
 18 formal offer is presented to any candidate (as previously stated in the Agreement). Note that  
 19 while this reimbursement is a "post-opening fee," these expenses will begin prior to opening as  
 20 staff is hired. These expenses are factored in the Pro Forma.

21  
 22 The Owner will pay Manager for the actual cost of these five (5) salaries plus the actual  
 23 costs per employee for health insurance up to \$500 per month and an amount equal to up to two  
 24 percent (2%) of gross sales above the Booking Incentive Fee Base for that year as a contribution  
 25 to the employee bonus pool. The bonus pool is used to provide bonuses to high performing  
 26 management and employees whose performance evaluations indicate a rating of ninety percent  
 27 (90%) or better. These items were and are included in the Operating Budget previously approved  
 28 by the Owner. Any payments made under the Employee bonus pool will require the Owner's  
 29 approval prior to Manager distributing any such bonuses.

30  
 31 **Table B2**

<b>Position</b>	<b>Placement Date</b>	<b>Maximum Pre-Opening Compensation</b>	<b>Maximum Year 1 Salary</b>	<b>Maximum Annual Raise</b>
General Manager	8 months prior to Opening Day	\$53,333	\$80,000	2%
Operations Director	6 months prior to Opening Day	\$27,500	\$55,000	2%
Marketing Director	10 months prior to Opening Day	\$41,667	\$50,000	2%
Facility Manager	3 months prior to Opening Day	\$8,750	\$35,000	2%
Office Manager/Bookkeeper	3 months prior to Opening Day	\$8,750	\$35,000	2%
<b>Subtotal</b>	<b>n/a</b>	<b>\$140,000</b>	<b>\$255,000</b>	<b>n/a</b>

1           5.     **Management Payroll Compensation.** During the Term, the Owner shall pay to  
2 Manager equal monthly installments, with the first two (2) installments for each position due and  
3 payable thirty (30) days prior to the placement of the position. Manager will compensate  
4 management employees on a monthly basis and therefore each successive compensation  
5 installment payment will become due and payable on the first (1<sup>st</sup>) day of each successive month.  
6 The initial three (3) installments will cover the first and last two months of employment. The  
7 total payment of each monthly installment will be equal to the total salary and compensation for  
8 the management employees plus the actual costs per employee for health insurance (up to \$500  
-9 per month per employee). Management Employees may also receive an annual bonus out of a  
10 bonus pool amount equal to two percent (2%) of gross sales for years where the facility meets or  
11 exceeds its gross sales and EBITDA objectives. The Owner's payments to the Manager for  
12 payroll purposes will be equal to the total compensation for management employees and the  
13 Manager will provide proof of same within seven (7) days of a request by the Owner and in a  
14 monthly budget review meeting with the Owner.

15  
16           6.     **Sponsorship and Advertising Compensation Terms.**

17  
18           (a)    **Sponsorship and Advertising Fee.** Due to the role that Manager will play  
19 in organizing the programs, negotiating agreements and pricing, and providing confidence to  
20 sponsors and advertisers, Manager will receive twenty percent (20%) of the gross revenue  
21 derived from sponsorship and advertising opportunities, including without limitation Facility  
22 naming rights when the Manager has solely identified such sponsorship opportunities. When  
23 such opportunities are jointly identified by Owner and Manager, Manager will receive ten  
24 percent (10%) of the gross revenues therefrom.

25  
26           (b)    **Sponsored Equipment Fee.** Manager will also be paid twenty (20%) of the  
27 total cost savings for sponsored equipment, scoreboards, fencing, or other budgeted items that  
28 are donated to the project as a sponsorship effort by the vendor or supplier. This will apply only  
29 if the item has been budgeted for in the construction and start-up costs and where the Owner has  
30 approved such budgeted items and where negotiations with a vendor result in a direct cost  
31 savings in trade for a sponsorship or promotion of the vendor at the facility site. As an example,  
32 if the Manager is responsible for negotiating the donation of a bleacher by the bleacher supplier  
33 in trade for mention in the "grand opening printed materials" and the budgeted cost for the  
34 bleacher is \$2,000 resulting in a direct cost savings of \$2,000 - the Manager would receive \$400.  
35 Notwithstanding anything contained herein to the contrary, the Owner must approve all  
36 sponsorship and advertising agreements, including those provided by suppliers and vendors,  
37 provided that the Owner shall not unreasonably withhold its consent to such agreement. In the  
38 event that the Owner does not approve a sponsorship or advertising arrangement, the Manager  
39 will not proceed with the agreement and the Manager shall not be entitled to receive a  
40 commission or compensation for the arrangement. All payments related to sponsored equipment  
41 will be made to Manager within thirty (30) days of the time when a sponsor/advertiser makes  
42 payment. For all budgeted items, payment will be made to the Manager by the Owner out of the  
43 construction and start-up account within thirty (30) days of the delivery or installation of the  
44 Owner-approved sponsored item.



**EXHIBIT C**  
**PRO FORMA**

See attached sheets.