

**FIRST AMENDMENT  
WARM MINERAL SPRINGS SITE MANAGEMENT AGREEMENT**

This AMENDMENT to the WARM MINERAL SPRINGS SITE MANAGEMENT AGREEMENT is made this 26th day of May 2015, by and between the City of North Port, a Florida municipal corporation, ("Owner") and National and State Park Concessions, Warm Mineral Springs, Inc., a Florida corporation, hereinafter referred to as the ("MANAGER").

In consideration of the mutual covenants, promises and representations contained herein, the parties agree the Warm Mineral Springs Site Management Agreement, executed September 26, 2014 between the parties, is amended as follows:

- 1. **TERM.** The term of the agreement is amended to remain in effect through September 30, 2025. After the first term, the agreement may be renewed for not more than one (1) ten (10) year term. This lease shall be terminable by either party for any reason upon ninety (90) day written notice.
  
- 2. **COMPENSATION.** In consideration of the services furnished by the MANAGER under this agreement, the MANAGER shall receive a monthly payment of Forty-eight Thousand Two Hundred Eighty Dollars and Zero Cents (\$48,280.00) for the period of October 1 through May 31. In addition to the monthly fee, the MANAGER shall receive one hundred seventy three dollars and twenty cents (\$173.20) per hour for all hours of daily operations beyond the established hours of 9 a.m. to 5 p.m. for the period of June 1 through September 30. All additional hours beyond 9:00 a.m. and 5:00 p.m. must be approved in writing in advance by the City Manager. The payment shall be due on the fifteenth day of each following month of the management term.

Beginning on September 1, 2016 and then occurring bi-annually on September 1 thereafter, the monthly payment shall be adjusted in accordance with the previous December's Consumer Price Index for All Urban Consumers (CPI-U); U.S. City Average; All items, not seasonally adjusted, 1982-1984=100 reference base. No adjustment shall exceed 2% in any given year, and the total adjustment shall not exceed a total 10% in each term of the agreement.

If any government-mandated cost (such as, without limitation, a required wage, minimum wage, payroll tax, insurance premium, assessment, contribution, benefit, or fee) is imposed, increased adjusted or newly introduced with respect to the MANAGER'S assigned employees, the OWNER agrees to renegotiate the COMPENSATION outlined above.

- 3. **ENTRY PRICING.** Entry pricing including sales tax may include the sale of annual passes, Scheduled Field Trip Passes and Summer Evening Hours as follows unless otherwise authorized by the OWNER:

**Annual Passes:**                      \$2,000\* - Non-resident              \$1,500\* - Sarasota County Resident

Annual Passes are valid for one (1) year from date of issue.

No Refunds – No Exchanges – No Transfers.

\*Owner shall receive annual pass revenue less \$5.00 per annual pass to cover cost of pass issuance/ID card.

**School/Government/  
Scheduled Field Trips**            \$5.00/student

**Evening Summer Hours (June 1 – Sept. 30)**

<b>(5 p.m – 8 p.m.)</b>	Adult	18 years of age and older	\$8/\$6 Resident
	Students:	6-17 years of age	\$5 Resident/non-resident
	Children	2-5 years of age	\$2 Resident/non-resident
	Children	2 years and under	Free

4. **HOURS OF OPERATION** MANAGER agrees to operate the Premises a minimum of seven (7) days per week, eight (8) hours per day. The Manager may operate the Premises up to twelve (12) hours per day, seven (7) days per week, for the period of June 1 through September 30, as may be determined by the OWNER. All additional hours beyond 9:00 a.m. and 5:00 p.m. must be approved in writing in advance by the City Manager. The MANAGER may close on Christmas Day.
  
5. **SERVICES PROVIDED.** The MANAGER agrees to furnish the furniture and equipment necessary to operate a full service restaurant and to coordinate with the OWNER to ensure all established services are provided as outlined in the Agreement during periods of renovation, remodeling, relocation, reconstruction and/or transition.  
  
MANAGER shall have the exclusive right to provide the sale of food and drink (to include beer and wine) in the operation of a café and/or restaurant. MANAGER will insure all alcoholic beverages remain within the confines of the service/dining area.
  
6. **GOVERNING LAWS.** This Agreement and the rights, duties, and remedies of the Parties shall be governed by the laws of Florida without regard to its conflicts of law rules. Exclusive venue for any action to interpret or enforce this Agreement shall be in Sarasota County.
  
7. **PARAGRAPH HEADINGS.** Paragraph headings and titles are solely for convenience of reference and are not a part of this Agreement, nor are they intended to aid or govern the interpretation of this Agreement.
  
8. **SEVERABILITY.** If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not be deemed to affect the other parts of the Agreement, so long as the rights and responsibilities of the Parties are not materially prejudiced and the intentions of the Parties continue to be in effect.

IN WITNESS WHEREOF, the parties have executed this Amendment effective on the date written above.

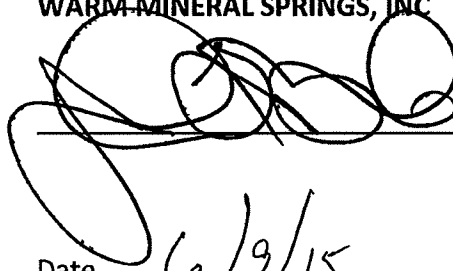
NATIONAL AND STATE PARK CONCESSIONS,  
WARM-MINERAL SPRINGS, INC



Witness

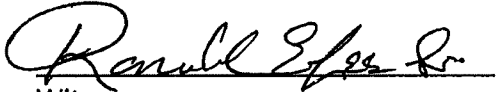
Eileen Pierson

Printed Name



Date

6/9/15



Witness

Ronald E. Lee Sr

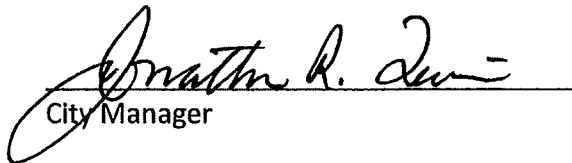
Printed Name

ATTEST:

CITY OF NORTH PORT

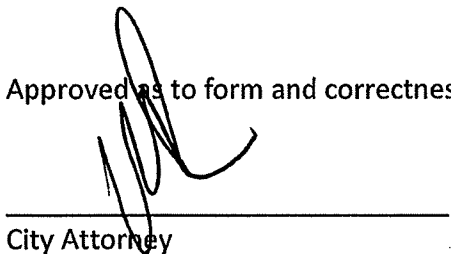


City Clerk



City Manager

Approved as to form and correctness:



City Attorney

Date: 6-1-15



*City Of North Port*  
*Warm Mineral Springs Site Management Agreement*

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**THIS SITE MANAGEMENT AGREEMENT** ("Agreement") is entered into this 26<sup>th</sup> day of SEPTEMBER 2014, by and between The City of North Port, a municipal corporation of the State of Florida, ("Owner"), and **National and State Park Concessions, Warm Mineral Springs, Inc.**, a Florida corporation, hereinafter referred to as the ("MANAGER").

**RECITALS**

**WHEREAS**, OWNER owns certain real property located in Sarasota County, Florida, in the incorporated City of North Port, PID # 0769-07-0014, more particularly described in Exhibit A, attached hereto and incorporated herein; and

**WHEREAS**, situated on the property is the natural deep water feature commonly known as Warm Mineral Springs (hereinafter, the "Springs"). Also situated on the property are buildings including locker rooms, restrooms, and ticket booth, (hereinafter, the "Facility") and identified as the highlighted area on Exhibit B, attached hereto and incorporated herein; and

**WHEREAS**, the Facility, Springs, and surrounding grounds of PID # 0769-07-0014 are collectively referred to herein as the "Premises", and

**WHEREAS**, OWNER desires to retain the services of the MANAGER and the MANAGER is qualified, willing and able to perform the services for the Premises subject to the terms and conditions contained herein.

**NOW THEREFORE**, OWNER and MANAGER hereby covenant and agree as follows:

**RECITALS:** The above recitals are true and correct and are incorporated herein.

**1. TERM**

- a. This Agreement shall commence immediately upon the execution of the Agreement by the OWNER and the MANAGER (the "Effective Date") and shall remain in effect through September 30, 2015. After the first term this lease shall be automatically renewable from year to year. This agreement shall be terminable by either party for any reason upon ninety (90) days written notice.
- b. Upon termination of this agreement, the MANAGER shall voluntarily quit its use of the Premises and leave the Premises in a similar or better condition than existed at the commencement of this Agreement. Unless the OWNER and the MANAGER shall otherwise agree, at the time of expiration of this Agreement, all improvements to the Premises shall become the property of the OWNER, at no expense to the OWNER. Further, the OWNER shall not be required to provide notice to the MANAGER to quit its use of the Premises upon expiration of this Agreement.
- c. The MANAGER covenants and agrees that it will operate and provide the Services continuously and uninterruptedly during the term of this Agreement, except while the Property is un-useable by reason of fire or other unavoidable casualty, or force majeure,

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- d. as defined in Section 11.f.i. The MANAGER will at all times keep and maintain within and upon the Premises sufficient personnel to service and supply the usual and ordinary demands and requirements of the customers.

**2. COMPENSATION**

- a. In consideration of the services furnished by the MANAGER under this agreement, the MANAGER shall receive a monthly payment of **Forty-eight Thousand Two Hundred Eighty Dollars and Zero Cents (\$48,280.00)**, due on the fifteenth day of each following month of the management term. Any additional hours of operation requested by the OWNER will be compensated at the rate of **\$278.54** per hour for each additional hour or part of an hour. Payment for additional hours of operation include only the additional time the Premises is open to the public. Payments will be made in accordance with Chapter 218, Florida Statutes, known as the Local Government Prompt Payment Act.
- b. MANAGER shall have the exclusive right, with prior approval of OWNER, to provide the following services at the FACILITY:
1. Sale of health, wellness and spa services, including but not limited to licensed cosmetic and/or massage services;
  2. Sale of food, drink (excluding all alcoholic beverages ) and sundry items and gifts;
  3. Management and operation of a café, restaurant or food concessions;
  4. To offer entertainment, classes and events in line with uses set forth in this AGREEMENT in the FACILITIES and on the PREMISES;

MANAGER shall responsible for payment of all sales taxes and fees, associated with the provision of the aforementioned items.,

In consideration of the services furnished by the MANAGER described above the MANAGER shall pay a monthly fee of eight per cent (8%) of gross revenues on all the services furnished by the MANAGER. Said fee shall be due and payable on the fifteenth day of each following month of the management term.

**3. STAFFING AND CUSTOMER SERVICE REQUIREMENTS**

- a. The MANAGER's staff must comply with the following guidelines:
1. The MANAGER's staff must be appropriately attired at all times.
  2. The MANAGER'S staff must refrain from the use of profanity, inappropriate jokes and other behavior considered to be in poor taste when in the presence of the public or other staff.
  3. The MANAGER'S staff must not be under the influence or have possession of any illegal drugs or alcohol while on the Premises.

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The MANAGER shall make their staff aware of all expectations and shall be responsible for the discipline and, if necessary, discharge of any or all personnel in violation of the guidelines. The MANAGER shall also provide competent supervision to direct the activities of the staff.

- b. Exceptional customer service is essential at all times. The MANAGER agrees to implement a system to gauge customer satisfaction and make the results of such system available to OWNER for review upon request. The MANAGER must train all employees of expected customer service standards and must have disciplinary actions if policy is violated. Staff is prohibited from purchase or consumption of alcoholic beverages on the Premises while on or off duty.
- c. If the MANAGER is using subcontractors to provide Services, such subcontractors will be required to be approved by the OWNER. All subcontractors will need to be appropriately licensed to provide such services and maintain sufficient levels of insurance as determined by the OWNER.
- d. At a minimum, the MANAGER shall provide adequate levels of personnel to provide professional and prompt service to customers. All expenses associated with the MANAGER'S staff shall be borne solely by the MANAGER.

**4. HEALTH/SAFETY AND ENVIRONMENTAL**

- a. The MANAGER shall respect the historical, hydrological, archeological, scientific and natural resources present in and on the Premises, to preserve the historic nature of the Premises and agrees to comply with all Federal, State and Local laws and ordinances including, but not limited to those related to maintenance and operations of the Premises.
- b. MANAGER agrees to maintain the Premises to meet all standards set forth in Florida Administrative Code Rule: 64E-9.013 PUBLIC SWIMMING POOLS AND BATHING PLACES.
- c. The MANAGER agrees that the all areas of Premises may be inspected at any time by authorized regulatory bodies including but not limited to the Department of Health. If any part of the Premises is found in unsatisfactory condition and is closed as a result, the MANAGER will have three (3) calendar days to remedy and re-open.
- d. The MANAGER hereby warrants and represents to the OWNER that the MANAGER will comply with all Federal, State and Local environmental laws and regulations relating to the use, storage or disposal of hazardous materials, hazardous or toxic substances, hazardous waste or other environmentally regulated substances (including, without limitation, any materials containing asbestos) by the MANAGER or its agents, employees, contractors, subcontractors or assigns. The MANAGER further warrants and represents to the OWNER that the MANAGER will obtain and maintain all licenses, permits and approvals required with respect to its use of the Premises and any environmentally regulated substances used in connection therewith. The MANAGER shall transmit to the OWNER copies of any citations, orders, notices or other communications received with any respect to any hazardous materials, hazardous or toxic substances, hazardous wastes or any other

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environmentally regulated substances affecting the Premises. The MANAGER shall indemnify and hold the OWNER harmless from and against any and all damages, penalties, fines, claims, liens, liabilities, costs, judgments and expenses (including attorney's, consultant's or expert's fees and expenses) incurred by or asserted against the OWNER as a result of any warranty or representation made by the MANAGER in this paragraph being false or untrue in any material respect or as a result of any requirement under any Federal, State and Local law, regulation or ordinance that requires the elimination or removal of any Hazardous Materials, hazardous or toxic substances, hazardous wastes or other environmentally regulated substances. The MANAGER will comply with all applicable laws and regulations relating to the use, storage or disposal of hazardous materials, hazardous or toxic substances, hazardous waste or other environmentally regulated substances (including, without limitation, any materials containing asbestos). Nothing in this Agreement shall be deemed to reduce or eliminate the liability that the MANAGER may otherwise have under such laws and regulations.

- e. The MANAGER shall not use the Premises for any unlawful purpose or in violation of any Federal, State and Local laws or regulations, insurance requirements or any certificate(s) of occupancy and not permit dangerous articles to be brought on the Premises unless safeguarded as required by law.
- f. The MANAGER shall report to the OWNER all calls to Fire, Police and/or Emergency Medical Services regarding the Premises within 24 hours of said call.
- g. The OWNER or its Administrative Agent shall have the right to close the Premises whenever, in the sole opinion of the OWNER, climatic, health or structural related hazards make human health or safety a concern.
- h. The OWNER warrants to the best of the OWNER'S knowledge that there are no hazardous substances on the property.
- i. The MANAGER shall contract with the City of North Port for recycling, and trash pickup as required by ordinance. MANAGER will be responsible for providing appropriate dumpsters and bins for solid waste and recycle pick up. MANAGER is responsible for daily cleanup of trash and recyclables.
- j. The MANAGER shall keep the Premises in a clean and sanitary condition at all times and shall cleanse, disinfect, fumigate and deodorize the same on a regular basis. Any and all chemicals used shall be "Green Seal Certified" (<http://greenseal.org/standards/industrialcleaners.htm>), unless otherwise authorized by the OWNER. A list of all intended cleaning products shall be submitted to the OWNER within five (5) days of the Effective Date. The Green Seal Certification shall appear on each container. All chemical mixing or diluting shall be done to manufacturer's specification and at no other ratio. All chemicals will be used as directed, specific to design and function. All cleaning activity shall employ the proper chemical designed for that purpose. No aerosols or acid content chemicals are permitted unless otherwise stated herein, or subsequently approved in writing by the OWNER. All cleaning chemicals used shall not overtly or negatively impact indoor air quality. The MANAGER shall be totally responsible for any damage due to chemical cleaning



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because of negligence on its part or on the part of its employees, agents, and representatives to any person and/or property.

- k. The MANAGER shall not paint, display, inscribe, affix, or make changes to any existing sign, fixture, advertisement, notice, lettering or direction on any part of any buildings or other structures located at the Premises without the prior written consent of the OWNER which shall not be unreasonably withheld. Signs shall not be affixed to any trees within the boundaries of the Premises at any time.
- l. Any and all improvements to the Premises made by either party shall immediately become the property of OWNER and shall remain upon and be surrendered with the Premises as part thereof at the end of the Agreement Term except that OWNER shall have the right to require MANAGER to remove any such improvements at the end of the Agreement at the sole expense of MANAGER, and restore the Premises to its condition prior to the improvements as reasonably determined by the OWNER.
- m. The MANAGER shall accept the Premises in its "AS IS" condition as of the date of this Agreement, and it is understood and agreed that the MANAGER is under no obligation to make or pay for any structural or other alterations, decorations, additions or improvements in or to the Premises.
- n. The MANAGER shall provide security at all times for the Premises and insure that the Facility is secured properly upon closing so that no unauthorized persons can access the Premises.
- o. Given the natural aspect of the Springs the OWNER cannot guarantee the quality, quantity and/or other characteristics of the water from the Springs and will not be held responsible for any loss of revenue or other impact to MANAGER'S operations, whether expected or realized, due to changes in these attributes.

**5. ALTERATIONS, MAINTENANCE AND REPAIR**

- a. The OWNER shall have access to all areas of the facility to make necessary connections involved with the potable water system, wastewater treatment system, springs water quality testing and to perform repairs, maintenance and/or inspect any repairs and/or maintenance performed by the MANAGER.
- b. The Premises is provided in AS-IS, WHERE-IS, HOW-IS condition, without warranty or representation, subject to any and all conditions that a competent examination of the Premises would disclose. MANAGER agrees to indemnify and hold OWNER harmless against any and all claims for personal injury or property damage arising from the use of the Premises by MANAGER or operation of the Premises by MANAGER.
- c. OWNER reserves the right to inspect and test any aspect of the Premises, either directly or through another agency, including testing any attributes of the water at any time.

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- d. The MANAGER shall be responsible for the daily cleaning/janitorial services for the facility as well as the supplies needed to perform the Services.
- e. No alterations to the Premises shall be made without prior written consent by the OWNER. All work must be accompanied by applicable permits.

**6. FACILITY OPERATIONS**

- a. MANAGER shall provide to the general public access to the Springs and premises no later than twenty-one days after the Agreement is executed by all parties. Operation of the Springs will include opening the Springs to swimming and bathing, providing lifeguarding services, providing janitorial services for the Premises, including the restroom/locker room areas and ticket booth, and providing security services for the Premises Entry pricing including sales tax shall be as follows unless otherwise authorized by the OWNER:

Springs Daily Passes:

Adult	18 years of age and older	\$20 / \$15 Resident
Students:	6-17 years of age	\$15 / \$11.25 Resident
Children	5 years of age and under	\$10 / 7.50 Resident

10 Day Pass (days do not have to be consecutive):

Adult \$170 / \$112.50 Resident

Monthly Passes:

Adult \$200 / \$150 Resident

Sarasota County Residents shall qualify for the resident rate. Unless otherwise directed by OWNER, no ten day passes shall be sold ten (10) days prior to the expiration of this agreement and no monthly passes shall be sold thirty (30) days prior to the expiration of this agreement. Tickets are not refundable. Same day re-entry shall be permitted.

- b. The MANAGER agrees to operate the Premises a minimum of seven (7) days per week, 8 hours per day, unless otherwise determined by the OWNER. The OWNER may from time to time request additional operating hours upon ten (10) days written notice. Such additional hours shall be compensated as provided in section 3. The Springs may be closed for severe weather, health, or structural related hazards in which human health or safety becomes a concern. If the closure is for an extended period of time (greater than five (5) days) and the reason for the closure is not the fault of the OWNER, a pro-rated reduction in the OWNER's payment to the MANAGER shall be determined by the OWNER.
- c. Lockers shall be available to visitors on a first come first serve basis. No overnight use shall be permitted.

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- d. The MANAGER is responsible for obtaining and paying for all necessary licenses and permits to operate the Springs, other than those provided by the OWNER pursuant to this Agreement.
- e. The MANAGER shall select, employ, and train personnel, who shall, at all times, conduct themselves in a professional and courteous manner. The amount of staff must be able to meet the needs of the public, and shall include but not be limited to:
  - i. On-Site Manager, during all hours of operations;
  - ii. Ticket Sales/Cashiers;
  - iii. Janitorial personnel;
  - iv. Certified lifeguards, in an amount as required by state statute;
  - v. Security.
- f. MANAGER will operate the facility in the manner that respects and preserves the historical, hydrological, archeological, scientific, environmental, recreational and cultural aspects of the site.
- g. MANAGER will be required to provide daily documentation of all revenue related to the Premises. The MANAGER shall record admissions numbers and ticket sales daily and shall provide this report to the OWNER monthly. Each ticket shall have a unique identifier. The MANAGER shall supply a receipt to all customers following every transaction.
- h. MANAGER shall be responsible for the safe delivery of daily deposits to a banking facility of the OWNER's choice. MANAGER shall cooperate with OWNER in the setup of a credit/debit revenue collection system. All revenue from ticket sales shall be the property of the OWNER.
- i. MANAGER shall not erect or post signs, banners, and/or promotional material without the prior written approval of the OWNER. Permits may be required for such activities.
- j. The OWNER shall have right to perform audits, inspect the property, and records and books related to the services with reasonable notice. All records for the operation of the premises shall be subject to Chapter 119, Florida Statutes. MANAGER shall comply with all requirements of Chapter 119, Florida Statutes, and public records law.
- k. MANAGER shall provide all fixtures and equipment required to provide services at its own expense.
- l. MANAGER shall be responsible for all charges for utility usage for the operations including but not limited to: electricity, telephone and data services and propoane gas services.
- m. MANAGER shall have a telephone to answer questions of the public relating to the operation of the Premises, including but not limited to ticket costs and operation hours. Tickets shall only be sold on site.

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- n. MANAGER shall comply with all laws and regulations of the State of Florida and ordinances and regulations of City of North Port and Sarasota County.
- o. The MANAGER shall offer customers multiple methods of payment, to include but not be limited to cash, debit card, MasterCard and Visa. The MANAGER shall not accept personal checks for payment.
- p. MANAGER shall be required to obtain, at its own expense, within twenty-one (21) days of the Effective Date of this Agreement, or prior to the operation of activities requiring same, all licenses, certifications and permits including but not limited to the Department of Health, Department of Environmental Protection, Department of Agriculture and Consumer Services and/or Southwest Florida Water Management District, necessary to provide the aforementioned services.
- q. MANAGER must employ First Responder Certified Lifeguards as designated by local ordinances or state law. The MANAGER will provide the OWNER with a copy of the required certification before a lifeguard employee begins employment.
- r. OWNER shall have the right to use the Springs and/or Facility for special events. OWNER shall provide ten (10) days written notice of such events, and shall indicate whether the Premises will be operated additional hours. OWNER may also direct MANAGER to handle ticket sales for such events.

**7. PROHIBITED USES**

- a. MANAGER shall not engage in or allow any individual or group to engage in any scuba diving, or any form of water research without the prior written approval of the OWNER.
- b. MANAGER shall not engage in or allow any individual or group to disturb or remove any artifacts from the Springs. If any artifacts are inadvertently found, the OWNER must be contacted immediately so proper personnel may be dispatched to care for the artifact.
- c. MANAGER shall not engage in or allow any individual or group to deposit any organic or inorganic materials into the Springs, including but not limited to water, sand, mud, or stone that does not occur with the normal use of the Springs without the prior written approval of the OWNER.
- d. MANAGER shall not engage in or allow any individual or group to remove any organic or inorganic materials from the Springs, including but not limited to water, sand, mud, or stone that does not occur with the normal use of the Springs without the prior written approval of the OWNER.
- e. MANAGER shall not remove any water or minerals from the Springs, nor allow any individual or group to remove any water or minerals from the Springs.
- f. The MANAGER shall not allow glass bottles, cups, plates, etc., on the grass area surrounding the Springs.

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- g. No animals are allowed on the Premises, with the exception of service animals or fish/marine life in properly maintained tanks or ponds (i.e. Koi pond).
- h. The MANAGER shall not use the Premises for any unlawful purpose or in violation of any Federal, State and Local laws or regulations, insurance requirements or any certificate(s) of occupancy and shall not permit dangerous articles to be brought on the Premises unless safeguarded as required by law.
- i. The MANAGER shall abide by all noise and sound ordinances.
- j. The MANAGER shall accept the Premises in its "AS IS" condition as of the date of this Agreement, and it is understood and agreed that the OWNER is under no obligation to make or pay for any structural or other alterations, decorations, additions or improvements in or to the Premises.
- k. MANAGER shall not access or use buildings on the property depicted in Exhibit A that are not a part of the Premises. MANAGER shall only access those portions of the two Facility buildings as depicted in Exhibit B. MANAGER shall not use the Premises for uses unrelated to operation of the Springs for public swimming and bathing, including use of the restroom/locker room areas and ticket booth, providing lifeguarding services, providing janitorial services for the Premises, and providing security services for the Premises, and administration of the same, without prior written authorization of the OWNER.

**8. OWNER's OBLIGATIONS**

- a. The OWNER shall be responsible for maintaining the septic system, and for managing the mowing and landscaping contract and interior/exterior pest control on the premises. The OWNER shall be responsible for landscape installation, shoreline maintenance and/or the addition or removal of any plantings and/or vegetation.
- b. The OWNER may provide visitor rules to MANAGER which shall be enforced by MANAGER. The visitor rules may be amended from time to time.
- c. The OWNER shall obtain permits to operate a public bathing place and to operate the onsite potable well. The OWNER will procure the necessary water testing services to satisfy permit requirements.

**9. INSURANCE REQUIREMENTS**

Not later than the commencement of this Agreement the MANAGER shall procure and maintain, for the full Agreement Term, all of the insurance coverage indicated in Exhibit C, Insurance Requirements, attached hereto and incorporated herein. Failure to maintain required insurance shall be considered a breach of contract and operations will cease until coverage is re-instated. If the lapse is more than three (3) days the OWNER will have the option to immediately terminate the Agreement.

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**10. DEFAULT/TERMINATION**

- a. Termination With or Without Cause: The OWNER shall have the right to unilaterally cancel, terminate or suspend this Agreement, with or without cause, in whole or in part, by providing the MANAGER ninety (90) days written notice by certified mail. MANAGER shall be paid for Services provided and not yet paid for up through the date of termination as provided in section 3, with a partial month paid on a pro-rata basis.
- b. The OWNER reserves the right to terminate this Agreement in the event a regulatory agency determines that the Springs will be unusable by the public for a period of three (3) days or more due to a public safety issue.
- c. An incurable default under this Agreement shall be defined as the occurrence of any one or more of the following events. If any such incurable default occurs, no cure period will apply and the OWNER shall give the MANAGER fifteen (15) days' notice to vacate:
  - i. If the MANAGER refuses to take possession of Premises within ten (10) days of the Effective Date.
  - ii. If any execution, levy, attachment or other process of law occurs upon the MANAGER'S goods, fixtures or interest in the Premises with the exception of the automatic stay provision provided by law.
  - iii. If the MANAGER shall be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors the OWNER reserves the right to terminate and cancel this Agreement.
  - iv. If the Premises are closed for a period greater than three (3) consecutive days due to the fault of the MANAGER.
  - v. If the MANAGER assigns this Agreement without the OWNER'S prior written consent.
  - vi. If the MANAGER knowingly employs unauthorized aliens in violation of 8 U.S.C. Section 1324a(e) (Section 274A(e) of the Immigration and Nationality Act).
- d. In the event that the MANAGER has abandoned performance under this Agreement, then the OWNER'S administrative agent may terminate this Agreement upon three (3) calendar days' written notice to the MANAGER indicating its intention to do so. The written notice shall state the evidence indicating the MANAGER'S abandonment.
- e. In the event MANAGER breaches this Agreement such that the breach is curable, the OWNER shall provide written notice of the breach and MANAGER shall have ten (10) days from the date the notice is received to cure. If MANAGER fails to cure within the ten (10) days, the Owner's administrative agent shall have the right to immediately terminate the Agreement.

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- f. In the event of termination for default, the MANAGER shall return the Premises to the OWNER no later than the date indicated on the written notice from the OWNER. Every improvement of any nature, excluding removable equipment, made to the Premises by the MANAGER shall become the property of the OWNER. The MANAGER may with the consent of the OWNER remove its inventory and personal property prior to the termination date. However, should the Premises be damaged by the MANAGER in effectuating such removal, said damage shall promptly be repaired by the MANAGER at its sole expense. Should the MANAGER fail to remove any inventory or personal property prior to the termination date, said inventory and personal property shall become the property of the OWNER and the OWNER shall have the right to dispose of same at public sale or otherwise and without liability to the MANAGER.
- g. In the event that the default is of such a nature that it cannot be remedied within the time limits herein set forth, the OWNER and the MANAGER may agree to provide such additional time as is reasonably necessary to cure such default, provided the MANAGER diligently commences the curing of such default within said time limits and proceeds to completely cure the same in a timely and diligent manner. If, by reason of force majeure, the MANAGER is unable to perform or observe any of the terms and condition of this Agreement which would give rise to the default set forth above, the MANAGER shall not be deemed in default during the continuance of such inability. The term "Force Majeure" shall mean, without limitation, the following:
  - i. Acts of God, such as natural fires, floods, hurricanes, tornados, epidemics; or an event beyond the MANAGER'S control, such as major workers strikes, government shut down; or other major catastrophic events. Except as otherwise expressly provided herein, neither party shall be liable for any delay due to causes not reasonably within its control, including but not limited to, acts of civil or military authority, including courts and regulatory agencies, acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, fires, floods, strikes, lockouts or other labor difficulties, provided such labor difficulties do not arise from inequitable labor practices. In the event of any delay resulting from such causes, the time for performance hereunder shall be extended for a period of time reasonably necessary to overcome the effect of such delays. This shall constitute the sole remedy to either party in the event of such delays.
  - ii. Any cause, circumstance or event not reasonably foreseeable or within the control of the MANAGER.
- g. Termination by MANAGER: MANAGER shall have the right to terminate services only in the event of a regulatory agency determining that the Springs will be unusable by the public for a period of thirty days or more due to a public safety issue.

**11. DISPUTE RESOLUTION**

- a. This Agreement shall be governed by, and be construed in accordance with, the laws of the State of Florida. Any legal proceedings concerning this Agreement shall be brought and maintained solely in Sarasota County, Florida.

*City Of North Port*  
*Warm Mineral Springs Site Management Agreement*

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- b. In the event any dispute arises concerning this Agreement, the Parties agree to attempt to settle any dispute by mediation. The parties shall evenly split the costs of the mediator.
- c. The Parties hereby expressly agree that in the event of litigation regarding this Agreement, any and all rights to jury trial are waived.
- d. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation of this Agreement and that legal counsel was consulted by each party hereto (or opportunity for such legal consultation afforded to each party) before the execution of this Agreement.

**12. AUTHORITY**

- a. Jack E. Bobo, Jr., President, as an officer of MANAGER, has the legal right, power, authority and capacity to execute and deliver this Agreement.
- b. Jack E. Bobo, Jr., and Devon Land are key personnel necessary for the successful performance of this Agreement. MANAGER shall not reassign, replace or remove these individuals without the prior written consent of OWNER.
- c. MANAGER represents that it has disclosed any criminal convictions of its officers in the past ten (10) years for fraudulent or dishonest dealings or those violations involving moral turpitude prior to entering into this Agreement and will continue to require its officers uphold themselves to the highest ethical and moral standards in all dealings, both professionally and personally. The MANAGER will notify OWNER within five (5) days of any new misdemeanor and/or felony charges and within thirty (30) days of any plea of guilty or nolo contendere to any felony for the term of this Agreement that involves the key personnel or officers of the MANAGER. Any convictions that occur during the term of this Agreement will be reviewed by the OWNER to determine necessary actions. Failure to disclose pending or past criminal history for any reason, whether due, but not limited to any omission, intentional falsification or any failure to disclose for any reason, this Agreement may, at the sole discretion of the OWNER be terminated at any time.

**13. MISCELLANEOUS**

- a. The OWNER'S Administrative Agent(s) is designated to act on behalf of the OWNER to administer the terms and conditions of this Agreement including but not limited to enforcement of terms, conditions and covenants, and extension of time periods. If necessary, a specific Administrator may be authorized to perform the responsibilities of the OWNER'S Administrative Agent.
- b. Except as otherwise provided herein, all notices, invoices, reports, or any other type of documentation required by this Agreement or permitted under this Agreement shall be



**City Of North Port**  
**Warm Mineral Springs Site Management Agreement**

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made in writing and shall be deemed given and served when provided by certified United States mail with proof of mailing, or personal delivery, to the addresses listed below. In addition to, but not in lieu of providing notice as stated above, the parties may choose to provide a courtesy copy of any notice via electronic mail to the e-mail addresses listed below. Either party may change its address or representative by giving written notice of such change.

**OWNER/Administrative agent:**

City Manager  
4970 City Hall Blvd  
North Port, FL 34286

With a copy to: Mark Moriarty, Esq.  
City Attorney  
4970 City Hall Boulevard  
North Port, FL 34286  
Phone: 941.429-7212/ Fax: 941.429-7079  
[mmoriarty@cityofnorthport.com](mailto:mmoriarty@cityofnorthport.com)

**MANAGER:**

National and State Parks Concessions, Warm Mineral Springs Inc.  
2801 Industrial Avenue 2  
Fort Pierce, FL 34946  
Phone: 772-595-6429 Fax: 772-595-6432  
Jack E. Bobo, Jr., President [jbobo@nspconcessions.com](mailto:jbobo@nspconcessions.com)

- c. The MANAGER acknowledges that the City of North Port is the Owner of the Premises and also has authority as a regulatory agency. If the OWNER authorizes a specific use, improvement or modification to the Premises, said authorization does not constitute any required regulatory or permitting approval. The MANAGER remains responsible to obtain any and all permits and/or permissions from the appropriate regulatory agencies including but not limited to the City of North Port.
- d. The MANAGER shall pay on behalf of or indemnify and hold harmless the OWNER, its Commissioners, officials, officers, employees, agents and volunteers from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, omission or default of the MANAGER arising out of or in any way connected with the MANAGER'S (or MANAGER'S officers, employees, agents, volunteers and subcontractors, if any) performance or failure to perform under the terms of this Agreement. This section of the Agreement will extend beyond the termination or expiration of this Agreement

*City Of North Port*  
*Warm Mineral Springs Site Management Agreement*

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- e. The MANAGER hereby expressly waives and releases any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment of the electrical apparatus, water supply equipment, or wires furnished for the Premises or by reason of any loss or impairment of light, current, or water supply which may occur from time-to-time for any cause unless the loss or damage is the result of the OWNER'S failure, within a reasonable period of time, to repair or replace such defect, deficiency or impairment if required under this Agreement or for any loss or damage sustained by the MANAGER resulting from fire, water, civil commotion, or acts of nature, and the MANAGER hereby expressly waives all rights, claims and demands and forever releases and discharges the OWNER and its officers and its agents from any and all demands, claims, actions and causes of action arising from any of the causes aforesaid.
- f. Florida law requires the following disclosure: "RADON GAS: Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your local county health department."
- g. Nothing herein contained shall be deemed to create a partnership or joint venture, nor shall the relationship between the Parties be construed as principal and agent.
- h. MANAGER shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of the OWNER, except that claims for the money due or to become due to the MANAGER from the OWNER under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the OWNER. Notice of such transfer or assignment due to bankruptcy shall be promptly given to the OWNER.
- i. For purposes of computing any period of a number of days hereunder for notices or performance (but not for accrual of interest) of ten (10) days or less, Saturdays, Sundays and holidays shall be excluded.
- j. Any provision of this Agreement in violation of the laws of the State of Florida shall be ineffective to the extent of such violation, without invalidating the remaining provisions of this Agreement. In no event shall the MANAGER or its assigns have any cause of action against OWNER, the officers or employees of the OWNER, or against any elected official of the OWNER based upon or materially related to any finding by any court that any or all provisions of this Agreement violate Florida law.
- k. TIME IS OF THE ESSENCE WITH RESPECT TO THE PERFORMANCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT.
- l. This Agreement shall not be interpreted or construed to grant any rights to any third parties.
- m. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*City Of North Port*  
*Warm Mineral Springs Site Management Agreement*

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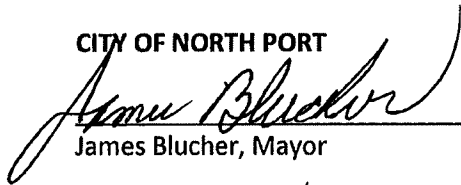
- n. A photocopy or facsimile copy of this Agreement and signatures of the parties hereon shall be considered for all purposes as originals.
- o. The Parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Agreement.
- p. This Agreement supersedes all other agreements between the parties, whether oral or written with respect to the subject matter. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, deleted, superseded or otherwise altered unless agreed upon in writing by both Parties and incorporated into this Agreement.
- q. In accordance with F.S. §119.0701, MANAGER shall comply with all public records laws, and shall specifically:
  - i. Keep and maintain public records that ordinarily and necessarily would be required by the OWNER in order to perform the service.
  - ii. Provide the public with access to public records on the same terms and conditions that the OWNER would provide the records and at a cost that does not exceed the cost provided in chapter 119 or as otherwise provided by law.
  - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
  - iv. Meet all requirements for retaining public records and transfer, at no cost, to the OWNER all public records in possession of the MANAGER upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the OWNER in a format that is compatible with the information technology systems of the OWNER.
  - v. Failure of the MANAGER to comply with these requirements shall be a material breach of this Agreement.

**City Of North Port**  
**Warm Mineral Springs Site Management Agreement**

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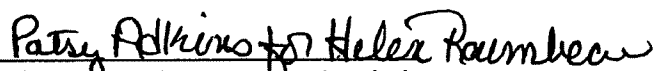
IN WITNESS WHEREOF, the OWNER and MANAGER have executed this Agreement as of the date first above written.

CITY OF NORTH PORT

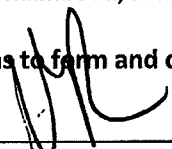
  
James Blucher, Mayor

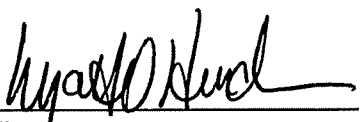
Date 9/26/14

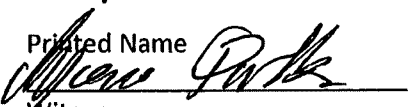
ATTEST:

By:   
Helen M. Raimbeau, MMC, City Clerk

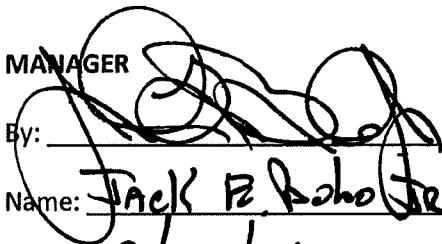
Approved as to form and correctness:

By:   
Mark Moriarty, City Attorney

  
Witness  
WYATT O. HENSELSON

Printed Name  
  
Witness  
MIRJANA PIVNIK  
Printed Name

MANAGER

  
By: \_\_\_\_\_  
Name: Jack R. Boho Jr. President  
Date 9/26/14

City Of North Port  
Warm Mineral Springs Site Management Agreement

EXHIBIT A



Warm Mineral Springs  
Spring Area

Legend

-  City Boundary
-  Property Lines

Prepared by GIS Services  
July 9, 2013

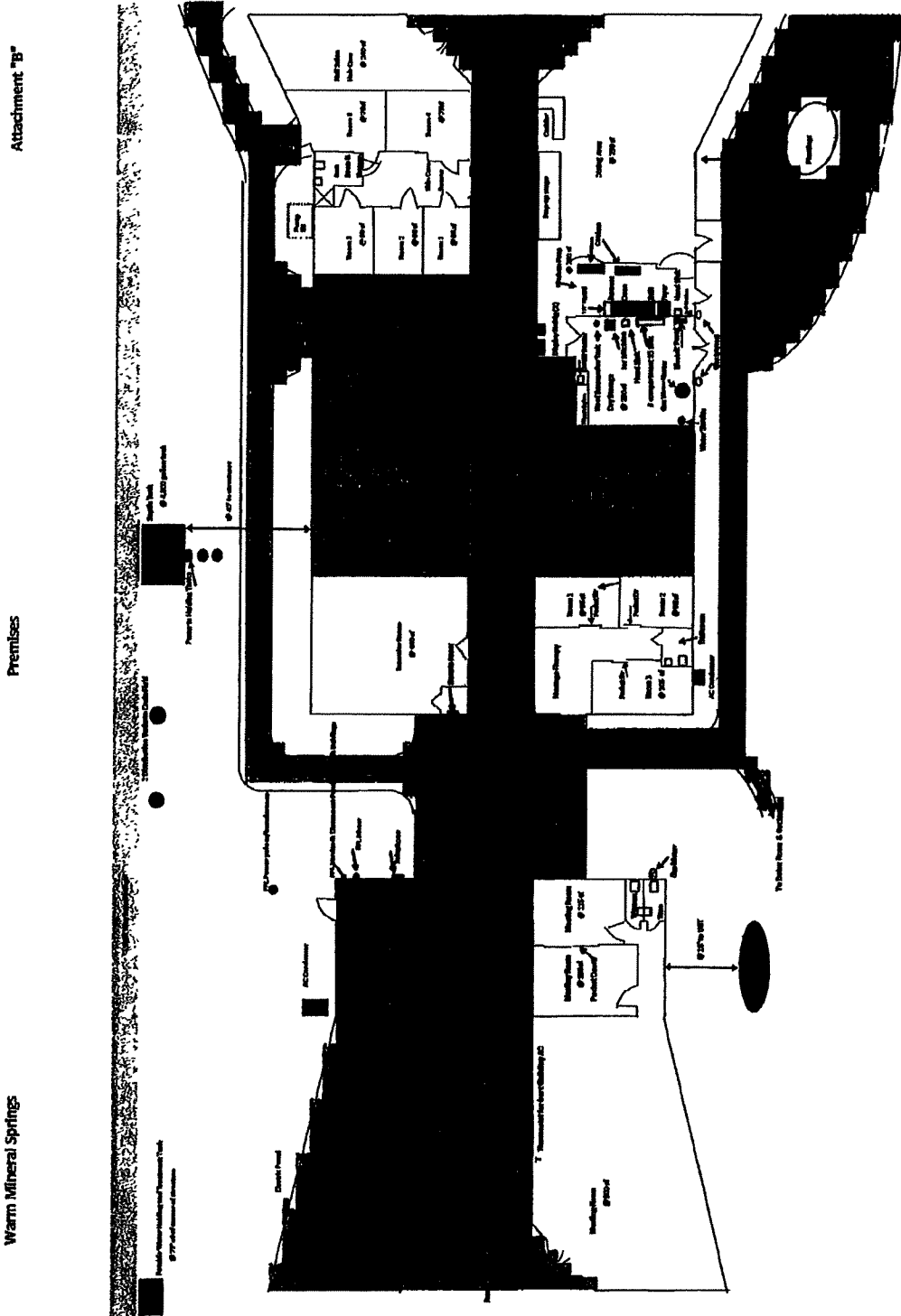


Disclaimer: This map is for reference purposes only and is not to be construed as a legal document. Any reliance on the information contained herein is at the user's risk. The City of North Port and its agents assume no responsibility for any use of the information contained herein or any loss resulting therefrom.

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City Of North Port  
Warm Mineral Springs Site Management Agreement

EXHIBIT B



*City Of North Port*  
*Warm Mineral Springs Site Management Agreement*

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**EXHIBIT C**

**INSURANCE**

At all times subsequent to the commencement date of the term of this Agreement and during the full term, MANAGER shall keep the Premises covered, at MANAGER's sole cost and expense, by the insurance coverage listed below. The policies of insurance shall be primary and written on forms acceptable to OWNER and placed with insurance carriers approved and licensed by the State of Florida and meet a minimum financial A.M. Best & Company rating of no less than "A- Excellent", FSC: VII. No changes are to be made to the following insurance specifications without prior written approval of OWNER, which approval shall not be unreasonably withheld, conditioned or delayed.

- I. Workers Compensation Insurance - on behalf of employees who are to provide a service under this Agreement, as required under Florida Laws Chapter 440 and Employers Liability of limits no less than \$100,000 per employee per accident; \$500,000 disease aggregate and \$100,000 employee per disease.
- II. Commercial General Liability - Including but not limited to bodily injury, property damage, contractual, personal injury and products and completed operations with limits not less than \$1,000,000 per occurrence, covering all work performed or services provided under the Agreement.
- iii. All policies required herein, unless specific approval is given by OWNER, are to be written on an occurrence basis and shall name the City of North Port, their Commissioners, officers, agents, officials, employees, and volunteers as additional insured as their interest may appear under this agreement, and the insurer(s) shall agree to waive all rights of subrogation against the City of North Port, their Commissioners, officers, agents, officials, employees and/or volunteers. All policies required herein shall be written as primary polices and non-contributory and secondary to any Insurance coverage maintained by OWNER.
- iv. Insurance requirements itemized in this section required of MANAGER shall be provided by or in behalf of all subcontractors to cover their operations performed. MANAGER shall be held responsible for any modifications, deviations or omissions in these insurance requirements as they apply to subcontractors. MANAGER shall be named as an additional insured on all applicable subcontractors insurance policies, in addition to OWNER being named as an additional insured.
- v. Each insurance policy required by this Agreement shall: (1) Apply separately to each insured against whom claim is made and suit is brought, except with respect to the limits of the insurer's liability; and (2) be endorsed to state that coverage shall not be suspended, voided, or canceled by either party, reduced In coverage or In limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to OWNER's Risk Manager.
- vi. MANAGER shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of the Agreement and shall be solely responsible for the payment of all deductibles or co-insurance to which such policies are subject, whether or not OWNER is an insured or additional insured under the policy.

*City Of North Port*  
*Warm Mineral Springs Site Management Agreement*

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- vii. Claims made policies will be accepted for hazardous materials liability coverage and such other risks as are authorized by the OWNER's Risk Manager. All such policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two years. If provided an option, MANAGER agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.
- viii. Certificates of Insurance - Certificates of insurance evidencing claims or occurrence form coverage, as well as OWNER's agreement number are to be furnished to the OWNER's Risk Manager prior to occupation of the Premises and within thirty (30) calendar days of expiration of the insurance contract when applicable. All insurance certificates shall be received and timely approved by the OWNER's Risk Manager before MANAGER will be allowed to occupy or continue to occupy the Premises.
- xii. Notice of Accident (occurrence) and Notice of Claim arising out of the terms of the Agreement shall be given to MANAGER's Insurance company and OWNER's Risk Manager as soon as practicable after notice to the Insured.
- ix. Waiver of Subrogation- All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or through other means, agree to waive all rights of subrogation against OWNER, its officers, officials, employees and volunteers, and OWNER's insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or work or operations performed by MANAGER for OWNER or on the Premises. It is MANAGER's responsibility to notify its insurance company of the waiver of subrogation and request written authorization or the proper endorsement. Additionally, MANAGER, its officers, officials, agents, employees, volunteers, and any hired subcontractors, agree to waive all rights of subrogation against OWNER and its insurance carriers for any losses paid, sustained or incurred, but not covered by insurance, that arise from the contractual relationship or work or operations performed on the Premises. This waiver also applies to any deductibles or self-insured retentions for which MANAGER or its agents may be responsible.

**END OF SECTION**