

MANAGEMENT AGREEMENT

between

POWER WELLNESS MANAGEMENT, LLC.

and

VILLAGE OF ORLAND PARK

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MANAGEMENT AGREEMENT

THIS AGREEMENT is effective as of the 2nd day of _____, 2017 ("Effective Date"), by and between **VILLAGE OF ORLAND PARK**, an Illinois home rule municipal corporation ("Client") and **POWER WELLNESS MANAGEMENT, LLC**, an Illinois limited liability company ("Manager").

RECITALS:

WHEREAS, Client operates Health and Fitness Center ("Fitness Center") which is located in Orland Park, Illinois, (the "Facility"), integrating fitness and health promotion and education.

WHEREAS, Fitness Center will provide among other services, fitness assessments, personal training, medically supervised fitness programs and child care at the Facility ("Fitness Services");

WHEREAS, Manager is a specialist in the field of Fitness Services and management; and

WHEREAS, Client desires to engage Manager to manage the Fitness Services on behalf of Client, and Manager desires to accept such engagement.

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the parties hereto do hereby agree as follows:

Section 1. TERM.

(a) The term of this Agreement (the "Term") shall commence on January 2, 2017 and shall continue for three (3) years. The parties may agree to extend the term by mutual written consent at least 90 days prior to the expiration of the Agreement term. Either party may terminate this Agreement at any time by providing 90 days written notice or, in the event of a breach by a party, as set forth in Section 8.

(b) Upon termination of this Agreement, except as otherwise provided in this Agreement, Client shall promptly (within five (5) days) return to Manager Work Product pursuant to Section 21 and all property and confidential information (marked as "Confidential") of Manager in Client's possession or control (which shall include property and confidential information in the possession or control of Client's contractor or subcontractor), including all copies thereof. Manager, within five (5) days, shall return to Client all Client Property and confidential information in the possession or control of Manager pursuant to Section 21. Upon termination of this Agreement, Manager shall not retain, remove or copy Client's Property in any format.

(c) In the event of termination or expiration of this Agreement for any reason, neither party shall have any further obligations hereunder, except for obligations accruing prior to the date of termination and the obligations surviving in accord with specific provisions of this Agreement, including without limitation the responsibility for indemnification and confidentiality.

Section 2. USE AND OPERATION OF THE FACILITIES.

2.1 Use and Standard of Operation.

(a) Pursuant to the terms of this Agreement, Manager shall, as agent of Client, manage the Fitness Services portion of the Facilities and provide Fitness Services for external client engagements coordinated by Client. Subject to the specific limitations set forth in this Agreement, Manager, shall conduct the daily operations of the Fitness Services portion of the Facilities. Manager shall also have the right, after consultation with and approval of Client, to determine, subject to the Operating Budget, the terms of labor policies (including wage rates, the hiring and discharging of employees, and the installation of employee retirement or other benefit plans), and all phases of promotion and publicity relating to the Fitness Services. The Manager shall not manage any portion of the Facility used for the provision of rehabilitative or therapeutic programs or medical office space leased to private physicians or hospitals. All acts performed by Manager pursuant to the terms of this Agreement shall be for the account of Client and at Client's expense, except such acts which are in breach of this Agreement or outside the scope of Manager's authority under this Agreement or which constitute negligence or willful misconduct. All such services to be performed by Manager pursuant to this Agreement ("Management Services") are detailed in EXHIBIT A attached hereto and made a part hereof.

(b) In general, all employees responsible for providing Fitness Services will be the employees of Manager. Client will approve invoice received from the Manager for the Fitness Centers' wages monthly on the 10th day of each month for the total aggregate compensation for the current month, including payroll taxes, fringe benefits, and Manager's general liability and worker compensation insurance (see Section 6), (deemed to currently equal to 27% of payroll wages, to be adjusted in accordance with market conditions for such costs as evidenced to and agreed to by Client) and annual performance bonuses as approved by Client. Client will also reimburse Manager for any travel expenses, approved in advance by Client, of employees of Manager (excluding the project executive) working on matters directly related to operations of the Fitness Services. Manager shall be responsible for remitting all employment taxes to the applicable governmental entity. A true up will occur on a monthly basis and any over payment or under payment of total aggregate compensation will be reflected on the subsequent month's invoice.

(c) Manager shall and does hereby indemnify, defend and hold harmless Client and its Trustees, officers, employees, agents, successors and assigns against and from any and all claims, demands, actions and suits, ("Claims") proceedings, costs, expenses, damages and liabilities, including reasonable attorney's fees arising out of, connected with or resulting from the payroll taxes, benefits, bonuses and pension plan monies paid or withheld from Manager's employees.

(d) Notwithstanding anything to the contrary contained in this Agreement, Manager shall be excused from its obligation to operate the Fitness Services in conformity with the terms of this Agreement to the extent and whenever (i) Manager shall be prevented from compliance with

such standard by Force Majeure Causes, (ii) there shall occur any material breach by Client of any provision hereof, and (iii) there is herein provided a limitation upon Manager's ability to expend funds in respect of the Facilities provided that the failure to expend funds by reason of the operation of such limitation shall reasonably prevent Manager from meeting the terms of this Agreement. For purposes hereof, "Force Majeure Causes" shall mean causes beyond the reasonable control of Manager, including casualties, war, insurrection, strikes, lockouts, material shortages and governmental actions. It is expressly understood and agreed that each and every provision contained in this Agreement pursuant to which Manager is excused from its obligation to operate the Facilities in conformity with the terms of this Agreement shall operate without prejudice to any other remedy (including the right to terminate this Agreement) which Manager shall have under the terms of this Agreement.

(e) Notwithstanding anything to the contrary herein above, Manager shall insure that all of the Manager's employees, are competent credential/licensed staff who will attend ongoing education classes and keep their licenses current.

(f) Client acknowledges and agrees that Manager has its own intellectual capital, technical know-how, training and education materials, expertise and best practices that Manager has developed through its general consultant and management services and practices (collectively "Manager Work Product") which is detailed at Section 21. Any Manager Work Product Manager shared with Client shall remain the sole and exclusive property of Manager. Client agrees to return to Manager, and never to use, all Manager Work Product and all copies in the event this Agreement is terminated by either party.

2.2 Leases and Concessions. Manager shall not, without the approval of Client (which approval shall not be unreasonably withheld), enter into leases or concessions for any Facilities operations or for any other operation in or about the Facilities. Any such lease or concession so approved shall be entered into in Client's name and shall be executed by Client (or Manager, as agent for Client). Manager shall, during the Term, use best efforts to perform, as agent for Client, all of the obligations of Client as land lord or concessionaire under all present or future leases and concessions made or granted with respect to the Facilities. Manager shall during the term hereof use reasonable efforts to perform all of the obligations concerning the granting of concessions and shall use reasonable efforts to collect the sums due from such concessions and shall deposit same in the Operating Accounts.

2.3 Bank Accounts. There shall be deposited within 48 hours of receipt by Manager (or within such other time limits as the Client and Manager agree) in a bank or banks designated by Client and in accounts established in Client's name all monies advanced to the Fitness Services as working capital by Client, and all monies received by Manager from the operations of the Fitness Services ("Operating Accounts"), and Manager shall pay out of the Operating Accounts, to the extent of the funds from time to time therein, all costs and expenses incurred in connection with the operation of the Fitness Services and all other amounts required to perform its obligations hereunder. Checks or other documents of withdrawal drawn upon the Operating Accounts shall only be signed by designated (by Manager AND Client) representatives of Manager or Client.

2.4 Limitation on Manager's Authority to Contract. Manager shall not, without the prior request or consent of Client, and the prior review and approval of Client's legal counsel,

submit to any government agency any corporate filings, registrations, alterations or amendments on behalf of Client, or enter into any contract for the account of Client, provided that the foregoing limitations shall not apply to the extent that any such contract is deemed necessary by Manager in the event of an emergency posing a threat to persons or property, Manager shall take all steps necessary to notify Client immediately. Absent such an emergency, Manager shall conform to Client's purchasing and bid policies as established by Client from time to time and about which Manager shall be timely advised.

2.5 Operating Budget.

(a) Not later than one hundred twenty (120) days prior to the commencement of each calendar year, Manager shall submit to Client an operating budget and marketing plan (collectively the "Operating Budget") for the operation of the Fitness Services for such year, containing reasonably detailed revenue and expense projections and providing projections of capital expenditures and expenditures for replacements of and additions to furnishings and equipment. Further, Manager shall submit in writing to Client the assumptions used in determining all such detailed projections. The Operating Budget is intended as and will represent an estimate of the projected revenues and expenditures for such year based upon assumptions believed by Manager to be reasonable at the time of preparation. Manager will use its best efforts to achieve the budgetary goals reflected in the Operating Budget, however, the Operating Budget cannot be relied upon as an assurance of actual results for such year, and a material failure to achieve the budgetary goals set forth in any Operating Budget shall not constitute an event of default hereunder. Manager shall notify Client of the need to depart in any material way from the Operating Budget if, in Manager's judgment, adherence to the Operating Budget is impractical or such departure is necessary or desirable for the efficient operation of the Fitness Services. The term "material" as used in this Subsection 2.5 shall mean a variance in an Operating Budget category of more than five percent (5%).

(b) Client shall have the right to review and accept or reject each Operating Budget, or material departures from approved Operating Budgets, which review shall not be unreasonably withheld or delayed, and pending such review, or in the case of rejection, revision of the Operating Budget, Manager shall operate the Fitness Services in accordance with the last approved Operating Budget, adjusted reasonably on account of changes in volume and cost of living, to the extent Manager can do so without interfering with the orderly and efficient operation of the Fitness Services as contemplated by this Agreement.

Section 3. MANAGEMENT FEES AND REMITTANCES TO CLIENT.

Client shall pay Manager the Base Management Fee in accordance with EXHIBIT B attached hereto and made a part hereof. The Base Management Fee will be payable in equal monthly installments at the beginning of each month and within thirty (30) days after Manager submits the monthly invoice to Client. In addition, Manager may receive an Incentive Fee in accordance with said EXHIBIT B, said amount, if any, will be payable within thirty (30) days of the end of the calendar year. All funds received by Manager from the operation of the Fitness Services shall be remitted to Client in accordance with Section 2.3 herein.

Section 4. REPAIRS, LEGAL REQUIREMENTS, LICENSE AGREEMENT;

AND ALTERATIONS.

4.1 Repairs and Maintenance. Except to the extent prevented by causes beyond its reasonable control (including Force Majeure Causes and the unavailability of funds from Client in violation of this Agreement), throughout the Term, Manager shall take good care of the Fitness Services portion of the Facility (other than such portions thereof as are leased or licensed to tenants or managed by third parties who undertake a duty of repair and maintenance for such portions) and maintain the same in good order and condition; provided, however, that Manager's responsibilities pursuant to this Section shall not include any matters relating to the structural integrity of the Facilities or other matters relating to defects in design, materials or workmanship in the construction of the Improvements, which shall be the responsibility of Client throughout the Term; notwithstanding the foregoing, Manager shall, at Client's written request, coordinate and supervise, as Client's agent, capital improvements under \$10,000 to the Facilities made during the Term. Manager shall be responsible for providing housekeeping, ordinary repairs and maintenance, and any other necessary maintenance for the Fitness Services portion of the Facilities. Manager shall take same-day action to correct any service need, repair or maintenance of the Facilities (including related equipment or amenities therein) upon discovery. Notwithstanding the foregoing, all repairs shall be completed within three (3) business days following any necessary administrative approvals and delivery of necessary equipment or supplies.

4.2 Compliance with Legal Requirements. Except as elsewhere herein limited or excused, throughout the Term, Manager shall use best efforts to cause the Fitness Services and the operation thereof to comply with all applicable legal requirements. If any alterations, additions or improvements, structural or nonstructural, shall be required in order to cause the Facilities to be in compliance with applicable legal requirements, the same shall be the responsibility of and shall be performed at the expense of Client. Manager may, but only after written approval by Client (which approval shall not be unreasonably withheld), contest by appropriate legal proceedings conducted in good faith, in the name of Manager or Client, or both, the validity or applicability of any legal requirements. If Client shall approve any such contest, Client shall execute and deliver any appropriate documents which may be necessary or proper to permit Manager to prosecute such contest. Client may, by written notice to Manager, direct Manager to contest, or Client may contest directly, any legal requirements which Manager may otherwise desire not to contest. Manager agrees in the performance of this Agreement to comply with all federal, state and municipal laws, rules and regulations. Failure by either party to comply with such laws, rules or regulations may be grounds for termination of this Agreement.

Section 5. GENERAL COVENANTS OF MANAGER AND CLIENT.

5.1 Right of Inspection and Review. Manager shall accord to Client and its duly authorized agents the right to enter upon any part of the Facilities/Fitness Services at all reasonable times during the Term for the purposes of examining or inspecting the Facilities or examining or making extracts from the books and records of the Fitness Services operation, or for any other purpose which Client, in its discretion, shall deem necessary or advisable, but the same shall be done with as little disturbance to the operation of the Fitness Services as possible. Notwithstanding anything to the contrary herein,

Client shall be permitted access to inspection of personnel records upon reasonable advance notice.

5.2 Books, Records, and Financial Reports. Manager shall keep full and adequate books of account and other records reflecting the results of operation of the Fitness Services. Manager will provide to Client, on a weekly basis, an electronic version of all financial activity of the Fitness Services that the Client will then upload to its financial management system. Manager shall deliver to Client, within ten (10) days after the end of each month, a preliminary unaudited financial statement prepared from the books of account maintained by Manager and containing (i) a statement of current assets and current liabilities of the Fitness Services as of the end of such month, (ii) a revenue and expense statement showing the results of operation of the Facilities for such month and for the year to date, and (iii) such other information as Client may reasonably request from time to time. Manager shall furnish a written analysis and explanation on a monthly basis of any departures of actual results in comparison to budget.

Within thirty (30) days of the close of the fiscal year, Manager shall furnish Client a statement of revenue and expenses showing the results of the Fitness Services' operations during the fiscal year. As the financial activity of the Fitness Services will be reflected on the Client's year-end financial statements, upon Client's request, Manager shall provide written support and/or documentation for all such activity.

Upon termination of this Agreement, Manager agrees to turn over to Client all Client Property as described in Section 22.

5.3 Payment of Taxes. During the Term, Client shall pay, prior to delinquency, any real and personal property taxes assessed against the Fitness Services.

Section 6. INSURANCE.

6.1 Insurance to be Maintained During Term.

(a) Client shall maintain, at all times during the Term, the following insurance respecting the Fitness Services in amounts and with responsible and properly licensed companies (provided that such amounts shall in no event be less than the amounts required under any mortgage, deed of trust or security agreement affecting the Fitness Services):

(i) Comprehensive public liability insurance for injury to or death of persons and damage to or loss of property, including automobile liability and liquor liability (if applicable);

(ii) Insurance against all risk of direct physical loss and damage, including fire and extended coverage and also including business interruption, boiler and machinery and use and occupancy, and such other risks and perils with respect to which insurance is customarily carried for Facilities of similar character, in amounts not less than the full insurable replacement value of the Fitness Services and bearing a replacement cost agreed amount endorsement; and

(iii) Such other insurance for protection against claims, liabilities and losses arising from the operation of the Fitness Services as is customarily carried for Facilities of similar character.

All policies evidencing the foregoing insurance shall name Client as the principal insured and shall name Manager and (if required by Client) any mortgagee of the Facilities or creditor of any member of Client as additional insureds thereunder by endorsement.

(b) Manager shall maintain workers' compensation, including employer's liability and a broad form "all states" endorsement or similar insurance as may be required by law, but not less than \$1,000,000 with waiver of subrogation in favor of the Client, and crime and fidelity insurance against dishonest acts by employees and others, the cost of which insurance shall be reimbursed to Manager in accordance with Section 2.1(b). All policies evidencing the foregoing insurance shall name Manager as the principal insured and shall name Client as additional insured thereunder by endorsement.

(c) Manager shall submit a Certificate of Insurance to Client upon the signing of this Agreement for the following insurance coverages and shall name Client as an additional insured. Any changes in coverage or cancellation of the policy shall be noticed to Client within thirty (30) days.

(i) Comprehensive general public liability insurance with broad form property damage endorsement, affording protection in an amount of not less than \$1,000,000 per occurrence with a \$2,000,000 aggregate with respect to (1) bodily injury or death of any one person, and (2) damage to the property of any one person resulting from one occurrence.

(ii) Comprehensive automobile liability for Manager's employees operating Manager's vehicles used in connection with the performance of this agreement, affording protection in an amount of not less than (1) \$1,000,000 with respect to bodily injury or death of any one person, (2) \$2,000,000 with respect to bodily injury or death of any number of persons in any one occurrence, and (3) \$500,000 with respect to damage to the property of any one person resulting from one occurrence. These limits can be satisfied with a combination of primary and umbrella coverage.

(iii) Excess Liability (Umbrella – Follow Form Policy) of not less than \$5,000,000 per occurrence which must cover general liability, automobile liability and Worker's Compensation.

(iv) All insurance coverages required under the Agreement shall be provided under either:

(a) valid and enforceable policies issued by insurance companies with an A rating under the Best Guide; or

(b) a program of self-insurance meeting all such requirements under Illinois law. All required insurance coverages shall be primary and shall not

contribute with, or be payable exclusively in excess of, any coverage that Client may carry. The comprehensive general public liability insurance shall name Client as an additional insured.

6.2 Notice of Cancellation or Change. All insurance policies required to be carried hereunder shall have attached thereto an endorsement that the same shall not be canceled or changed without at least thirty (30) days' prior written notice to all named insureds and additional insureds.

6.3 Evidence of Insurance Coverage. For the purpose of evidencing compliance with the provisions of this Section 6, Client and Manager shall from time to time furnish to each other certified duplicate policies of all insurance required to be maintained by Client and Manager pursuant to this Section 6.

Section 7. INDEMNIFICATION.

(a) To the fullest extent permitted by law, Client agrees to indemnify, defend and hold Manager, its members, managers, employees and agents harmless from and against any claims, suits, costs, losses, liability, damages or expense (including, without limitation, reasonable attorneys' fees and expenses) arising from or in any way related to (i) injury to persons or property by reason of any acts or omissions of Client or Client's employees or agents; or (ii) any breach or default on the part of Client in the performance of any term, covenant, condition, obligation or agreement on the part of Client to be performed or met under this Agreement.

(b) To the fullest extent permitted by law, Manager agrees to indemnify, defend and hold Client, its commissioners, officers, employees and agents harmless from and against any claims, suits, costs, losses, liability, damages or expense (including, without limitation, reasonable attorneys' fees and expenses) arising from or in any way related to (i) injury to persons or property by reason of any acts or omissions of Manager or Manager's employees or agents; or (ii) any breach or default on the part of Company in the performance of any term, covenant, condition, obligation or agreement on the part of Manager to be performed or met under this Agreement. This indemnification obligation is not limited in any way by any limitations on the amount or type of damages, compensation or benefits payable by or for the Manager under Worker's Compensation Acts, disability benefits acts or any other employee benefits acts.

(c) Both parties are required to notify the other as soon as practicable of receipt of any lawsuits, claims, suits, proceedings or notices of intent to file a lawsuit based in any manner on services rendered pursuant to this Agreement. If both parties have an obligation to the other under the foregoing provisions, comparative fault principles shall be applied to allocate payment between the parties.

(d) It is expressly understood and agreed that the provisions of this Section shall survive the termination or expiration of this Agreement.

Section 8. DEFAULT AND TERMINATION.

The following shall constitute events of default hereunder:

(a) The failure of either party (the "defaulting party") to pay to the other party (the "non-defaulting party") any sum which may become due hereunder within fifteen (15) days after receipt by the defaulting party of a written notice from the non-defaulting party specifying such failure; or

(b) The failure of either party (the "defaulting party") to perform, keep or fulfill any of the material terms, covenants, undertakings, obligations or conditions set forth in this Agreement other than those referred to in the foregoing paragraph (a), and the continuance of such failure for a period of thirty (30) days after written notice to the defaulting party from the other party (the "non-defaulting party") specifying such failure, or, in the event such failure is of such a nature that it cannot, with due diligence and in good faith, be cured within thirty (30) days, the failure of the defaulting party to commence to cure the same within such thirty-day period and thereafter to prosecute the curing of such failure with due diligence and in good faith (it being intended that, in connection with a failure not susceptible of being cured with diligence and in good faith within thirty (30) days, the time allowed the defaulting party within which to cure the same shall be extended for such period as may be necessary for the curing thereof with due diligence and in good faith); or

(c) If either party (the "defaulting party") shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter in effect, or shall file an answer or other pleading in any proceeding admitting insolvency, bankruptcy or inability to pay its debts as they mature; or if within ninety (90) days after the filing against the defaulting party of any involuntary proceedings under the Federal Bankruptcy Code or similar law, state or federal, now or hereafter in effect, such proceeding shall not have been vacated; or if all or a substantial part of the defaulting party's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within ninety (90) days; or if the defaulting party shall be adjudicated a bankrupt; or if the defaulting party shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property; or if any order appointing a receiver for, trustee of or liquidator of the defaulting party or all or a major part of the property of the defaulting party is not vacated within ninety (90) days following the entry thereof:

Upon occurrence of an event of default as provided in items (a) through (c) above, the non-defaulting party may give to the defaulting party notice of intention to terminate the Term after the expiration of a period of fifteen (15) days from the date of such notice and, upon the expiration of such period, the Term shall expire. Following the occurrence of an Event of Default under item (c) above, Client may give to Manager notice of intent ion to terminate the Term after the expiration of a period of fifteen (15) days from the date of such notice and, upon the expiration of such period, the Term shall expire. Such termination shall be without prejudice to any right to damages that the non-defaulting party may have against the defaulting party under applicable law.

Section 9. SUCCESSORS AND ASSIGNS.

Neither party may assign this Agreement without the prior written consent of the other party.

If such consent shall be given, the terms, provisions, covenants, undertakings, agreements, obligations and conditions of this agreement shall be binding upon and shall inure to the benefit of the successors in interest and the assigns of the parties hereto with the same effect as if mentioned in each instance where the party hereto is named or referred to. Notwithstanding the language above, Client may assign this Agreement to a corporation owned by Client upon written notice to Manager.

Section 10. NOTICES.

All notices to be given hereunder shall be given in writing and shall be deemed given when delivered by messengers, by overnight express mail service, or by the U.S. mail (and, if mailed, shall be deemed received two (2) business days after the postmarked date thereof), with postage prepaid, registered or certified, delivered or addressed to the address following each party's signature. Either party hereto may change its address for notices hereunder by notice of such change to the other party hereto in the manner herein above provided. Manager will give copies of all notices given to Client to any mortgagees of the Facilities whose names and addresses are furnished to Manager, in the manner set forth in this Section.

Section 11. APPROVALS.

If a party shall desire the approval of the other party hereto to any matter, such party must give written notice to such other party that it requests such approval, specifying in such notice the matter as to which such approval is requested and reasonable detail respecting such matter. Approvals must be granted in writing.

Section 12. FURTHER INSTRUMENTS.

Each party hereto shall execute and deliver all such other appropriate supplemental agreements and other instruments and take such other action as may be necessary to make this Agreement fully and legally effective, binding and enforceable as between the parties hereto and as against third parties, as the other party may reasonably request.

Section 13. APPLICABLE LAW.

This Agreement shall be governed by and construed and enforced in accordance with the laws of Illinois and without regard to the conflict of law rules principals thereof.

Section 14. SURVIVAL AND CONTINUATION.

If, pursuant to the terms of this Agreement, the Term and Manager's management of the Fitness Services are terminated or the Term shall expire, (a) Client's obligations to pay to Manager any amounts due to Manager hereunder shall survive such termination or expiration and shall continue until all such amounts due for services rendered up to the date of termination are paid in full, and (b) all terms, provisions and obligations of either party contained herein which, in order to give them effect and accomplish their intent and purpose, need to survive such termination shall, by agreement between Client and Manager, survive and continue until they have been fully satisfied or performed.

Section 15. INTERPRETATION.

The headings and captions herein are inserted for convenient reference only, and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof. This Agreement and any document or instrument executed pursuant hereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement contains the entire Agreement and understanding of the parties in respect to the subject matter hereof, and the same may not be amended, modified or discharged, nor may any of its terms be waived, except by an instrument in writing signed by the parties to be bound thereby.

Section 16. IT EQUIPMENT AND SOFTWARE

Manager will utilize certain information technology hardware/equipment (the "IT equipment") to provide the Services, as set forth in the Operating Budget. On behalf of Client, the Manager will specify, procure, configure and install the IT equipment required to run and support Manager's core business system applications for the operation of the Facility. The IT equipment will be owned by Client. The IT equipment will reside on Manager's private wide area network and Manager shall be responsible for the safe keeping and security of the IT equipment while it resides of Manager's network. Upon termination of this Agreement for any or no reason, Manager will work with Client to timely and securely remove the IT equipment from Manager's private wide area network.

Manager will also utilize certain software systems to provide the Services. Manager warrants that it has all licenses and permissions required from third parties to utilize the software to provide the Services.

Manager and Client will each bear a portion of the total software expenses in accordance with EXHIBIT C attached hereto and made a part hereof.

Section 17. EMPLOYEES.

Subject to the provisions in Section 18, in the event of termination of the Agreement by either party, Client and Manager agree to work together professionally to assess the placement of Manager's employees upon the effective date of termination.

Section 18. NON-COMPETE.

(a) During the period(s) this Agreement is in force, Manager (or any corporation or other entity which is a subsidiary or affiliate of, or otherwise related to, Manager) or any of Manager's managerial employees, agents, principals, partners, or members of Manager shall not perform any managerial duties or any other type of work or services substantially similar to those performed under this Agreement (and the other Agreements between Client and Manager) with any other entities in the (State Region/AREA), encompassing the counties of Insert if applicable. In the event of a breach of the provisions of this section, Manager shall notify Client of the breach and shall undertake all actions reasonably necessary and appropriate to cause the immediate discontinuance of the breach in question. At any time, Manager may request in writing that Client release Manager (or any corporation or other entity which is a subsidiary or affiliate of, or otherwise related to, Manager) or any employees, agents, principals, partners, or members of Manager identified below, in whole or in part, from the obligations imposed pursuant to this section. Client may (but shall not be obligated to) grant any such request and, if it does so, may impose any conditions it deems appropriate with respect to the granting of that request.

(b) Recognizing that the remedy at law for any breach or threatened breach by Manager hereto of the covenants and agreements set forth in this Section would be inadequate and that any such breach or threatened breach would cause such immediate and permanent damage as would be irreparable and the extent amount of which would be impossible to ascertain, the parties hereto agree that in the event of any breach or threatened breach of any such covenant or agreement, in addition to any and all other legal and equitable remedies which may be available, Client may specifically enforce the terms of this Section and may obtain temporary and/or permanent injunctive relief without the necessary of proving actual damage by reason of any breach or threatened breach hereof and, to the extent permissible under the statutes and rules of procedures, a temporary injunction may be granted immediately upon the commencement of any such suit without notice.

(c) Subject to the reimbursement provisions in Section 2.1(b), Manager agrees to hire as "Manager's Employees" any and all staff necessary to fulfill Manager's obligations under this Agreement. Client agrees that it will not solicit for employment, attempt to hire or hire any of Manager's Employees at any time during the term of this Agreement, and extension thereof. Section This Section 18 shall survive termination of the Agreement.

Section 19. ACCESS TO BOOKS AND RECORDS.

If Manager should be deemed to be a subcontractor subject to the disclosure requirement of 42 USC 1395 X(V)(l)(I), anything herein to the contrary notwithstanding, under the expiration of (4) years after the furnishing of services pursuant to this Agreement, upon written request of Client, Manager shall make available to the Secretary of the Department of Health and Human Services, or to the Comptroller General, or any duly authorized representatives, this Agreement and books, documents and records of Manager that are necessary to certify the nature and extent of any costs incurred by Client or Manager. This Section 19 will survive termination of the Agreement

Section 20. NON-DISCLOSURE.

(a) During the term hereof and indefinitely thereafter, Manager will (i) refrain from directly or indirectly using or causing to be used in any manner whatsoever any information of a proprietary or confidential nature (as defined below), or Client Property, other than in connection with fulfilling its obligations hereunder and, upon termination of this Agreement, such information, to the extent that it has been reduced to writing (including any and all copies thereof), together with all copies of all records, forms and charts of every kind, whether confidential or otherwise, shall be forth with returned to Client and shall not be retained by Manager or furnished to any third party, either by sample, facsimile, or by verbal communication: (ii) refrain from any disparagement, direct or indirect, through innuendo or otherwise, of Client or any of its employees, officers, contractors or owners; and (iii) refrain from soliciting the business of any client or entity for whom Client has provided service at any time, or attempt to induce any such client or entity to cease being a client of Client or reducing its business in any manner with Client.

(b) During the term hereof and indefinitely thereafter, Client will (i) refrain from directly or indirectly using or causing to be used in any manner whatsoever any information of a proprietary or confidential nature (as defined below) or Manager's Work Product (defined in Section 21) other than in connection with fulfilling its obligations hereunder and, upon termination of this Agreement, such information, to the extent that it has been reduced to writing

(including any and all copies thereof), together with all copies of all records, forms and charts of every kind, whether confidential or otherwise, that are not Client Property (defined in Section 21), shall be forthwith returned to Manager and shall not be retained by Client or furnished to any third party, either by sample, facsimile, or by verbal communication: (ii) refrain from any disparagement, direct or indirect, through innuendo or otherwise, of Manager or any of its employees, officers, contractors or owners; and (iii) refrain from soliciting the business of any client or entity for whom Manager has provided service at any time, or attempt to induce any such client or entity to cease being a client of Manager or reducing its business in any manner with Manager. This Section 20 will survive termination of the Agreement.

(c) In the event either Manager or Client receives a request for documents under the Freedom of Information Act, the party receiving the request will notify the other party prior to making any production and will allow the producing party to make objections to production that party deems legally appropriate and necessary.

Section 21. CONFIDENTIAL INFORMATION.

(a) Client's confidential or proprietary information, shall include but not be limited to the following documents: all sales and marketing information and protocols; marketing plans; client names, addresses or any other client-related information; client accounting, policies, procedures, forms and reports; cash flows and receivables; short-term and long-term management strategy; business data; financial records; income and expense information; pricing and charging for services; employee flow and placement methodology; procedures to document services provided; revenue and expense monitoring and analysis; client satisfaction data; client intake procedures; client booking procedures; collections procedures and strategies; charge/billing generation and documentation procedures; employee record documentation procedures; fee schedules; fee information; payroll information; billing and payment methodology; copyright; trademark; personnel information; volume of business; strategic plans; administrative policy; quality management procedures; information related to earnings and other financial information; assets; and all other information deemed by Client to be confidential and proprietary.

(b) Manager's confidential or proprietary information, and Manager's Work Product, shall include but not be limited to the following forms physically prepared by Manager; templates, policies and documents: all sales and marketing information, forms, policies and protocols; secret shop forms; membership surveys forms and protocols; Manager's policies, procedures, forms and reports used for accounting purposes; pricing and charging for services forms; employee flow and placement methodology forms; procedures to document services provided; revenue and expense monitoring and analysis templates; client satisfaction information templates; client intake procedures; client booking procedures; collections procedures and strategies; charge/billing generation and documentation procedures; employee record documentation procedures; fee schedule forms; fee information protocols; payroll information for Manager's employees; billing and payment methodology; copyright; trademark; personnel information; Manager's volume of business; Manager's strategic plans; Manager's administrative policy; quality management procedures; information related to Manager's earnings and other Manager financial information; Manager's assets; and all other information deemed by Manager to be confidential and proprietary.

(c) Client and Manager acknowledge that there is certain confidential

information shared by both (collectively, "Shared Data"). The parties agree that Shared Data includes: member contact information and member data; marketing, outcome and business strategies and data; financial records, including Center cash flow and receivables, income and expense information; pricing and charge for services detail. It is intended, through the Shared Data section, that data about the Center's clients, finances, business operations, performance, customers and business strategies belongs to Client, but all such information is jointly shared with Manager to enable Manager to perform its obligation under this Agreement. It likewise is intended that Manager's templates, policies, protocols and documents belong to Manager but are shared documents with Client to the extent Client's data is utilized in connection with Manager's proprietary Work Product to fulfill Manager's obligations under this Agreement.

In the event of agreement termination, Manager will make a best effort to assist in the coordination and transfer of the subscriptions, subject to any licensing fees which must be paid by Client and data from Manager to Client. Subscription based services include Jonas software (Compete) and Polar. Manager shall not retain or use for any purpose, member lists and/ or individual member data of any kind.

Manager acknowledges and agrees that a breach of any promise or covenant related to such member data will result in irreparable and continuing damage to Client, for which there is no adequate remedy at law. Consequently, in the event of such a breach, Client shall be entitled, without bond or other security, to injunctive relief and/or a decree for specific performance and Such other remedies as may be proper. This shall not be construed as a waiver of any other rights that a disclosing party may have for damages or other forms of relief.

Client acknowledges and agrees that a breach of any promise or covenant related to Manager's confidential and proprietary information will result in irreparable and continuing damage to Manager for which there is no adequate remedy at law. Consequently, in the event of such a breach, Manager shall be entitled, without bond or other security, to injunctive relief and/or a decree for specific performance and such other remedies as may be proper. This shall not be construed as a waiver of any other rights that a disclosing party may have for damages or other forms of relief.

IN WITNESS WHEREOF, Client and Manager have executed this Agreement as of the day and year first above set forth.

POWER WELLNESS MANAGEMENT, LLC.

By: _____
Name: Brian Hummert
Title: Chief Operating Officer

**VILLAGE OF ORLAND PARK,
an Illinois home rule municipal
corporation**

By: _____
Name:
Title:

ADDRESS FOR NOTICE:
2055 W. Army Trail Road, Suite 124
Addison, IL 60101

ADDRESS FOR NOTICE:
14700 S. Ravinia Avenue
Orland Park, Illinois 60462
Attn: Village Manager

EXHIBIT A: Management Services

Manager will provide the following list of operational services on a continuing basis. This list is not intended to be all-inclusive and may increase or decrease as appropriate.

Financial:

- Establishment of internal control procedures and administrative form design for cash receipts, cash disbursements, member billing, and safeguarding of inventory and fixed assets.
- Preparation of annual operating and capital budgets.
- Prepare staffing plan indicating with position control and projected FTEs, and market salaries.
- Monthly key operating indicators report.
- Annual statement of operations with key operating statistics and narrative.
- Industry Benchmarking.
- Monthly financial statement of operations with comparison to budget.
- Preparation of year-end audit work papers.
- Sales tax reporting

Human Resources:

- Recruit, hire, and train all staff, recognizing each staff member.
- Employee recruitment and retention; including but not limited to management of an on line employee application system through the center and Power Wellness (PWM) websites.
- Provision of job descriptions
- Intern recruitment and Center curriculum program.
- Implement New Hire paperwork procedures.
- Employee orientation procedures and employee handbook updates.
- Sexual harassment and hiring practices training.
- Administration of annual employee performance evaluation.
- Employee benefits/assistance administration.
- Employee recognition program.
- Implement medical emergency and building safety procedures.
- Administer CPR and Automated External Defibrillator training.
- Support Certified Pool Operator (CPO) training for a minimum of two employees
- Implement manager on duty (MOD) procedures.
- Access/recommendations to continuing education programs.
- Internal employee communications.
- Mediate round table discussions with colleagues from all locations.

Marketing, Sales and Customer Service:

- Member recruitment- Ongoing preparation of a sales and marketing plan; based on community and membership research profiling to target and educate area residents, students, corporations, and community about the benefits of membership at the center.
- Ongoing competitive analysis

- Provision of a center website to advertise and educate the community about the center.
- Development of internal and external collateral marketing pieces including but not limited to member handbooks, programming, center and corporate brochures and health history questionnaires.
- Customer service and member orientation training development.
- Sales presentation, tracking, and retention procedures.
- Service desk procedures and administrative forms development.
- Corporate sales programs
- Member retention- Development of internal programming and other motivational opportunities for member base engagement.
- Development and administration of an electronic member survey including measurement of Net Promoter Score (NPS).
- Collection and evaluation of member comment card procedures.
- Member communication via electronic email.
- Conduct ongoing secret shop evaluation by third party.

Programming:

- Administration of fitness/health assessment protocols based on guidelines from the American College of Sports Medicine (ACSM).
- Provision of Medically Integrated programs and concepts in cooperation with community health care providers.
- Development and maintenance of group exercise curriculum; integral to membership including but not limited to fitness, yoga and aquatics group classes.
- Introduction of ancillary programming including personal training, massage therapy and other integrative therapies that support member base and client philosophies.
- Nutritional and wellness program development.
- Development and maintenance of child minding programming.

Environmental Services:

- Daily, weekly, and monthly housekeeping and maintenance checklists and duty logs.
- Train employees on facility and aquatic maintenance.
- Provide workplace safety standards and building emergency procedures for all employees.
- Administer service contracts.
- Review and execute all long-term preventative maintenance contracts with assistance of the client.

Communications & Best Practices:

- Benchmarking against other PWM centers.
- Monthly PWM manager's conference calls.
- Monthly & Annual Client meetings.
- Information sharing with all PWM centers and employees.
- Monthly center director conference calls and annual center director meetings.
- Director participation in center operational practices and policy development.
- Center team member participation in charters for ongoing development of key

center operations such as sales, customer service, fitness and medically integrated programming.

Equipment Procurement and Preventative Maintenance:

- Preferred vendor development and pricing
- Equipment maintenance procedures.
- Administer product warranties.
- Procurement, receipt, and recording of all equipment.
- Equipment space planning.
- Maintenance of fixed asset list as applicable.

Information Systems:

- Network & communications specification, procurement, and placement
- Server hardware specification, procurement, and placement
- PC hardware specification, procurement and placement.
- Peripheral (Scanners, Printers, Cameras, Cash Drawers, Copy Machines), specification, procurement, and placement
- Telecommunications - specification, procurement, and placement
- Audio Visual - specification, procurement, and placement
- Vendor relations & negotiations
- Disaster recovery specification and implementation
- Supplement support / liaison of client IT staff
- Deployment of core system applications
 - Membership Management
 - Membership & Resource Scheduling
 - Front Desk POS
 - Member Assessment Software
 - Website Inquiry and Prospecting Software
 - Employee Payroll & Health & Welfare
 - Employee Time & Attendance
 - Recruiting & Application Management
 - Accounting
 - Fixed Asset Tracking - FAS
 - POS / Credit Card Processing - Owner Merchant
 - EFT Transmittal
- Marketing
 - Domain name registration
 - Constant contact management
 - Membership data analysis
 - Web site
 - Registration
 - Hosting
 - Design Development
 - Maintenance
- Deployment of power proprietary products
 - Internet Kiosk - Power Net
 - Internet – Kids Net

EXHIBIT B

Management Base Fees

<u>Calendar Year</u>	<u>Base</u>
2017	\$ 80,000
2018	\$ 90,000
2019	\$100,000

Management Incentive Fees

Manager will be eligible to receive incentive fees totaling \$65,000, \$60,000, and \$55,000 in years 1, 2, and 3 respectively, should Manager meet certain agreed upon annual performance measurements as described below:

Member Satisfaction (10% weight) – measured annually each May

Achieving a 55% or better (“Very Good Category”) Net Promoter Score on the annual member survey.

Financial Outcomes (40% weight) – measured annually at each end of December

Obtain or exceed approved budgeted net operating income (net income before management fee, debt service, and depreciation).

Billable Member Goals (50% weight) – measured annually at each end of December.

Obtain or exceed approved budgeted ending billable members.

Example: In year 1 (2017), if Manager fails to achieve a 55% or better Net Promoter Score in the Membership Satisfaction category but meets or exceeds the goals in the remaining two categories (Financial Outcomes and Billable Member Goals), Manager will receive an Incentive Fee of 90% of \$65,000, i.e., \$58,500.