



BOROUGH OF DORMONT

1444 HILLSDALE AVE
PITTSBURGH, PA 15216-2019
(412) 561-8900
FAX (412) 561-7805
www.boro.dormont.pa.us

BOROUGH MANAGER
BENJAMIN ESTELL

MAYOR
PHIL ROSS

SOLICITOR
DODARO MATTA & CAMBEST

MEMBERS OF COUNCIL
JOHN MAGGIO, PRESIDENT
DREW LEHMAN, VICE PRESIDENT
KATE ABEL
JEFF FABUS
JOAN HODSON
ROBERT PALMIERI
DANIELE VENTRESCA

AGENDA MEETING February 29, 2016 7:00 PM

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Registered Comments from the Public
5. Comments from the Mayor
6. Council President's Report
7. Borough Manager's Report
8. Consent Agenda
 - a. Motion to approve the written report of the Solicitor.
 - b. Motion to approve the written reports of Borough Officials.
 - c. Motion to approve the Minutes of the February 1, 2015 Council Meeting.
 - d. Motion to approve the Minutes of the February 11, 2016 Special Council Meeting.
 - e. Motion to approve the Warrant list for February 2015.
 - f. Motion to accept recommendation of the Manager to approve contract with Zambelli Fireworks to provide fireworks at Dormont Day for \$13,750.00.
 - g. Motion to accept recommendation of the Manager to approve contract with Jeff Ellis Management to manage the Dormont Pool in 2016 for \$116,412.36.
 - h. Motion to accept recommendation of the Manager to approve Jeffrey Fabus as a member of the Recreation Board.
 - i. Motion to accept recommendation of the Manager to approve Kara Walsh as a member of the Recreation Board.
 - j. Motion to accept recommendation of the Manager to approve Monique Fontaine as a member of the Recreation Board.



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- k. Motion to accept the request of the Tax Collector to exonerate him from 2015 uncollected taxes.
- 9. Action Items
- 10. Discussion Items
 - a. Creation of a Sanitary Sewer Authority
 - b. Recognition of the Stormwater Committee
- 11. Citizens' Comments
- 12. Adjournment

Kara G. Walsh

1410 Edgehill Ave Pittsburgh, PA 15216

Phone: 412.807.8267

Email: karagwalsh@gmail.com

Work Experience

- Chang Eye Group, Senior Optician** 2014 - Current
- Leading sales associate for high volume retail establishment.
 - Frame adjustments and lens troubleshooting.
 - Assisted with insurance and vision benefits.
 - Ordered frames, lenses, and other necessary supplies.
 - Motivated team members to help improve sales and reduce product loss.
 - Provided outstanding customer service.
 - Educated team on new promotions, updates, products, events, etc.
 - Created fashion eyewear displays to increase sales.
 - Managed inventory of frames, contact lenses, and accessories.
- John Hughes and Associates, Optometric Assistant/Optician** 2011 - 2014
- Responsible for performing thorough preliminary testing, obtain patient histories, tested near and far visual acuity, depth insight, visual fields, tonometry, topography, dilate pupils, administer eye drops and ointments, retinal photography using various technical ophthalmic equipment, using manual and automatic lensometer, and contact lens insertion/removal. Maintained the examination rooms
 - Purchase and maintain retail inventory, assist patients in choosing proper optical wear and lens options
 - Supervising office flow and proper work function; Communicate with other staff to facilitate proper patient flow.
 - Insurance verifications, sending faxes, filing, answering incoming calls, transferring calls, scheduling and confirming appointments. Online medical and vision claim submission
- Home Instead Senior Care, Service Scheduling Coordinator** 2010 - 2011
- Responsible for scheduling CAREGivers with clients taking into consideration many factors including compatibility and availability.
 - Monitor, mediate, resolve and document employee and client concerns.
 - Strategic and creative problem solving to complete schedule and meet customer service needs.
 - Input pertinent details into the database on a daily basis and maintain records.
 - On-call supervisory responsibilities including handling urgent issues quickly and accurately while enforcing policy.
- Aliquant Corporation, Senior Customer Service Representative** 2007-2010
- Took customer service calls in regard to health and welfare benefits for a company of over 25,000 people.
 - Created and maintained training manuals
 - Trained new hires in procedures and call etiquette
 - Assisted supervisor with special projects
 - Performed various clerical duties including filing, mail distribution, UPS and FedEx Shipping, scheduling and office supply ordering
- PharmaCare Management Services, Elite Customer Service Staff** 2004-2007
- Acted as an advocate for PharmaCare Rx Plan customers by providing guidance, interpretation and education on benefit coverage levels, claims processing, and various program inquiries.
 - Quickly promoted to selling prescriptions by mail services and then to support staff, assisting CSR's with questions and escalated issues.
 - Trained new and reinforced already trained business material.
 - Approving requests for medication coverage and administrative overrides in conjunction with plan allowances

Education

Clarion University of Pennsylvania, Clarion, PA
Studies toward Bachelor of Science in Liberal Studies: Communication

May 2013

Volunteer Experience

Variety the Children's Charity of Pittsburgh

- Assisted with activities for various children's parties and functions.
- Participated in the Radiothon to raise money for Camp Variety.

Camp JJ – McKean County, PA

- Participated as a counselor at a camping program for children with developmental handicaps
- Attending planning meetings and trained councilors

Safe House – Atlanta, GA

- Participated in homeless ministry by assisting with food and clothing distribution, outreach that
- Participated in summer day camp for children living in low-income housing.
- Assisted elders living in public housing with cleaning and maintenance

References Available Upon Request

Jeffrey J. Fabus
2959 Espy Ave. Dormont, Pa. 15216
412-726-5740 jfabus2959@comcast.net

Objective - To obtain a seat on the Recreation Board.

I am submitting this resume to be considered to be an active member of the Recreation Board. I have lived in Dormont for over 44 years. I am a father of 5 and grandfather of eight. I believe my experience with the Dormont Athletic Boosters Association (DABA), my ties to the community and my previous experience as a board member and chairman of this committee will be an asset.

During my time with DABA I have had the opportunity to work very close with children and have built a great report with parents within the community. As a past DABA Officer I was responsible for overseeing meetings and helped in organize events and fundraisers.

As a member of Recreation Board and as chairman of this committee I have worked with others to help grow the number of opportunities offered in the community to our residents. In the past few years we have:

Brought back the Dormont Dash

Added the following activities as responsibilities for the Recreation Board

- Open Gym
- Holiday Decorating Contest
- Snowman Contest
- Halloween Children's Parade
- Halloween Pet Parade
- Street Fair
- Dormont Day
- Battle of the Bands (Tried this once and was successful – Have not made a second attempt)

I would like to see this board continue to increase opportunities to more residents with such events as:

- Open gym for ages 15 and under
- Adult basketball or volleyball league for Dormont Residents
- Stories in the Park
- Senior Aerobics / Yoga in the gym
- Tennis Club to utilize the courts at Dormont Pool
- Walking Club – Dormont has some beautiful scenery, homes and businesses and the hills or Dormont offers walkers some challenges. This would be a great initiative to get people moving and to introduce them to more of the community
- Utilize the borough gym more by turning it in to a real community recreation center by adding treadmills, elliptical machines, stationary bikes and other workout equipment and have residents pay a minimal fee to have access.

There is much this board can do with the right mix of people willing to put forth the effort.

If there is nothing written in our code preventing me from being an active member of this board, then I would hope council would consider allowing me to continue to serve my community and grant me one of the three open seats.

Thank you

MONIQUE L. FONTAINE

1454 Alabama Avenue
Pittsburgh, PA 15216
Phone: (412)-207-4932
Email: mfontaine1@verizon.net

EMPLOYMENT

- 2010-2016 Budget Analyst, Allegheny Valley School
- Approve check invoices, credit card reconciliations, and purchase requisitions.
 - Write and maintain journal entries.
 - Forecast and analyze actual versus budgeted and historical financial results.
 - Liaison between finance department and administrators for twenty-eight group homes.
 - Complete scheduled monthly reporting to support monthly financial results.
 - Prepare annual budgets to submit to the state.
 - Develop targets, consolidate financial information, and analyze trends in support of preparing the annual company budget
 - Prepare annual cost report.
- 2007-2009 Cost Accountant, Hussey Copper and Fabricated Products
- Reconcile balance sheet accounts and closing within monthly time constraints.
 - Write, post, and maintain journal entries.
 - Maintain metal accounts and research charges and variances on monthly invoices.
 - Liaison between finance department and plant managers.
 - Reconcile quarterly balance sheet accounts.
 - Participate in annual inventory at Eminence, KY location.
- 2002-2007 Accounting Technician, Alcoa
- General accounting contact for multiple locations and business units.
 - Reconcile balance sheet accounts and closing according to GAAP/SOX standards.
 - Post and maintain journals from subsidiary ledger; investigate and reconcile account variances.
 - Maintain chart of accounts and cross validation rules.
 - Reconcile and maintain Project, Works in Process and Fixed Asset accounts.
 - Liaison between primary shared services, co-sourced team members and business units for general accounting functions.
 - Participation in several special audits at North American locations.
- 1995-2002 Mellon Financial Corporation
- 2002-2002 Telecom System Coordinator, Mellon Financial Corporation
- Research and track payments made to individual accounts.
 - Inventory management for land lines, cell phones, pagers and calling cards.
 - Write and input to general ledger.
 - Check and run tapes, invoices, and update the system for 15 month-end accounts.
 - Answer corporate-wide inquiries into telecom billing issues and attend vendor meetings.
- 2000-2002 Operations Analyst, Dreyfus Financial Services Corporation
- Open new variable annuity accounts
 - Perform as liaison between financial advisors and insurance companies.
 - Maintain daily records and customer files.
 - Execute trades on internal Dreyfus system.
 - Update insurance companies on linked policies and delete from system.
- 1998-2000 Loan Reconciliation Specialist, Mellon Financial Corporation
- Balance payments in process for installment loans.
 - Research and correct out of balance conditions.
 - Daily audit of general ledger to daily proof.
 - Balance and research multiple accounts for month-end.
- 1995-1998 Consumer Operations Specialist, Mellon Bank
- Research and track personal credit line payments and return items.
 - Organize and distribute reports to internal and external customers.
 - Cross train co-workers and write procedure manual for functions.

EDUCATION

- 2004-2009 Certificate in Accounting, Robert Morris University
- 1991-1994 B.A., Political Science and Economics, University of Pittsburgh
- 1989-1991 A.A., Liberal Arts, CCAC

COMPUTER

Microsoft Office, Great Plains, Forecaster, FRX, Ross, Oracle 11i, Integrated Discoverer query tools.

VOLUNTEER

Dormont Day booth volunteer.
Dormont Historical Society board member (Facebook page administrator).
Dormont Democratic Committee secretary.
Friends of the Hollywood Theater's board member and secretary.

ZABELLI FIREWORKS MANUFACTURING CO.

THIS CONTRACT AND AGREEMENT (this "Contract") is made effective as of this 1st day of February, 2016, by and between:

Zambelli Fireworks Manufacturing Co. of New Castle, Pennsylvania (hereinafter referred to as "Zambelli"),

-AND-

Dormont Day Committee of Pittsburgh, Pennsylvania (hereinafter referred to as "Client").

WHEREAS, Zambelli is in the business of designing and performing exhibitions and displays of fireworks; and

WHEREAS, Client desires that Zambelli provide an exhibition and display of fireworks for Client's benefit pursuant to the terms and conditions hereof, and Zambelli desires to perform an exhibition and display of fireworks for Client's benefit pursuant to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual agreements herein contained:

Zambelli, intending to be legally bound, agrees as follows:

1. Zambelli agrees to sell, furnish and deliver to Client a fireworks display [per the program submitted by Zambelli to Client, accepted by Client and made a part hereof] (hereinafter referred to as the "Display") to be exhibited on the display date set forth below (hereinafter referred to as the "Display Date"), or on the postponement date set forth below [if the Display is postponed as provided herein], (hereinafter referred to as the "Postponement Date") which Display Date and Postponement Date have been agreed upon at the time of signing this Contract.

Display Date: **July 4, 2016** **Postponement Date:** _____

2. Zambelli agrees to furnish the services of display technicians (hereinafter referred to as "Display Technicians") who are sufficiently trained to present the Display. Zambelli shall determine in its sole discretion the number of Display Technicians necessary to take charge of and safely present the Display.
3. Zambelli agrees to furnish insurance coverage in connection with the Display for bodily injury and property damage, including products liability, which insurance shall include Client as additional insured regarding claims made against Client for bodily injury or property damage arising from the operations of Zambelli in performing the Display provided for in this Contract. Such insurance afforded by Zambelli shall not include claims made against Client for bodily injury or property damage arising from failure of Client, including through or by its employees, agents and independent contractors, to perform its obligations under this Contract, including without limitation those set forth in paragraphs 5 and 6 below. Client shall indemnify and hold Zambelli harmless from all claims and suits made against Zambelli for bodily injury or property damage arising from failure of Client, including through or by its employees, agents and independent contractors, to perform its obligations under this Contract, including without limitation those set forth in paragraphs 5 and 6 below.

Client, intending to be legally bound, agrees as follows:

4. Client agrees to pay Zambelli the sum of **\$13,750** (see line 24)** (hereinafter referred to as the "Purchase Price"), fifty percent (50%) of which is due upon signing this Contract and the balance of which is due at noon three (3) days prior to the Display Date. Zambelli reserves the right to add to Client's invoice an equitable transportation surcharge in the event of any material increase in transportation costs (including the cost of fuel and third party shipping costs) to Zambelli after the date of this Contract. In addition, Client agrees to pay a postponement fee of fifteen percent (15%) of the Purchase Price plus Additional Third Party Charges (as defined in paragraph 11 below) if the Display is fired on the Postponement Date, or twenty-five percent (25%) of the Purchase Price plus Additional Third Party Charges if the Display is fired on a date other than the Display Date or the Postponement Date ("Alternate Date"). The Alternate Date must occur within six months of the original Display Date at a time agreeable to both Zambelli and the Client. Generally, Alternate Dates will not include the period from June 28th through July 7th. Checks shall be made payable to Zambelli Fireworks Manufacturing Co., unless otherwise authorized in writing by Zambelli. NO CASH shall be paid to any agent or employee of Zambelli, unless otherwise authorized in writing by Zambelli. There shall be no refund of the Purchase Price due and payable under this paragraph 4, except as specifically provided in paragraph 11 below.

5. Client agrees to meet all deadlines outlined in the Design and Production Provisions, which has been provided to Client, including but not limited to the following:
 - (a) Client must select a suitable place for the Display, including a firing and debris zone reasonably acceptable to Zambelli (hereinafter referred to as the "Display Area") and submit such selection to Zambelli no later than sixty (60) days prior to the Display Date. The Display Area shall adhere to or exceed applicable National Fire Protection Association ("NFPA") standards including the Zambelli guideline that the Display Area have a radius of at least 100 feet per inch (or as mutually agreed to between Zambelli and Client) of the largest diameter pyrotechnic from the firing site in all directions to any parking area, spectators, inhabited buildings, public roads, or active railroad. Client shall submit a site map (attached hereto as Exhibit A) to Zambelli accurately representing the physical characteristics of the Display Area as pertains to NFPA and Zambelli guidelines. The content of the Display may be limited by the selection of the Display Area due to the requirement to provide sufficient safety zones.
 - (b) Client must secure and deliver to Zambelli no later than _____ or ____ days prior to the Display Date all permits necessary for the Display, including but not limited to police, local, state and United States Coast Guard ("USCG") permits, and arrange for any security bonds or insurance as required by law. Zambelli will assist Client when appropriate in completing permit applications.

[Alternate to (b) above when it is expressly required by regulations that Zambelli obtain the permits. "Zambelli will secure all permits necessary for the Display as required, including but not limited to police, local, state and United States Coast Guard ("USCG") permits, and arrange for any security bonds or insurance as required by law. Client will assist Zambelli when appropriate in completing permit applications."]
 - (c) If the Display is choreographed to music, the final selection of the music must be submitted to Zambelli by Client no later than ninety (90) days prior to the Display Date.
6. If, in its sole discretion, Client designates an area for members of the public to view the Display (hereinafter referred to as the "Spectator Area") or an area for vehicular parking (hereinafter referred to as the "Parking Area"), Client shall (a) ensure that the Spectator Area does not infringe on the Display Area, (b) have sole responsibility for ensuring that the terrain of the Spectator Area and any structures thereon, including but not limited to grandstands and bleachers are safe for use by spectators, (c) have sole responsibility for ensuring that the Parking Area is safe for use, (d) have sole responsibility to police, monitor and appropriately control spectator access to the Spectator Area and the Parking Area and police, monitor and appropriately control the behavior of persons in these areas. It is expressly agreed that Zambelli shall not inspect any area other than the Display Area, except to ensure that any Spectator or Parking Areas are outside the Display Area.
7. Prior to, during, and immediately following the Display, Client shall monitor the Display Area and will be solely responsible to keep all persons and property not authorized by Zambelli out of the Display Area and behind safety zone lines and limits.
8. Following the Display, Client shall be solely responsible for policing of the Display Area and for cleanup except as specifically provided in the sentence immediately following. Zambelli shall be responsible for the removal of unexploded fireworks and the cleanup of material debris, the removal of frames, sets and lumber from the Discharge Area, and the refilling of holes created by Zambelli or on behalf of Zambelli within the Discharge Area.
9. Client will include a direct reference to "Zambelli Fireworks" in all promotional material, including but not limited to event schedules; radio, television, newspaper and internet announcements; newspaper articles; and other media.

The parties, intending to be legally bound, mutually agree as follows:

10. It is agreed and understood by the parties hereto that should inclement weather prevent firing of the Display on the Display Date, as determined by the Authority Having Jurisdiction (as defined in paragraph 14 below) or as reasonably determined by Zambelli, then the program shall be postponed and fired on the Postponement Date. If there is no Postponement Date and the Display is not fired on the Display Date, or if inclement weather prevents firing of the Display on the Postponement Date, as determined by the Authority Having Jurisdiction or as reasonably determined by Zambelli, the Display will be cancelled and Client will pay to Zambelli, 50% of the Purchase Price, less any Deposit paid prior to the Display Date.
11. Client's cancellation of the Display will only be effective upon receipt by Zambelli of a written notice from an authorized person representing Client. In the event of cancellation of the Display, the parties agree as follows:

- (a) If Client cancels the Display more than sixty-one (61) days prior to the Display Date, Client agrees to pay Zambelli a cancellation fee equal to ten percent (10%) of the Purchase Price plus Additional Third Party Charges, as defined below.
 - (b) If Client cancels the Display from thirty-one (31) to sixty (60) days prior to the Display Date, Client agrees to pay Zambelli a cancellation fee equal to twenty percent (20%) of the Purchase Price plus Additional Third Party Charges, as defined below.
 - (c) If Client cancels the Display from five (5) to thirty (30) days prior to the Display Date, Client agrees to pay Zambelli a cancellation fee equal to thirty percent (30%) of the Purchase Price plus Additional Third Party Charges, as defined below.
 - (d) If Client cancels the Display less than five (5) days prior to the day of the Display, Client agrees to pay Zambelli a cancellation fee equal to fifty percent (50%) of the Purchase Price plus Additional Third Party Charges, as defined below.
 - (e) "Additional Third Party Charges" shall mean all costs and expenses incurred by Zambelli and paid or payable to third parties in connection with the Display, including but not limited to security fees, permits and licensing fees and expenses, barge and tow expenses, and firewatch fees.
12. Zambelli reserves the exclusive right to make minor modifications and substitutions to the Display, provided that such changes are reasonable and necessary and do not materially, adversely affect price, time of delivery, functional character or performance of the Display.
 13. It shall be within Zambelli's and/or the Authority Having Jurisdiction's discretion to terminate the firing of the Display if any unsafe or unsuitable condition is identified. If such condition is not corrected, Zambelli may cancel the Display without further liability to Client for such cancellation.
 14. The parties agree to cooperate with the regulatory authorities having jurisdiction over the Display, including, but not limited to local fire and police departments, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of Transportation, the Department of Homeland Security, and the USCG (any such authority having jurisdiction over the Display is sometimes referred to herein as, the "Authority Having Jurisdiction"). The parties acknowledge that such governmental regulatory authorities having jurisdiction over the Display have the right to prohibit the Display until unsafe or unsuitable conditions are corrected.
 15. This contract shall be deemed made in the Commonwealth of Pennsylvania and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, excluding its conflict of law rules. The parties agree and consent to the jurisdiction of the courts of the Commonwealth of Pennsylvania and the Federal District Court for the Western District of Pennsylvania to decide all disputes regarding this Contract.
 16. If Client becomes bankrupt or insolvent, or if a petition in bankruptcy is filed by or against Client or if a receiver is appointed for Client, Zambelli may refuse to perform under this Contract and may terminate this Contract without prejudice to the rights of Zambelli. If Client's financial condition becomes unsatisfactory to Zambelli, Zambelli may require that Client deposit the balance of the Purchase Price in escrow or provide sufficient proof of its ability to pay the balance of the Purchase Price.
 17. Except to the extent, if any, specifically provided to the contrary herein, in no event shall Zambelli be liable to Client for any indirect, special, consequential, incidental or punitive damages or lost profits, however caused and on any theory of liability (including negligence of any kind, strict liability or tort) arising in any way out of this contract, whether or not Zambelli has been advised of the possibility of damages.
 18. If Client fails to pay the monies due under this Contract, Zambelli is entitled to recover the balance due plus interest at one and one-half percent (1 ½ %) per month on amounts past due sixty (60) days or more. Further, on balances outstanding one hundred twenty (120) days or more, Zambelli is entitled to recover the balance due, plus accrued interest, plus attorneys fees of ten percent (10%) of the amount past due, plus court costs, or, if less, the maximum amount permitted by law.
 19. This Contract shall not be construed to create a partnership or joint venture between the parties or persons mentioned herein.
 20. Each party hereunder shall be excused for the period of delay in the performance of any of its obligations hereunder and shall not be liable for failure to perform or considered in default hereunder, when prevented from so performing by a cause or causes beyond its reasonable control, including but not limited to fire, storm, earthquake,

flood, drought, accident, explosion, operation malfunction, or interruption, strikes, lockouts, labor disputes, riots, war (whether or not declared or whether or not the United States is a member), Federal, state, municipal or other governmental legal restriction or limitation or compliance therewith, failure or delay of transportation, shortage of, or inability to obtain materials, supplies, equipment, fuel, power, labor or other operational necessity, interruption or curtailment of power supply, or act of God, nature or public enemy.

- 21. This Contract constitutes the sole and entire understanding of the parties with respect to the matters contemplated hereby and supersedes and renders null and void all prior negotiations, representations, agreements and understandings (oral and written) between the parties with respect to such matters. No change or amendment may be made to this Contract except by an instrument in writing signed by each of the parties.
- 22. Notices, consents, requests or other communications required or permitted to be given by either party pursuant to this Contract shall be given in writing by first class mail, postage prepaid addressed as follows: if to Zambelli, to the address set forth below; if to Client, to **Dormont Day Committee, 1444 Hillsdale Avenue, Pittsburgh, PA 15216.**
- 23. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument. The exchange of copies of this Contract and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Contract as to the parties and may be used in lieu of the original Contract for all purposes. This Contract and all the rights and powers granted by this Contract shall bind and inure to the benefit of the parties and their respective successors and assigns.
- 24. ** For same show value as 2015

IN WITNESS WHEREOF, we set our hands and seals to the agreement in duplicate the day and year first above written.

FOR Client:

FOR: Zambelli Fireworks Manufacturing Co.

BY _____
date

BY _____
date

Please sign contract where indicated for Client and return all copies for final acceptance to:

Zambelli Fireworks Manufacturing Co.
20 South Mercer Street
New Castle, PA 16101

724-658-6611 800-245-0397 FAX 724-658-8318

Zambelli Fireworks
 20 South Mercer Street
 New Castle, PA 16101

724-658-6611

www.zambellifireworks.com

(Fax) 724-658-8318

Communication Sheet

Communications Sheet must be completed in its entirety each year. *Our insurance carrier requires a newly completed form each year.* A Zambelli representative will use this sheet to contact you.

Customer Information		Show Information	
Customer Name	_____	Show Date	_____
Address	_____	Rain Date	_____
City, State, Zip	_____	Time of Show	_____
		Duration of Show	_____
Firing Site Location		Storage Site Location	
Description	_____	Description	_____
Site contact Name	_____	Site Contact Name	_____
Phone Number	_____	Phone Number	_____
Address	_____	Address	_____
City, State, Zip	_____	City, State, Zip	_____
Contact Person		Alternate Contact #1	
Name	_____	Name	_____
Address	_____	Address	_____
City, State, Zip	_____	City, State, Zip	_____
Home Phone Number	_____	Home Phone Number	_____
Fax Number	_____	Fax Number	_____
Office Number	_____	Office Number	_____
Cell Number	_____	Cell Number	_____
E-Mail	_____	E-Mail	_____
Alternate Contact #2		Day of Show Contact	
Name	_____	Name	_____
Address	_____	Address	_____
City, State, Zip	_____	City, State, Zip	_____
Home Phone Number	_____	Home Phone Number	_____
Fax Number	_____	Fax Number	_____
Office Number	_____	Office Number	_____
Cell Number	_____	Cell Number	_____
E-Mail	_____	E-Mail	_____

Suggested Routing from New Castle:

SAFE SHOWS ARE A RESULT OF PROPER PLANNING!

Zambelli Fireworks
20 South Mercer Street
New Castle, PA 16101

www.zambellifireworks.com

724-658-6611

(Fax) 724-658-8318

Required Insurance Requisition Form

Customer Name _____

Address _____

City _____ State _____ Zip _____

Display Date _____ Display Duration _____

Location of Display _____

City _____ State _____ Zip _____

Name all Additional Insured

Name & Address of Display Site Property Owner

Certificate to be issued to: _____

Address _____

City _____ State _____ Zip _____

Title _____ Phone _____

*** This form must be returned with your signed contract in order for the insurance certificate to be processed. Our insurance company requires that we have this form in addition to the signed contract prior to the certificate being issued.**



SERVICES AGREEMENT

between

JEFF ELLIS MANAGEMENT, LLC

and

BOROUGH OF DORMONT

dated as of

January 22th, 2016

TABLE OF CONTENTS

ARTICLE I DEFINITIONS.....1

ARTICLE II SERVICES3

ARTICLE III SERVICE PROVIDER'S OBLIGATIONS4

ARTICLE IV CUSTOMER'S OBLIGATIONS4

ARTICLE V CHANGE ORDERS5

ARTICLE VI TERM.....6

ARTICLE VII FEES AND EXPENSES; PAYMENT TERMS.....6

ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP.....7

ARTICLE IX CONFIDENTIAL INFORMATION.....8

ARTICLE X REPRESENTATIONS AND WARRANTIES9

ARTICLE XI INDEMNIFICATION10

ARTICLE XII LIMITATION OF LIABILITY11

ARTICLE XIII TERMINATION; EFFECT OF TERMINATION.....12

ARTICLE XIV INSURANCE13

ARTICLE XV NON-SOLICITATION.....14

ARTICLE XVI NON-EXCLUSIVITY.....14

ARTICLE XVII FORCE MAJEURE14

ARTICLE XVIII MISCELLANEOUS.....15

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the "**Agreement**"), dated as of January 22nd, 2016 (the "**Effective Date**"), is by and between Jeff Ellis Management, LLC a Florida limited liability company, with offices located at 11732 Delwick Dr.; Windermere, FL 34786 (the "**Service Provider**") and Borough of Dormont, with offices located at 1444 Hillsdale Ave., Dormont, PA 15216 (the "**Customer**").

WHEREAS, Customer owns certain aquatic facilities and desires to retain Service Provider to provide certain aquatic facility management services upon the terms and conditions hereinafter set forth, and Service Provider is willing to perform such services.

In consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

ARTICLE I DEFINITIONS

"**Action**" has the meaning set forth in **Section 11.01**.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**Change Order**" has the meaning set forth in **Section 5.02**.

"**Confidential Information**" means any information that is treated as confidential by a party, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing. Confidential Information shall not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

"**Customer**" has the meaning set forth in the preamble.

"**Customer Contract Manager**" has the meaning set forth in **Section 4.01(a)**

"Customer Equipment" means including but not limited to any equipment, facilities, water attractions, pools, filtration systems on Customer property and used directly or indirectly in the provision of the Services.

"Customer Materials" any documents, data, know-how, methodologies, manuals, and other materials provided to Service Provider by Customer.

"Deliverables" means if applicable, all documents, work product and other materials that are delivered to Customer hereunder or prepared by or on behalf of Service Provider in the course of performing the Services, including any items identified as such in the Statement of Work (such as "The Comprehensive Aquatic Risk Management Program" manual published by Jeff Ellis & Associates, Inc.).

"Disclosing Party" means a party that discloses Confidential Information under this Agreement.

"Force Majeure Event" has the meaning set forth in **Section 17.01**.

"Intellectual Property Rights" means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"Losses" mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"Permitted Subcontractor" has the meaning set forth in **Section 3.01(e)**.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

"Pre-Existing Materials" means the pre-existing materials specified in the Statement of Work, all documents, data, know-how, methodologies, manuals and other materials, provided by or used by Service Provider in connection with performing the Services, in each case developed or acquired by the Service Provider prior to the commencement or independently of this Agreement.

"**Receiving Party**" means a party that receives or acquires Confidential Information directly or indirectly under this Agreement.

"**Service Provider**" has the meaning set forth in the preamble.

"**Service Provider Contract Manager**" has the meaning set forth in **Section 3.01(a)**.

"**Service Provider Equipment**" means any equipment provided by or on behalf of Service Provider and used directly or indirectly in the provision of the Services.

"**Service Provider Personnel**" means all employees and Permitted Subcontractors, if any, engaged by Service Provider to perform the Services.

"**Services**" mean any services to be provided by Service Provider under this agreement, as described in more detail in the Statement of Work, and Service Provider's obligations under this Agreement.

"**Statement of Work**" means each Statement of Work entered into by the parties and attached to this Agreement, substantially in the form of Exhibit A.

"**Term**" has the meaning set forth in **Article VI**.

ARTICLE II SERVICES

Section 2.01 Service Provider shall provide the Services to Customer as described in more detail in each Statement of Work, attached hereto as Exhibit A and incorporated herein by reference, and in accordance with the terms and conditions of this Agreement. Additional Statements of Work may be entered into under this Agreement for additional services upon the mutual agreement of the parties in writing.

Section 2.02 Each Statement of Work shall include the following information, if applicable:

- (a) a detailed description of the Services to be performed pursuant to the Statement of Work;
- (b) the date upon which the Services will commence and the term of such Statement of Work;
- (c) the names of the Service Provider Contract Manager;
- (d) the fees to be paid to Service Provider under the Statement of Work;
- (e) an operating schedule, if applicable; and
- (f) any other terms and conditions agreed upon by the parties in connection with the Services to be performed pursuant to such Statement of Work.

ARTICLE III
SERVICE PROVIDER'S OBLIGATIONS

Section 3.01 The Service Provider shall:

(a) appoint: a Service Provider employee to serve as a primary contact with respect to this Agreement and who will have the authority to act on behalf of Service Provider in connection with matters pertaining to this Agreement (the "**Service Provider Contract Manager**"); and

(b) maintain the same Service Provider Contract Manager throughout the Term of this Agreement except for changes in such personnel due to:

(i) Customer's request pursuant to **Section 3.01(c)**; or

(ii) the resignation or termination of such personnel or other circumstances outside of Service Provider's reasonable control;

(c) upon the reasonable written request of Customer, promptly replace the Service Provider Contract Manager and any other Service Provider Personnel; before the date on which the Services are to start, obtain, and at all times during the Term of this Agreement maintain, all necessary licenses and consents and comply with all relevant Laws applicable to the provision of the Services;

(d) comply with, and ensure that all Service Provider Personnel comply with, all rules, regulations and policies of Customer that are communicated to Service Provider in writing, including building security procedures, general health and safety practices and procedures, and the Customer's drug and alcohol policies; and

(e) engage additional Persons needed to provide any Services to Customer (each such approved subcontractor or other third party, a "**Permitted Subcontractor**").

Section 3.02 Service Provider is responsible for all Service Provider Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

ARTICLE IV
CUSTOMER'S OBLIGATIONS

Section 4.01 Customer shall:

(a) cooperate with Service Provider in all matters relating to the Services and appoint and, in its reasonable discretion, place a Customer employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of Customer with respect to matters pertaining to this Agreement (the "**Customer Contract Manager**");

(b) provide, subject to **Section 3.01(d)**, such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Service Provider and agreed with Customer in writing in advance, for the purposes of performing the Services;

(c) respond promptly to any Service Provider request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of this Agreement;

(d) provide such information as Service Provider may request, in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects;

(e) ensure that all Customer Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant legal or industry standards or requirements obtain and maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services, before the date on which the Services are to start;

(f) keep, maintain and insure the Service Provider Equipment in good condition, and shall not dispose of or use Service Provider Equipment other than in accordance with Service Provider's written instructions or authorization.

Section 4.02 If Service Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees outside of Service Provider's reasonable control, Service Provider shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

ARTICLE V CHANGE ORDERS

Section 5.01 If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other in writing. Service Provider shall, within a reasonable time after such request, provide a written estimate to Customer of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the fees and other charges for the Services arising from the change;
- (c) the likely effect of the change on the Services; and
- (d) any other impact the change might have on the performance of this Agreement.

Section 5.02 Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither party shall be

bound by any Change Order unless mutually agreed upon in writing in accordance with **Section 18.10**.

ARTICLE VI TERM

This Agreement shall commence as of May 28th, 2016 and shall continue until September 5th, 2016, unless sooner terminated pursuant to **Article XIII**. Upon such termination, Customer shall pay all outstanding invoices for Services completed through the effective date of cancellation.

In addition to any remedies that may be provided under this Agreement, Service Provider may terminate this Agreement within ten (10) days upon written notice to Customer, if Customer does not pay past due account balances within ten (10) days from the receipt of written notice of a past due account.

ARTICLE VII FEES AND EXPENSES; PAYMENT TERMS

Section 7.01 In consideration of the provision of the Services by the Service Provider to Customer under this Agreement, Customer shall pay the fees set forth in Exhibit B. Payment to Service Provider of such fees and the reimbursement of expenses pursuant to this **Article VII**.

Section 7.02 Where the Services are provided on a time and materials basis:

(a) the fees payable for the Services shall be calculated in accordance with Service Provider's hourly fee rates for the Service Provider Personnel set forth in Exhibit B;

(b) Service Provider shall issue invoices to Customer monthly in arrears for its fees for time for the immediately preceding month, calculated as provided in this **Section 7.02**, together with a detailed breakdown of any expenses for such month incurred in accordance with **Section 7.04**.

Section 7.03 Where Services are provided for a fixed price, the total fees for the Services shall be the amount set out in the applicable Statement of Work. The total price shall be paid to Service Provider in installments, as set out in the Statement of Work. At the end of a period specified in the applicable Statement of Work in respect of which an installment is due, Service Provider shall issue invoices to Customer for the fees that are then payable, together with a detailed breakdown of any expenses incurred in accordance with **Section 7.04**.

Section 7.04 Customer agrees to reimburse Service Provider for all out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services.

Section 7.05 The parties agree that after the Term for Services provided on a time and materials basis, Service Provider may increase its standard fee rates specified in the applicable Statement of Work upon written notice to Customer; *provided, that*:

- (a) Service Provider provides Customer written notice of such increase at least ninety (90) days prior to the effective date of such increase;
 - (b) such increases occur no more frequently than once per contract year of the Term;
- and
- (c) the amount of such increase shall not exceed five percent (5%).

Section 7.06 Service Provider shall issue invoices to Customer only in accordance with the terms of this Section, and Customer shall pay all properly invoiced amounts due to Service Provider within fifteen (15) days after Customer's receipt of such invoice, except for any amounts disputed by Customer in good faith. All payments hereunder shall be in US dollars and made by check or wire transfer. Service Provider shall assess a 1.5% monthly finance charge on all past due account balances. In the event Customer does not pay past due account balances within ten (10) days from the receipt of written notice of a past due account, Service Provider may suspend or terminate services provided to Customer upon twenty-four hour advance written notice to Customer.

Section 7.07 In the event Customer has a reasonable dispute as to the time or expenses submitted or any portion of an invoice, Customer shall provide written notice of such dispute to Service Provider. The parties shall use reasonable efforts to quickly resolve any such disputes. If Service Provider disputes Customer's contention that appropriate grounds exist for withholding payments, it may suspend the performance of Services hereunder until settlement or resolution of the issue, without being in default of this Agreement.

Section 7.08 Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; *provided, that*, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Service Provider's income, revenues, gross receipts, personnel or real or personal property or other assets.

ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP

Section 8.01 Service Provider and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to the Pre-Existing Materials, including all Intellectual Property Rights therein. Service Provider hereby grants Customer a limited, irrevocable, perpetual, fully paid-up, royalty-free, non-transferable (except in accordance with **Section 18.07**), non-sublicenseable, worldwide license to use, perform, display, execute, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have

made, sell, offer to sell and otherwise exploit any Pre-Existing Materials to the extent incorporated in, combined with or otherwise necessary for the use of the Deliverables to the extent reasonably required in connection with Customer's receipt or use of the Services and Deliverables. All other rights in and to the Pre-Existing Materials are expressly reserved by Service Provider.

Section 8.02 Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein. Service Provider shall have no right or license to use any Customer Materials except solely during the Term of the Agreement to the extent necessary to provide the Services to Customer. All other rights in and to the Customer Materials are expressly reserved by Customer.

ARTICLE IX CONFIDENTIAL INFORMATION

Section 9.01 The Receiving Party agrees:

(a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; *provided, however*, that the Receiving Party may disclose the Confidential Information of the Disclosing Party 1) as required by law, and/or 2) to its and its Affiliates, and their officers, employees, consultants and legal advisors who have a "need to know", who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this **Article IX**;

(b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement or, in the case of Customer, to make use of the Services and Deliverables; and

(c) to immediately notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

Section 9.02 If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide:

(a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and

(b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing

Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

Section 9.03 Nothing in this Agreement shall prevent either party from using any general methodologies or know-how contained in the unaided memory of such party's personnel or those of its Affiliates developed or disclosed under this Agreement, provided that in doing so it is not in breach of its obligations of confidentiality under this Section or using any Intellectual Property Rights of the other party or any of its Affiliates.

Section 9.04 The parties agree that pursuant to the Right-to-Know Law, 65 P.S. 67.101, et seq., as amended, this Agreement does not constitute Confidential Information.

ARTICLE X REPRESENTATIONS AND WARRANTIES

Section 10.01 Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;
- (b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and
- (d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

Section 10.02 Service Provider represents and warrants to Customer that:

- (a) it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement;
- (b) it shall perform the Services in compliance with all applicable laws in performance of its obligations under this Agreement;
- (c) the Services and Deliverables will be in conformity in all material respects with all requirements or specifications stated in this Agreement and the applicable Statement of Work. In the event of Service Provider's breach of the foregoing warranty, Service Provider's sole and exclusive obligation and liability and Customer's sole and exclusive remedy shall be as follows:

(i) The Service Provider shall use reasonable efforts to cure such breach; *provided, that* if Service Provider cannot cure such breach within a reasonable time (but no more than 30 days) after Customer's written notice of such breach; Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with **Section 18.04**.

(ii) In the event the Agreement is terminated in accordance with this **Section 10.02(c)**, Service Provider shall within 30 days after the effective date of termination, refund to Customer any fees paid by the Customer as of the date of termination for such Service or Deliverable less a deduction equal to the fees for receipt or use of such Deliverables or Service up to and including the date of termination on a pro-rated basis.

(iii) The foregoing remedy shall not be available unless Customer provides written notice of such breach within 30 days after performance of such Service.

Section 10.03 EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT SERVICE PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT.

ARTICLE XI INDEMNIFICATION

Section 11.01 Service Provider shall defend, indemnify and hold harmless Customer and its officers, directors, employees, agents, successors and permitted assigns (each, a "**Customer Indemnity**") from and against all Losses awarded against a Customer Indemnity in a final judgment arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**") arising out of or resulting from:

(a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the negligent, willful, fraudulent or grossly negligent acts or omissions of Service Provider or Service Provider Personnel in the performance of the Services; and

(b) Service Provider's material breach of any representation, warranty or obligation of Service Provider set forth in this **Section 10.01** or **Section 10.02** of this Agreement.

Section 11.02 Customer shall defend, indemnify and hold harmless Service Provider and Service Provider's Affiliates and their officers, directors, employees, agents, successors and permitted assigns from and against all Losses awarded against Service Provider in a final judgment arising out of or resulting from any third party Action arising out of or resulting from:

(a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the negligent, grossly negligent or willful acts or omissions of Customer and any and all claims arising from the operation and activities at the aquatic facility beyond the scope of work and performance of Services under this contract by the Service Provider or Service Provider Personnel ; and

(b) Customer's material breach of any representation, warranty or obligation of Customer as set forth in Section 10.01 or 10.02 of this Agreement.

Section 11.03 The party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any Action and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party shall not settle any Action in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed. The indemnified party's failure to perform any obligations under this **Section 11.03** shall not relieve the indemnifying party of its obligations under this **Section 11.03** except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

ARTICLE XII LIMITATION OF LIABILITY

Section 12.01 EXCEPT AS OTHERWISE PROVIDED IN **Section 12.03**, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Section 12.02 EXCEPT AS OTHERWISE PROVIDED IN **Section 12.03**, IN NO EVENT WILL SERVICE PROVIDER'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT OR THE APPLICABLE STATEMENT OF WORK IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

Section 12.03 The exclusions and limitations in **Section 12.01** and **Section 12.02** shall not apply to:

(a) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under **Article VIII** (Intellectual Property Rights; Ownership);

(b) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under **Article IX** (Confidentiality);

- (c) Customer's indemnification obligations under **Section 11.02 (Indemnification)**;
- (d) Service Provider's indemnification obligations under **Section 11.01 (Indemnification)**;
- (e) damages or other liabilities arising out of or relating to a party's gross negligence, willful misconduct or intentional acts;
- (f) death or bodily injury or damage to real or tangible personal property resulting from a party's negligent acts or omissions;
- (g) damages or liabilities to the extent covered by a party's insurance; and
- (h) a party's obligation to pay attorneys' fees and court costs in accordance with **Section 18.05**.

ARTICLE XIII TERMINATION; EFFECT OF TERMINATION

Section 13.01 Either party, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to the other party.

Section 13.02 Either party may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party:

(a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach.

(b) (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

Section 13.03 Upon expiration or termination of this Agreement for any reason:

(a) Service Provider shall (i) promptly deliver to Customer all Deliverables (whether complete or incomplete) for which Customer has paid, and all Customer Materials, (ii) promptly remove any Service Provider Equipment located at Customer's premises, (iii) provide reasonable cooperation and assistance to Customer upon Customer's written request and at Customer's expense in transitioning the Services to an alternate Service Provider, and (iv) on a pro rata basis, repay all fees and expenses paid in advance for any Services or Deliverables which have not been provided.

(b) Each party shall (i) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information, (ii) permanently erase all of the other party's Confidential Information from its computer systems and (iii) certify in writing to the other party that it has complied with the requirements of this clause.

(c) In no event shall Customer be liable for any Service Provider Personnel termination costs arising from the expiration or termination of this Agreement.

Section 13.04 The rights and obligations of the parties set forth in this **Section 13.04** and **Article I, Article VIII, Article IX, Article X, Article XII, Section 13.03, Article XIV, Article XV, and Article XVIII**, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

ARTICLE XIV INSURANCE

Section 14.01 At all times during the Term of this Agreement, Service Provider shall procure and maintain, at its sole cost and expense, at least the following types and amounts of insurance coverage:

(a) Commercial General Liability with limits no less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate, including bodily injury and property damage, which policy will include contractual liability coverage insuring the activities of Service Provider under this Agreement;

(b) Worker's Compensation with limits no less than the greater of (i) \$1,000,000 or (ii) the minimum amount required by applicable law; and

(c) Commercial Automobile Liability with limits no less than \$1,000,000 combined single limit.

Section 14.02 All insurance policies required pursuant to this **Article XIV** shall:

(a) be issued by insurance companies reasonably acceptable to Customer with a Best's Rating of no less than A-VII;

(b) provide that such insurance carriers give Customer at least 30 days' prior written notice of cancellation or non-renewal of policy coverage; *provided that*, prior to such cancellation, the Service Provider shall have new insurance policies in place that meet the requirements of this **Article XIV**;

(c) waive any right of subrogation of the insurers against the Customer or any of its Affiliates;

(d) name Customer as additional insureds.

Section 14.03 Upon the written request of Customer, Service Provider shall provide Customer with copies of the certificates of insurance and policy endorsements for all insurance coverage required by this **Article XIV**, and shall not do anything to invalidate such insurance. This **Article XIV** shall not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations imposed under this Agreement (including but not limited to, any provisions requiring a party hereto to indemnify, defend and hold the other harmless under this Agreement).

ARTICLE XV NON-SOLICITATION

Section 15.01 During the Term of this Agreement, any Statement of Work, and for a period of twelve (12) months thereafter, neither party shall, directly or indirectly, in any manner solicit or induce for employment any person who performed any work under this Agreement or such Statement of Work who is then in the employment of the other party. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, shall not be construed as a solicitation or inducement for the purposes of this **Section 15.01**, and the hiring of any such employees or independent contractor who freely responds thereto shall not be a breach of this **Section 15.01**.

Section 15.02 If either Service Provider or Customer breaches **Section 15.01**, the breaching party shall, on demand, pay to the non-breaching party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the non-breaching party in replacing such person.

ARTICLE XVI NON-EXCLUSIVITY

The Service Provider retains the right to perform the same or similar type of services for third parties during the Term of this Agreement.

ARTICLE XVII FORCE MAJEURE

Section 17.01 No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation:

- (a) acts of God;

- (b) flood, fire or explosion;
- (c) war, invasion, riot or other civil unrest;
- (d) actions, embargoes or blockades in effect on or after the date of this Agreement;
- (e) national or regional emergency;
- (f) strikes, labor stoppages or slowdowns or other industrial disturbances;
- (g) compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent;
- (h) shortage of adequate power or telecommunications or transportation facilities; or
- (i) any other event which is beyond the reasonable control of such party

(each of the foregoing, a "**Force Majeure Event**"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

Section 17.02 During the Force Majeure Event, the non-affected party may similarly suspend its performance obligations until such time as the affected party resumes performance.

Section 17.03 The non-affected party may terminate this Agreement or any affected Statement of Work if such failure or delay continues for a period of thirty (30) days or more and, if the non-affected party is Customer, receive a refund of any amounts paid to the Service Provider in advance for the affected Services. Unless this Agreement is terminated in accordance with this **Section 17.03**, the Term of this Agreement shall be automatically extended by a period equal to the period of suspension.

ARTICLE XVIII

MISCELLANEOUS

Section 18.01 Each party shall, upon the reasonable request, and at the sole cost and expense, of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

Section 18.02 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

Section 18.03 Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks, service marks, trade names, logos, symbols or brand names, in each case, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

Section 18.04 All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 18.04**).

If to Service Provider:

Jeff Ellis Management, LLC
Attention: Elaine Ellis-Quest
PO Box 2160
Windermere, FL 34786
Facsimile: 800-787-8950

with a copy to (which shall not constitute notice):

Akerman LLP
Attention: Rema Awad, Esq.
50 North Laura Street
Suite 3100
Jacksonville, Florida 32202
Facsimile: 904.598.3984

If to Customer:

Borough Manager
Borough of Dormont
1444 Hillsdale Avenue
Dormont, Pennsylvania 15216
Facsimile: 412- 561-7805

Section 18.05 For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or"

is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, Exhibits and Statements of Work refer to the Sections of, and Schedules, Exhibits and Statements of Work attached to this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules, Exhibits and Statements of Work referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 18.06 This Agreement, together with all Schedules, Exhibits and Statements of Work and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Schedule, Exhibit or Statement of Work, the following order of precedence shall govern: (a) first, this Agreement, exclusive of its Exhibits and Schedules; (b) second, the applicable Statement of Work; and (c) third, any Exhibits and Schedules to this Agreement.

Section 18.07 Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; *provided, that*, upon prior written notice to the other party, either party may assign the Agreement to an Affiliate of such party or to a successor of all or substantially all of the assets of such party through merger, reorganization, consolidation or acquisition. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 18.08 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

Section 18.09 The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 18.10 This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the

provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 18.11 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 18.12 This Agreement shall be governed by and construed and enforced in accordance with the substantive laws of the State of Pennsylvania. Both parties consent to jurisdiction and venue in state and federal courts of the State of Pennsylvania.

Section 18.13

Section 18.14 Each party acknowledges that a breach by a party of **Article VIII** (Intellectual Property Rights; Ownership) or **Article IX** (Confidentiality) may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

Section 18.15 In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its actual attorneys' fees and court costs from the non-prevailing party.

Section 18.16 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SERVICE PROVIDER

JEFF ELLIS MANAGEMENT, LLC

By _____

Name: Elaine Ellis-Quest

Title: VP of Finance/Business

Date:

CUSTOMER

Borough of Dormont

By _____

Name: John Maggio

Title: Council President

Date:

EXHIBIT A

STATEMENT OF WORK: SERVICES AND DELIVERABLES

Scope

1. Service Provider agrees to provide Services and Deliverables to operate the aquatic facilities owned by the Customer at the following location(s):
2.
 - 1801 Dormont Ave.
Dormont, PA 15216
3. Service Provider will perform the following professional aquatic facility management services for the Customer's aquatic facilities identified above:
 - a. Service Provider shall employ, train, assign, schedule, and supervise Service Provider's employees to safely operate said aquatic facility or facilities pursuant to the guidelines set forth in the "Comprehensive Aquatic Risk Management Program" manual that is published by Jeff Ellis & Associates, Inc. for the term of this Agreement.
 - b. Service Provider will administer, supervise and otherwise manage the daily operations of said aquatic facility or facilities pursuant to the terms of this Agreement.
 - c. Service Provider will provide general cleaning, sanitation, organization, and maintenance of the front gate and/or admissions area, locker rooms, lavatories, showers, pool decks, water attractions, spas, swimming pools, filtration rooms, pumps and other aquatic facility equipment for said aquatic facility or facilities for the term of this Agreement.
 - d. Service Provider will sanitize, vacuum, operate filtration equipment and otherwise monitor water quality for all aquatic facility or facilities spas and swimming pools identified in Appendix A.
 - e. Service Provider will administer, schedule and conduct swimming lessons, coach swim team and provide other aquatic educational/recreational programs for said aquatic facility or facilities for the term of this Agreement as specifically requested by Customer.

- f. Service Provider shall perform the following pre-opening tasks to prepare for daily operation of said aquatic facility or facilities:
 - i. Organize, sanitize, make ready and otherwise prepare the front gate and/or admissions area for a timely opening according to the published aquatic facility-operating schedule mutually agreed upon by Service Provider and Customer.
 - ii. Organize, sanitize, make ready and otherwise prepare the locker rooms, lavatories, and showers for daily operation.
 - iii. Organize, sanitize, make ready and otherwise prepare pool decks, furniture, water attractions, spas, and swimming pools for daily operation.
 - iv. General Operation of swimming pool filtration equipment to achieve optimal water quality. Service Provider will notify Customer of any problems observed.
 - v. For dates and times identified in the Operating Schedule only, Service Provider will distribute, ready and position emergency rescue equipment for use.

- g. Service Provider shall perform the following daily operational services for said aquatic facility or facilities:
 - i. For dates and times identified in the Operating Schedule only, Service Provider will assign and schedule the aquatic facility manager and/or supervisor to provide management oversight for daily operation.
 - ii. For dates and times identified in the Operating Schedule only, Service Provider will assign and schedule the lifeguards and/or attendants to provide general supervision for daily operations.
 - iii. Maintain general cleanliness of the aquatic facility premises during daily operation.

- h. Service Provider shall perform the following closing tasks at the end of daily operation for said aquatic facility or facilities:
 - i. Collect and remove trash from all facility trash receptacles.
 - ii. For dates and times identified in the Operating Schedule only, Service Provider will collect and store the emergency rescue equipment provided by Service provider..

- iii. Organize, sanitize, make ready and otherwise prepare the front gate and/or admissions area for a timely opening according to the published aquatic facility-operating schedule.
 - iv. Organize, sanitize, make ready and otherwise prepare the locker rooms, lavatories, and showers for daily operation.
 - v. Organize, sanitize, make ready and otherwise prepare pool decks, furniture, water attractions, spas, and swimming pools for daily operation.
 - vi. General Operation and monitoring of swimming pool filtration equipment to achieve optimal water quality.
4. For dates and times identified in the Operating Schedule only, Service Provider will provide, maintain and operate the following emergency rescue equipment for said aquatic facility or facilities:
- a. Automatic External Deliberator
 - b. Supplemental Oxygen Support Unit
 - c. Bag Valve Mask
 - d. Oral Suction Device
 - e. Seal Easy Mask(s)
 - f. Rescue Tube(s)
 - g. Life Jacket(s)
 - h. Spinal Management and Extrication Board
5. Service Provider develop an Emergency Action Plan pursuant to the guidelines set forth in the “Comprehensive Aquatic Risk Management Program” manual published by Jeff Ellis & Associates, Inc. for said aquatic facility or facilities.

Operating Schedule

1. Service Provider shall operate said aquatic facility or facilities according to the terms set forth in the operating schedule submitted and mutually agreed upon by the Service Provider and Customer as described in Exhibit C.
2. Service Provider reserves the right to temporarily close said aquatic facility or facilities for sanitation or biohazard incidents, weather or chemical emergencies, when ambient air temperatures fall below sixty-seven degrees Fahrenheit (67 ° F), or when safety of guests is compromised. Service Provider agrees to notify Customer when temporarily aquatic facility closings occur and provide an explanation for said closing. Customer agrees to re-open said aquatic facility or facilities when said hazard is rectified or eliminated.

EXHIBIT B

SERVICE FEES

Service Provider's Management Fee	\$3,000
Insurance (General Liability)	\$2,739.22
Labor	\$110,323.14
Maintenance Support	\$0
Logistical Support	\$0
Administrative Fee	\$350
Annual Consulting Agreement Total Cost	\$116,412.36

Payment Schedule

Amount Due on or before 5/1/2016	Amount Due on or before 6/1/2016	Amount Due on or before 7/1/2016	Amount Due on or before 8/1/2016
\$29,103.09	\$29,103.09	\$29,103.09	\$29,103.09

Customer agrees to deliver above installment payments by check to Service Provider's business address by the specified delivery dates as follows or by wire transfer:

Jeff Ellis Management, LLC.
Attention: Elaine Ellis-Quest
PO Box 2160
Windermere, FL 34786
(800) 742-8720

EXHIBIT C

OPERATING SCHEDULE

Service Provider agrees to operate and staff said aquatic facility or facilities pursuant to the terms specified by the following agreed upon operating schedule:

May 2016	Operating Dates 28, 29 31 30	Operating Times 12PM to 8PM 4PM to 8PM 12PM to 6PM
June 2016	Operating Dates 1-3, 6-10 4, 5, 11-30	Operating Times 4PM to 8PM 12PM to 8PM
July 2016	Operating Dates 1-3, 5-31 4	Operating Times 12PM to 8PM 12PM to 6PM
August 2016	Operating Dates 1-21, 27, 28 22-26, 29-31	Operating Times 12PM to 8PM 4PM to 8PM
September 2016	Operating Dates 5 1, 2 3, 4	Operating Times 12 PM to 3PM 4PM to 8PM 12PM to 8PM

The Service Provider adds 30 minutes prior to opening and 30 minutes after closing for a total of one additional hour per operating day to the above operating schedule to allow its employees to complete pre-opening and post-closing responsibilities. Accordingly, on additional labor hours is factored into daily operating schedule shown above.