

**ADMISSION RATE AGREEMENT
BETWEEN THE CITY OF NORTH PORT, FLORIDA AND NORTH PORT HOSPITALITY, LLC**

THIS ADMISSION RATE AGREEMENT (“Agreement”) is made and entered into by and between the City of North Port, Florida, a municipal corporation of the State of Florida, (“City”) and North Port Hospitality, LLC, a Michigan Limited Liability Company registered to do business in the State of Florida and whose business address is 5225 E. Pickard, Mt. Pleasant, Michigan 48858 (“North Port Hospitality”), (together the “Parties”).

RECITALS

WHEREAS, the City owns Warm Mineral Springs Park (“Warm Mineral Springs”), located at 12200 San Servando Boulevard, and the North Port Aquatic Center (“Aquatic Center”), located at 6205 West Price Boulevard; and

WHEREAS, Appendix A, Section G of the Code of the City of North Port, Florida (“City Code”) provides daily admission rates for Warm Mineral Springs and the Aquatic Center, and authorizes the City to negotiate additional discounted admission rates via contract with tourism-related entities; and

WHEREAS, North Port Hospitality owns and operates the Hampton Inn and Suites, a tourism-related entity located at 5664 Tuscola Boulevard, North Port, Florida 34287 within the municipal limits of the City and providing hotel services to tourists and visitors (“Guests”); and

WHEREAS, North Port Hospitality desires to purchase daily passes to Warm Mineral Springs and the Aquatic Center for its out-of-town Guests at the City’s resident admission rate; and

WHEREAS, the City Commission for the City of North Port, Florida finds that the discounted admission rates provided under this Agreement primarily serve a public purpose by promoting economic development and community involvement in the City’s parks and natural resources; and

WHEREAS, the City Commission finds that the discounted admission rates provided under this Agreement promote the health, welfare, safety, and protection of the community and the City’s Parks & Recreation services, and that this is a proper exercise of a municipal function.

NOW THEREFORE, for and in consideration of the mutual covenants specified herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated into this Agreement by reference.
2. Term and Termination.
 - A. Term. The term of this Agreement begins on the date it is approved by the City Commission (“Effective Date”) and will remain in effect until October 1, 2022 (“Initial Term”). At the end of the Initial Term, and unless otherwise terminated as provided herein, this Agreement will automatically renew for an additional one-year term annually on October 1 (“Subsequent Term[s]”).

- B. Termination. This Agreement may be terminated without cause by either party by providing the non-terminating party with at least 30 days' prior written notice of termination. All pre-paid admission passes purchased by North Port Hospitality prior to the date of termination will remain effective for 365 days from North Port Hospitality's date of purchase.
3. Non-Exclusivity. This Agreement is non-exclusive, and the City may enter similar agreements with multiple similar entities.
4. Daily Passes. North Port Hospitality may purchase daily passes to Warm Mineral Springs and the Aquatic Center for the use of its Guests pursuant to the below limitations. To order passes, North Port Hospitality must make a request in writing to the City's Parks and Recreation Department, and must pay for the passes in full. The City will process daily pass purchases within five business days, as long as North Port Hospitality has not reached the maximum number of passes for the term. The City is not responsible for lost, stolen, or destroyed daily passes provided to North Port Hospitality.
- A. Warm Mineral Springs.
- (1) Adult Resident Rate. North Port Hospitality may purchase up to two hundred (200) daily passes during the Initial Term, and during each Subsequent Term, at the adult resident rate identified in the City Code. North Port Hospitality shall ensure that adult resident daily passes are only made available to Guests 18 years of age and older.
- (2) Student Resident Rate. North Port Hospitality may purchase up to one hundred (100) student resident rate daily passes during the Initial Term, and during each Subsequent Term, at the student resident rate identified in the City Code. North Port Hospitality shall ensure that student resident daily passes are only made available to Guests between 6 to 17 years of age.
- B. Aquatic Center.
- (1) Adult Resident Rate. North Port Hospitality may purchase up to two hundred (200) daily passes during the Initial Term, and during each Subsequent Term, at the adult resident rate identified in the City Code. North Port Hospitality shall ensure that adult resident daily passes are only made available to Guests between 13 to 64 years of age.
- (2) Child, Senior, and Veteran Rate. North Port Hospitality may purchase up to a total of two hundred (200) daily passes during the Initial Term, and during each Subsequent Term, at the child, senior, and/or veteran resident rates identified in the City Code. North Port Hospitality shall ensure:
- (a) Child resident daily passes are only made available to Guests between 2 to 12 years of age;
- (b) Senior resident daily passes are only made available to Guests 65 years of age and older; and
- (c) Veteran resident daily passes are only made available to Guests who are a veteran of the United States armed forces.

- C. Expiration and Refund. Daily passes are valid for 365 calendar days from the date of purchase by North Port Hospitality. The expiration date of a daily pass will not be extended due to a weather or wildlife related closure of Warm Mineral Springs or the Aquatic Center. Daily passes purchased by North Port Hospitality are not refundable.
 - D. No Further Discount. Hampton shall not sell a daily pass for more than it paid the City for the pass. Any further discount offered by the City for a daily pass to Mineral Springs and/or the Aquatic Center will not be applied to those daily resident rate passes purchased by Hampton.
 - E. Accident Prevention. The City reserves the right to expel any person from City-owned property, including but not limited to Warm Mineral Springs and the Aquatic Center, who is causing a disturbance, is conducting themselves in violation of City rules, regulations, or ordinances, or whose conduct or activity presents a safety risk or public nuisance. Neither the City nor any of its officers, agents, or employees will be liable to North Port Hospitality or Hampton Guest for any damages that may be sustained to the person or property of North Port Hospitality or Hampton Guest through exercise by the City of such right.
5. Use of City Logo.
- A. Promotion. North Port Hospitality must include the City of North Port logo and website address on all promotional material that includes the promotion of Warm Mineral Springs and/or the Aquatic Center, or related Guest stay package. The City will provide its logo artwork in a digital format acceptable to North Port Hospitality, along with the specific website address to use.
 - B. License. This is a limited, non-transferable, non-assignable, non-exclusive, revocable royalty free license to display the City's logo only for the specific purposes identified in this section. North Port Hospitality acknowledges that, except for the licenses expressly granted herein, it acquires no right, interest, or title to the City's logo.
 - C. Restrictions. North Port Hospitality agrees not to, either directly or indirectly: (i) modify or change the City's logo; (ii) create derivative works from or other works incorporating the City's logo; (iii) make unauthorized copies of the City's logo; or (iv) use the City's logo other than as the City intends and directs.
6. Annual Use Report. At the end of the Initial Term and every October 15 thereafter, North Port Hospitality must provide the City with an annual use report covering the period of October 1 through September 30 of the previous year. Until received, the City may withhold the sale of daily passes to North Port Hospitality for the failure to timely provide a complete annual use report. Each annual use report must include but is not limited to the following information:
- A. The number of stay package promotions that included a daily pass to Warm Mineral Springs;
 - B. The advertised nightly rate of a Warm Mineral Springs stay package, and the number of packages purchased;
 - C. The number of stay package promotions that included a daily pass to the Aquatic Center;

- D. The advertised nightly rate of an Aquatic Center stay package, and the number of packages purchased;
- E. Copies of advertising used for all Warm Mineral Springs and/or Aquatic Center stay packages; and
- F. Total number of each daily pass type purchased by North Port Hospitality.

7. INDEMNIFICATION.

- A. TO THE EXTENT PERMITTED BY FLORIDA LAW, NORTH PORT HOSPITALITY ASSUMES ALL LIABILITY FOR, AND RELEASES AND AGREES TO DEFEND, INDEMNIFY, PROTECT, AND HOLD HARMLESS THE CITY, ITS COMMISSIONERS, OFFICERS, AGENTS, AND EMPLOYEES, FROM ALL LIABILITIES, FINES, CLAIMS, ASSESSMENTS, SUITS, JUDGMENTS, DAMAGES, LOSSES AND COSTS, INCLUDING CONSEQUENTIAL, SPECIAL, INDIRECT, AND PUNITIVE DAMAGES, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS, WHETHER SUCH FEES AND COSTS ARE INCURRED IN NEGOTIATIONS, AT THE TRIAL LEVEL OR ON APPEAL, OR IN THE COLLECTION OF ATTORNEYS' FEES), ARISING OUT OF ANY ACTS, ACTIONS, BREACHES, NEGLIGENCE OR OMISSIONS OF NORTH PORT HOSPITALITY, OR NORTH PORT HOSPITALITY'S OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, AND OTHER PERSONS EMPLOYED OR UTILIZED BY NORTH PORT HOSPITALITY IN THE PERFORMANCE OF, OR THE FAILURE TO PERFORM, THE AGREEMENT. THE AGREEMENT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CITY OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.
- B. THE CITY MUST PROVIDE ALL AVAILABLE INFORMATION AND ASSISTANCE THAT NORTH PORT HOSPITALITY MAY REASONABLY REQUIRE REGARDING ANY CLAIM. IN THE EVENT OF A CLAIM, THE CITY MUST PROMPTLY NOTIFY NORTH PORT HOSPITALITY IN WRITING BY PREPAID CERTIFIED MAIL (RETURN RECEIPT REQUESTED) OR BY DELIVERY THROUGH ANY NATIONALLY RECOGNIZED COURIER SERVICE (SUCH AS FEDERAL EXPRESS OR UPS) WHICH PROVIDES EVIDENCE OF DELIVERY, AT THE ADDRESS PROVIDED FOR RECEIPT OF NOTICES IN THIS AGREEMENT.
- C. THIS AGREEMENT FOR INDEMNIFICATION SURVIVES TERMINATION OR COMPLETION OF THE AGREEMENT. IN ANY PROCEEDINGS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS INDEMNITY PROVISION, THE PREVAILING PARTY SHALL BE REIMBURSED ALL COSTS, EXPENSES AND REASONABLE ATTORNEY FEES THROUGH ALL PROCEEDINGS (AT BOTH TRIAL AND APPELLATE LEVELS).
- D. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES, AND IMMUNITIES OF THE CITY AS SET FORTH IN FLORIDA STATUTES SECTION 768.28. THE TERMS OF THIS SECTION SURVIVE THE TERMINATION OF THIS AGREEMENT.

8. Force Majeure.

Should performance of any obligation (other than payment obligations) created under this Agreement become illegal or impossible by reason of:

- A. A strike or work stoppage, unless caused by a negligent act or omission of any Party;

- B. An act of God, tornado, hurricane, flood, sinkhole, fire, explosion, landslide, earthquake, epidemic, pandemic, quarantine, pestilence, or extremely abnormal and excessively inclement weather;
 - C. An act of a public enemy, act of war, terrorism, effect of nuclear radiation, blockage, insurrection, riot, civil disturbance, state of martial law, or national or international calamity;
 - D. A declared emergency of the federal, state, or local government; or
 - E. Any other cause not enumerated that is beyond the reasonable control of the non-performing party; then the performance of any such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided the affected Party provides reasonable notice of the event of force majeure and exercises all reasonable diligence to eliminate the cause of force majeure.
9. Notice of Closure. The City has the right, without notice and in its sole discretion, to immediately close any portion or all of Warm Mineral Springs and/or the Aquatic Center when the City determines the presence of or the imminent threat of harm or injury to the general public, beyond those activities inherently present at the location(s). All efforts will be made by the City to make such a closure temporary.

10. Notice to Parties.

Except as specified elsewhere in this Agreement, all notices provided for in the Agreement must be in writing and transmitted by FedEx, UPS, or by certified mail, return receipt requested to the following. A party may update its notice information by providing written notice to the other party.

For the City of North Port, Florida:

City of North Port, Florida
 Attn: City Manager
 4970 City Hall Boulevard
 North Port, Florida

With a copy to:

City of North Port, Florida
 Attn: City Attorney
 4970 City Hall Boulevard
 North Port, Florida

For North Port Hospitality, LLC:

North Port Hospitality, LLC
 Attn: Ann Kelly
 Manager
 227 Albee Road West
 Nokomis, Florida 34275

With a copy to:

Hampton Inn and Suites
 General Manager
 5664 Tuscola Boulevard
 North Port, Florida 34287

11. Miscellaneous.

- A. Authority to Execute Agreement. The signature by any person to this Agreement shall be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.

- B. Binding Effect/Counterparts. By the signatures affixed hereto, the Parties intend to be bound by the terms and conditions hereof. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns. It may be signed in counterparts.
- C. Governing Law and Venue. The laws of the State of Florida govern the rights, obligations, and remedies of the Parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, and the United States District Court for the Middle District of Florida.
- D. No Agency. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the Parties, it being understood and agreed that no provision contained herein, or any acts of the Parties shall be deemed to create any relationship between them other than that as detailed herein.
- E. Severability. In the event any court shall hold any provision of this Agreement to be illegal, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either party of any breach of any provision, term, condition, or covenant shall not be construed as a waiver of a subsequent breach by the other party.
- F. Headings. The descriptive titles appearing in each respective paragraph are for convenience only and are not a part of this Agreement and do not affect its construction.
- G. Complete Agreement. This Agreement incorporates and includes all prior negotiations, correspondence, agreements, or understandings between the Parties, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. This Agreement supersedes all other agreements between the Parties, whether oral or written, with respect to the subject matter.
- H. Amendment. No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. Any amendments changing the financial obligations under this Agreement shall require approval by the City Commission. The City Commission hereby authorizes the City Manager or City Manager's authorized designee to approve and execute all Agreement amendments on behalf of City that do not change the financial obligations under this Agreement.
- I. Assignment. North Port Hospitality shall not assign this Agreement or any right or responsibility herein unless with the written consent of the City.
- J. Non-Discrimination. The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services. North Port Hospitality shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

IN WITNESS WHEREOF, the Parties executed this Agreement as of the dates identified below.

Executed on February 8, 2022

North Port Hospitality, LLC

By: [Signature]
Ann Kelly, Manager

STATE OF Florida
COUNTY OF Sarasota

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 8th day of February 2022, by Daniel Harrison as Manager for North Port Hospitality, LLC. ANN KELLY

[Signature]
Notary Public

Personally Known OR Produced Identification
Type of Identification Produced _____



Kelle L. Naser
Notary Public
State of Florida
Comm# HH192734
Expires 10/29/2023

Approved by the City Commission of the City of North Port, Florida on _____, 2021.

CITY OF NORTH PORT, FLORIDA

By: _____
A. Jerome Fletcher II
City Manager

ATTEST

Heather Taylor, MMC
City Clerk

APPROVED AS TO FORM AND CORRECTNESS

Amber L. Slayton
City Attorney