April 24, 2024

Wee Wah Beach Village of Tuxedo Park

Attention: Elizabeth Doherty, Mathew Tinari

77 Wee Wah Rd

Tuxedo Park NY 10987

Dear Mathew Tinari,

 On behalf of Arch Pools, we are pleased to present this proposal for pool management for the 2024 season.

 Arch Pools is a commercial and residential pool service company providing best-in-class pool management services for HOAs and COAs serving neighborhoods, condominiums and apartment complexes across New York and New Jersey. Our unique service model distinguishes us, as we are completely dedicated to customer satisfaction and consistent exceptional service. One hundred percent of our services are performed by our team of experts; we do not subcontract out any work, which allows us to exercise complete control and supervision over our projects, properties, and staff from pre-season through to the off-season.

 In the summer of 2022, NYS Pool Management/United Pool Services joined the Arch Amenities Group family of companies. Arch Amenities Group (“AAG”) is a global provider of amenity management services for commercial and residential properties across the United States. Through AAG, NYS Pools/United Pool Services, now Arch Pools, will be able to expand its service offering and service geography by leveraging AAG’s extensive network, best practices and back-end support.

 Our staff of over 600 employees is professional, reliable, well-trained, and completely focused on safety and customer service. Our team of Certified Pool Operators and lifeguards are highly qualified to safely, effectively, and efficiently run your facility. We take steps to ensure that you and your pool’s patrons will get to know our team and that they will get to know you and your location.

 Arch Pools will reliably provide all of your swimming pool needs. Our team appreciates the opportunity to provide you with this contract for services, and we look forward to working with you to deliver an exceptional pool season. We encourage you to contact us with any questions at 201-828-2078.

Regards,

Arch Pools Management

**Master Services Agreement**

This **MASTER SERVICES AGREEMENT** ("Agreement") is entered into as of April 1, 2024 (the “Effective Date”) by and between **Wee Wah Beach Village of Tuxedo Park** (“Client”) and **WTS International, LLC** **d/b/a Arch Pools** (“Arch Pools”) regarding the Services as hereafter defined.

**WITNESSETH**:

**WHEREAS**, Arch Pools is in the business of managing amenity spaces, including pools, within commercial real estate, fitness centers, high density and single family communities, and spas regarding all aspects of design, development, promotion and operation of such facilities; and

**WHEREAS**, Client desires to engage Arch Pools to perform certain services at one or more Client amenity spaces; and

**WHEREAS**, Arch Pools and Client shall sometimes be referred to herein individually as a “Party” or collectively as the “Parties”; and

**WHEREAS**, Client and Arch Pools have agreed that Arch Pools shall provide the Services described in this Agreement and the exhibits attached hereto and made a part hereof, in accordance with the terms and conditions of this Agreement.

**NOW**, **THEREFORE**, in consideration of the mutual covenants and representations hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto covenant and agree as follows:

1. **Services and Term**.
2. Client hereby engages Arch Pools, and Arch Pools hereby accepts such engagement, on the terms and conditions of this Agreement. This Agreement shall be effective as of the Effective Date.
3. Arch Pools shall perform the services as set forth in Exhibit A, attached hereto (the “Services”), at the lake (the “Premises”) located at 77 Wee Wah Road, Tuxedo Park, New York 10987, United States (the “Property”).
4. Term. The Term of this Agreement shall commence on the Effective Date and expire on September 30, 2024 unless extended by mutual consent of the Parties in writing.
5. Exclusivity. Arch Pools shall be the exclusive provider of the Services at the Premises.
6. **Schedule of Services**.
7. Arch Pools shall perform the Pre-Opening Services set forth herein for Premises during the Pre-Opening Period, which is the period commencing on April 30, 2024 and expiring on or about May 24, 2024.
8. Arch Pools shall perform the Management Services as set forth herein(together with Pre-Opening Services, the “Services”) commencing on May 24, 2024 and ending on September 30, 2024 (the “Season”).
9. **Premises Staffing**.

1. Arch Pools Premises Staff. All persons providing the Services at the Premises during the Term shall be employees or independent contractors of Arch Pools and referred to herein as “Arch Pools Premises Staff.” Arch Pools shall have the authority to search for, identify, hire, supervise, manage, discipline and discharge Arch Pools Premises Staff or contractors in its sole discretion, provided that all staff must have the requisite training and certification. Arch Pools reserves the right to use subcontractors to perform part or all of the Services set forth in this Agreement. Arch Pools will supervise any such subcontractors and shall bear ultimate responsibility for the acts and omissions of such subcontractors to the same extent as Arch Pools' own acts and omissions and shall ensure that such subcontractors carry insurance policies equal to or greater than those held by Arch Pools in accordance with Section 7 below. Client has the right to require Arch Pools to change out Arch Pools Premises Staff, without notice, who do not adhere to operating protocol of the Premises. Client has the right to require Arch Pools to employ or subcontract specific individuals identified and interviewed by Client.

1. Arch Pools Premises Staff shall be granted access to employee rest rooms, break areas, and other common areas within the Premises and Property.
2. Hiring Restrictions.
	* 1. Client acknowledges Arch Pools’ legitimate business interest in protecting Arch Pools’ knowledge, training, and best practices in the domain of amenity management which are imparted and invested in Arch Pools staff and which are unique, specialized, and proprietary. Accordingly, during the Term and for a period of one (1) year from the termination or natural expiration of this Agreement, Client shall not employ, engage, or enter into a contract with any individual employed by Arch Pools and engaged in the Services at any time during the Term (collectively, “Restricted Hires”), with the exception of those introduced to Arch Pools by Client in order to be employed on the Premises. In addition, Client shall not permit any Restricted Hire to work at the Property in any capacity, whether under the employment of a successor operator, other third-party company, or any other arrangement in which services are rendered at or for the benefit of the Property. This restrictive period shall be tolled during any period in which Client is in violation of this Section. Arch Pools may release Client from the restrictive covenants contained herein, and may place conditions upon such release, in its sole discretion, provided that such a release must be in writing signed by the Arch Pools President or General Counsel.
		2.

In any action by Arch Pools to enforce the provisions of this Section, the Parties agree that the prevailing Party in any such action shall be entitled to collect its reasonable attorneys’ fees and costs associated with such action from the non-prevailing Party within ninety (90) days of the conclusion of the proceedings.

1. **Premises Operation.**
2. Licenses and Permits. Client represents and warrants that the Premises complies with all applicable regulations, building codes, licensure and permit requirements, and registrations and taxes required by law for the operation of the Premises as of the Effective Date. Further, Client acknowledges that there may be various licenses, permits, registrations and taxes required by law for the operation of the Premises. Obtaining and maintaining such licenses or other regulatory approvals and any costs, fees, and penalties associated therewith shall be the responsibility of Client, provided that Arch Pools shall timely cooperate with all license applications, be responsible for license fees, and perform such services to ensure compliance with applicable laws as had historically been performed for Client by Arch Pools’ predecessor, including refreshing the Orange County health permit, updating the code of conduct, and ensuring that the staff complies and all requisite documentation is presented in compliance with Orange County laws. Arch Pools shall be responsible for the licensing and certification of Arch Pools staff only.
3. Building and Pool Systems.
	* 1. Client shall be responsible for the cost relating to acquisition, repair, and replacement of the systems, equipment, and related facilities necessary for the Premises to be operated in a manner consistent with a commercially reasonable duty of care towards Premises patrons. Such systems, equipment, and related facilities shall be defined as the “Building Systems” or “Lake Systems.”
		2. To the extent such systems are present within the Property, Building Systems include but are not limited to: first aid apparatus, code and regulatory compliance, electrical, plumbing, and sanitation. Building Systems may be located within or outside the confines of the Premises.
		3. To the extent such systems are present within the Premises, Lake Systems include but are not limited to: lake safety equipment, and lifeguard equipment other than whistles and CPR masks.
		4. Arch Pools shall cause the regular and periodic inspection of the Lake Systems to ensure that they are in good working order. Upon receipt of a signed purchase order from Client, Arch Pools shall perform repair and replacement services for Lake Systems. Such repair and replacement services will incur additional fees.
		5. Client acknowledges that Arch Pools shall not be held liable for latent defects in Building Systems or Lake Systems or for damage or failure of Building Systems or Lake Systems occurring in the ordinary course of proper usage.
4. Chemicals. Chemicals are not expected to be used in this engagement and no chemical costs are included in the Management Fee. Any chemicals requested by Client to maintain the quality of the water or prevent any imbalances or improper conditions, including chlorine and muriatic acid necessary to prevent, address, or remediate water conditions, shall be the financial responsibility of Client.
5. Refusal of Service. Arch Pools shall have the right to refuse access to, or use of, the Premises for any individual whose conduct is deemed by Arch Pools staff to represent: abuse or harassment; a threat to Premises operations; a threat to the health or safety of Premises patrons or Arch Pools staff; or a violation of Premises rules and regulations.

1. **Arch Pools Fees**.

1. Management Fee. During the Season, in consideration of Arch Pools’ performance of the Services, Client shall pay to Arch Pools a total management services fee of $40,965.00 (the “Management Fee”), plus tax. The Management Fee shall be due and payable in the following installments:
	1. On or before May 1, 2024: $8,193.00, plus tax
	2. On or before June 1, 2024: $8,193.00, plus tax
	3. On or before July 1, 2024: $8,193.00, plus tax
	4. On or before August 1, 2024: $8,193.00, plus tax
	5. On or before September 1, 2024: $8,193.00, plus tax
2. The Management Fee shall be inclusive of the following operational expenses and exclusive of applicable state or local sales or use tax. Any and all Premises operating expenses not listed in this Section shall be the financial responsibility of Client:
	1. Arch Pools management fees;
	2. Premises general liability insurance; and
	3. Premises payroll, at staffing levels not to exceed the allocated staffing and operational hours defined in the Scope of Services, and associated payroll taxes.
3. Prior to the performance of Services, Arch Pools shall invoice Client for the first Management Fee installment payment set forth above, and shall invoice Client on a monthly basis thereafter. Client shall pay all invoices on within thirty (30) days of Client’s receipt of an invoice, subject to Arch Pools’ submission of all requisite claim vouchers or other supporting documentation required by Client.
4. Delinquent Payments.
5. Client acknowledges that delinquent payment of any amounts owed to Arch Pools under this Agreement, for any reason, is a material breach of the Agreement.
6. For purposes of this Section and Section 8, payments are considered delinquent if they are not fully paid within thirty (30) days of the date of Client’s receipt of an invoice and supporting documentation for the claim.
7. **Indemnification**.
8. Client shall defend, indemnify and hold harmless (collectively, “indemnify” or “indemnification”) Arch Pools, and its officers, directors, shareholders, employees, agents, affiliates and assigns, from any and all third-party claims, demands, actions, damages, causes of action, liabilities, penalties, wages and costs (including insurance deductibles, reasonable attorney’s fees and costs of litigation) of whatever nature, and whenever made or incurred, pertaining and relating to, and directly arising from:
	* 1. Negligent acts or omissions of Client or its employees or agents;
		2. Allegations of discrimination or harassment perpetrated by Client or its employees or agents;
		3. Latent defects of the Premises, Property or Building Systems;
		4. Violations of law by Client or its employees or agents;
		5. Any breach by Client of any representation, warranty, covenant or other obligation or duty of Client or its employees or agents under this Agreement.
		6. Any incident, claim, or other cause of action pertaining to the Premises which occurred or arose prior to the Effective Date.
9. Arch Pools shall defend, indemnify and hold harmless (collectively, “indemnify” or “indemnification”) Client, and its officers, directors, shareholders, employees, agents, affiliates and assigns, from any and all third-party claims, demands, actions, damages, causes of action and liabilities (including reasonable attorney’s fees and costs of litigation) of whatever nature, and whenever made or incurred, pertaining and relating to, and directly arising from:
10. Negligent acts or omissions of Arch Pools or its employees or agents, including any subcontractors;
11. Allegations of discrimination or harassment perpetrated by Arch Pool or its employees or agents, including any subcontractors;
12. Violations of law by Arch Pools or its employees or agents, including any subcontractors;
13. Any breach by Arch Pools of any representation, warranty, covenant or other obligation or duty of Arch Pools or its employees or agents, including any subcontractors under this Agreement.
14. Upon the filing of any third-party claim for damages arising out of acts or omissions for which one Party has agreed to indemnify, defend and hold harmless the other Party, the indemnified Party shall promptly notify the indemnifying Party of such claim. The indemnifying Party shall have the right to control the defense of such action with counsel of its choice or settle the claim in its sole discretion. The indemnified Party shall cooperate fully with the indemnifying Party in the defense of any such action, including the sharing of any evidence collected at the Premises or Property.
15. Each Party’s obligations under this Section shall be offset to the extent of any negligence or unlawful or wrongful acts or omissions of the indemnified Party, the indemnified Party’s employees, and the indemnified Party’s independent contractors. The provisions contained in this Section shall survive the expiration or termination of services under this Agreement with respect to any claims or liability occurring prior to such expiration or termination.
16. **Insurance**.
17. During the Term, to cover the Services provided for herein, Arch Pools shall keep in effect as an operating expense of the Premises the following insurance in amounts not less than the amounts set forth below:
	* 1. Pool Management insurance with a Two Million Dollar ($2,000,000) general aggregate limit and a per-occurrence limit of One Million Dollars ($1,000,000).
		2. General liability insurance with a Ten Million Dollar ($10,000,000) general aggregate limit; Two Million Dollar ($2,000,000) products and completed operations limit; One Million Dollar ($1,000,000) personal and advertising injury limit; and a per-occurrence limit of One Million Dollars ($1,000,000).
		3. Professional liability insurance with a Five Million Dollar ($5,000,000) limit; One Million Dollar ($1,000,000) sexual harassment and molestation sublimit.
		4. Employment practices liability insurance with a One Million Dollar ($1,000,000) limit.
		5. Cyber liability insurance with a Five Million Dollar ($5,000,000) limit.
		6. Comprehensive automobile liability insurance for all vehicles used by Arch Pools with respect to the operation of the Premises, whether non-owned or hired, with a combined single limit of One Million Dollars ($1,000,000).
		7. Excess liability policy in excess of the limits set forth in the sections above, in the amount of Fifteen Million Dollars ($15,000,000) per occurrence.
		8. Worker’s compensation insurance to cover full liability under worker’s compensation laws in effect from time to time in the applicable state.
18. The policies of insurance of general liability, professional liability, and excess (umbrella) liability referenced above include Blanket Additional Insured coverage for parties named pursuant to a written contract. Accordingly, this Agreement hereby names Client, its subsidiaries, affiliates, directors, officers and employees as additional insureds, with a waiver of subrogation, for coverage pertaining to bodily injury, property damage, and personal and advertising injury liability caused in whole or in part by Arch Pools’ negligent acts or omissions under this Agreement during the course of the Term.
19. Arch Pools shall notify Client at least thirty (30) days prior to the effective date of any cancellation or modification of such policy. Arch Pools shall, upon execution of this Agreement and upon request by Client, provide Client with a certificate of insurance evidencing the coverage listed above. If Client requires additional insurance to be carried by Arch Pools, Client shall promptly reimburse Arch Pools for said costs attributable thereto. Arch Pools may negotiate and settle claims with respect to insurance carried by Arch Pools in its sole discretion.
20. Arch Pools shall require any subcontractor hired in connection with this Agreement to carry insurance with the same limits and provisions required to be carried by the Arch Pools under this Agreement
21. **Defaults and Remedies**.
22. Client Default. Client is in default (“Client Default”) if any payment to Arch Pools becomes delinquent, or if Client commits a material violation of any other term, condition, or provision of this Agreement, and such violation continues for a period of thirty (30) days following Client’s receipt of a written notice from Arch Pools setting forth the basis of Arch Pools’ assertion of a violation and the manner in which said violation maybe cured within the thirty-day cure period. In the event Client undertakes to cure a Client Default (other than a default for non-payment) within said thirty (30) day period and the cure, despite Client’s diligent and continuing good faith efforts, cannot reasonably be completed within such cure period, then the cure period will be extended for a reasonable time, upon Arch Pools’ prior written consent, to afford Client an opportunity to effect the cure; provided, that in no event will the entire cure period exceed sixty (60) total days.
23. Arch Pools Default. Arch Pools is in default (“Arch Pools Default”) if Arch Pools commits a material violation of any term, condition, or provision of this Agreement, and such violation continues for a period of five (5) days following Arch Pools’ receipt of a written notice setting forth the basis of Client’s assertion of a violation and the manner in which said violation may be cured within the five-day cure period. In the event Arch Pools undertakes to cure and notwithstanding Arch Pools’ diligent and continuing good faith efforts, such cure cannot reasonably be completed within the Cure Period, then the Cure Period will be extended for a reasonable time to afford Arch Pools an opportunity to effect the cure; provided, however, that in no event will the entire Cure Period exceed sixty (60) total days.
24. Arch Pools Remedies. In the case of a Client Default, Arch Pools shall have the right to elect any one or a combination of the following remedies: (i) to suspend performing any of the Services to be provided by Arch Pools under this Agreement until the Client Default has been cured; (ii) to continue performing the Services to be provided by Arch Pools under this Agreement without waiving the Client Default (and with the express right to subsequently invoke any of its other remedies pertaining to the same, or any future, Client Default); (iii) to initiate an action for damages or equitable relief prior to exercising any right to terminate or suspend performance under this Agreement; and (iv) to terminate this Agreement, reserving the right to pursue any further legal and equitable remedies that may be available to Arch Pools hereunder, including but not limited to the right to pursue collection of any amounts owed to Arch Pools and reimbursement of any expenses incurred in doing so. Arch Pools’ rights and remedies hereunder are cumulative and may be exercised concurrently or separately.
25. Client Remedies. In the case of an Arch Pools Default, Client shall have the right to elect any one or a combination of the following remedies: (i) to initiate an action for damages or equitable relief prior to exercising any right to terminate performance under this Agreement; or (ii) to terminate this Agreement upon delivery of written notice to Arch Pools, reserving the right to pursue any further legal and equitable remedies that may be available to Client hereunder. Client’s rights and remedies hereunder are cumulative and may be exercised concurrently or separately.
26. Limitation of Damages; Exclusion of Certain Damages. EXCEPTING RECOVERIES UNDER Arch Pools’S INSURANCE POLICIES AND THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 6, Arch Pools’S MAXIMUM LIABILITY ARISING OUT OF OR RELATED TO THE SERVICES OR THIS AGREEMENT SHALL BE LIMITED TO PROVEN DIRECT DAMAGES, NOT TO EXCEED THE TOTAL DOLLAR AMOUNT WHICH CLIENT HAS PAID TO Arch Pools AS COMPENSATION UNDER THIS AGREEMENT. CLIENT SHALL BE REQUIRED TO EXHAUST ALL AVAILABLE INSURANCE LIMITS AND REMEDIES AS PROVIDED IN SECTION 7 HEREIN BEFORE SEEKING AN ACTION FOR DAMAGES. IN NO EVENT SHALL Arch Pools HAVE ANY LIABILITY TO CLIENT FOR ANY LOST PROFITS OR REVENUES. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION SHALL BE DEEMED OR CONSTRUED AS A LIMITATION OR CAP ON CLIENT’S LIABILITY WITH RESPECT TO A BREACH OF ITS PAYMENT OBLIGATIONS HEREUNDER AND/OR Arch Pools’S REMEDIES WITH RESPECT THERETO.
27. Actions Upon Termination. Notwithstanding anything to the contrary in this Agreement, in the event of a termination of this Agreement by either Party in accordance with the terms and provisions of this Agreement, the parties agree that Client shall be obligated to pay all amounts owed under this Agreement through the effective date of the termination.
28. Force Majeure. If, because of weather, acts of God, strikes or other labor disputes, pandemic or other public health emergency, vendor delays, or other unavoidable cause, either Party is unable to perform its obligations hereunder, such non-performance shall not be considered a breach of the Agreement and the Term shall be tolled for the duration of the force majeure event. In the event of a natural disaster that forces the Premises to close for longer than two weeks, Client shall provide disaster relief pay to Arch Pools Premises employees in the amount of the lesser of: the amount of pay which Client is supplying its own employees; or an amount equal to the average of two weeks of payroll as calculated over the preceding three months.
29. **Miscellaneous Provisions**.
30. Notices. All notices will be hand delivered or sent by certified or registered mail, postage prepaid, return receipt requested, to the following address:

To Client: Wee Wah Beach Village of Tuxedo Park

 77 Wee Wah Rd

Tuxedo Park NY 10987

Attn: Elizabeth Doherty, Village Clerk

To Arch Pools: WTS International, LLC

3200 Tower Oaks Boulevard, Suite 400

Rockville, MD 20852

 Email Copy to: Danielle Schivek, General Counsel

 DSchivek@archamenity.com

Any notice will be considered to have been given on the date of hand delivery or on the date of receipt or refusal.

1. Confidential Information. Client and Arch Pools acknowledge and agree that each Party has and will obtain other valuable and proprietary confidential information regarding the other’s business and operations, including price information, financial information, operating procedures, trade secrets, business methods, training manuals, program materials and other proprietary information (collectively, “Confidential Information”). The amount and nature of all fees associated with this Agreement shall be considered Confidential Information. Client and Arch Pools covenant and agree further that neither Party will divulge nor disclose, either directly or indirectly, Confidential Information without first obtaining express written authorization of the other Party to do so. Notwithstanding the foregoing, Arch Pools acknowledges that Confidential Information in Client’s possession may be subject to disclosure under Article 6 of the New York State Public Officer’s Law (“Freedom of Information Law” or “FOIL”). In the event that such a request for disclosure is made, Client shall make reasonable efforts to notify Arch Pools of such request prior to disclosure of the Confidential Information so that Arch Pools may take such action as it deems appropriate.
2. Arch Pools Intellectual Property. In the course of performing the Services, Arch Pools may utilize certain proprietary and confidential materials, including but not limited to written manuals, standard operating procedures, programs and software, policies, instructions, memoranda, and directives, all of which have been created by Arch Pools for general operational applicability (collectively, “Arch Pools Intellectual Property”). Arch Pools Intellectual Property shall at all times be the exclusive property of Arch Pools. No license or ownership right is granted or implied by the sharing or use of Arch Pools Intellectual Property at the Premises. Client shall not, at any time during or following termination of this Agreement for any reason, attempt to copy or recreate Arch Pools Intellectual Property, or instruct any third party to do so. Upon notice of termination of this Agreement, Arch Pools shall have the right to immediately remove all Arch Pools Intellectual Property from the Premises. Arch Pools Intellectual Property shall not include any materials produced by Arch Pools which are unique to the Premises; such materials shall be considered work product to be owned by Client.
3. Marketing. Arch Pools shall have the right, subject to Clients’ prior written consent, to include photographic or artistic representations of the Premises and Property among Arch Pools’ promotional materials. These materials shall not include the Client's Confidential Information, nor shall any materials used represent Client in a negative light or cause direct harm to Client’s business or reputation. Arch Pools shall have the right to utilize contact information voluntarily provided by Premises patrons to market services offered at other Arch Pools-managed facilities, provided that Premises patrons are provided an opt-out option.
4. No Waiver. No waiver of any breach of any covenant, condition or agreement or any right of exercise contained herein will be construed to be a subsequent waiver of that covenant, condition or agreement or of any subsequent breach thereof of this Agreement.
5. Applicable Law. This Agreement and the rights and obligations of the parties hereunder will be governed by the laws of the State of Delaware.
6. Entire Agreement. This Agreement, including any exhibits, schedules and attachments hereto, will constitute the entire Agreement between the parties, and no variance or modification thereof will be valid and enforceable, except by amendment in writing, executed and approved in the same manner as this Agreement, and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, except as set forth herein.
7. Benefits and Burdens. This Agreement will inure to the benefit of and bind the parties, their successors-in-interest, and their permitted assigns.
8. Construction. Unless the context clearly indicates otherwise, where appropriate the singular will include the plural and the masculine will include the feminine or neuter, and vice versa, to the extent necessary to give the terms defined herein and/or the terms otherwise used in this Agreement their proper meanings.
9. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, unless to do so renders the performance of the Agreement economically infeasible, in which event the Party suffering from the infeasibility may terminate performance under this Agreement.
10. No Third Party Beneficiaries. This Agreement is made solely and specifically among and for the benefit of the Parties, and other than the indemnification rights contained in Section 6, no other person or entity will have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise. In furtherance of and not in limitation of the foregoing, nothing contained in this Agreement is intended to be for the benefit of any creditor or other person or entity to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) Client or Arch Pools or any officer, director, shareholder or agent thereof; and no such creditor or other person or entity will obtain any right hereunder against the either Client or Arch Pools by reason of any debt, liability or obligation (or otherwise).
11. Relationship of Parties. In its performance of this Agreement, Arch Pools shall at all times act as an independent contractor of Client. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between Arch Pools and Client or their respective successors in interest. To the extent any fiduciary duties would have the effect of modifying, limiting or restricting the express provisions of this Agreement, the terms of this Agreement shall prevail and any liability between the Parties shall be based solely on principles of contract law and the express provisions of this Agreement. For the purposes of assessing Arch Pools’ fiduciary duties and obligations under this Agreement, the Parties acknowledge that the terms and provisions of this Agreement and the duties and obligations set forth herein are intended to satisfy the fiduciary duties which may exist as a result of the relationship between the Parties.
12. Execution. The Parties warrant that the individuals signing this Agreement have the necessary authority and legal capacity to bind the Parties. Additionally, this Agreement may be executed in several counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Delivery of an executed signature page by facsimile transmission or email via PDF or similar electronic format shall be effective as delivery of a manually executed counterpart hereof.
13. Intentionally Deleted.
14. Dispute Resolution. Client may not initiate litigation or arbitration proceedings with respect to any dispute until the completed mediation of such dispute by a mutually agreeable alternative dispute resolution provider. If any dispute remains between the Parties after the mediation is complete, then Arch Pools shall have the sole authority to require all claims and disputes arising under or relating to this Agreement be settled by binding arbitration in the State of New York, County of Orange. An award of arbitration may be confirmed in a court of competent jurisdiction.

[Signatures Appear on Following Page]

**IN WITNESS WHEREOF**, Client and Arch Pools have caused this Agreement to be signed as of the Effective Date.

**Wee Wah Beach Village of Tuxedo Park**

By:

Name:

Title:

Date:

**WTS International, LLC**

By:

Name:

Title:

Date:

**EXHIBIT A**

**SCOPE OF SERVICES**

1. Board of Health Inspection.

Arch Pools shall coordinate an appointment with the local Board of Health for any required pre-season inspections. A representative from Arch Pools shall accompany the Board of Health through its inspection. Client and Arch Pools shall receive an inspection report from the Board of Health detailing any major violations, and Arch Pools is hereby authorized to remediate any such violations at Client’s expense, not to exceed One Thousand Dollars ($1,000) per violation; any expenditure in excess of $1,000 per violation shall require Client’s written pre-approval.

1. Premises Season and Hours of Operation.

Unless otherwise stated, all Services shall be performed during Season and upon completion of any remedial action required by the Board of Health.

During Season, Arch Pools shall staff the Premises during the following operating hours:

Mondays: 1:00pm to 8:00pm 5/24 - 9/2;

Tuesdays: 1:00pm to 8:00pm 5/24 - 9/2;

Wednesdays: 1:00pm to 8:00pm 5/24 - 9/2;

Thursdays: 1:00pm to 8:00pm 5/24 - 9/2;

Fridays: 1:00pm to 8:00pm 5/24 - 9/2;

Saturdays: 1:00pm to 8:00pm 5/24 - 9/2;

Sundays: 1:00pm to 8:00pm 5/24 - 9/2.

Hours are subject to adjustment by Client, in Client’s discretion.

1. Staffing.

Arch Pools shall provide the following staff to operate the Premises during the operating hours listed above:

1 lifeguard on duty per shift for weekdays and 2 lifeguards on duty per shift for weekends and long-weekend holidays.

Fridays, Saturdays, Sundays and Holidays will have an additional membership checker / admin on duty per shift.

For the avoidance of doubt, Arch Pools will ensure there each shift in the above Hours of Operation is covered by the requisite lifeguard(s) and membership checker / admin.

Lifeguards assigned to the Premises, including any subcontracted lifeguards, shall be certified with no less than the minimum credentials required by state law. This shall include lifeguard training, first aid, and CPR from state-approved organizations. Copies of all lifeguard certificates shall be maintained at the Premises at all times.

Additionally, Arch Pools shall provide centralized telephone support between the hours of 9:00am and 8:00pm seven days a week.

1. Orientation.

Arch Pools, jointly with Client, will hold one on-site orientation meeting for all Arch Pools Premises Staff during the Pre-Opening Services Period.

1. Daily operations.

Arch Pools shall perform the following tasks at the Premises at regular intervals as needed in Arch Pools’ reasonable discretion:

* Provide sufficient qualified and certified Arch Pools Premises Staff to operate the Premises in compliance with state and local codes and regulations and in accordance with the Scope of Services herein
* Abide by, and require Arch Pools Premises Staff to abide by the Client operating protocols discussed during the pre-opening on-site orientation meeting
* Ensure that Premises are ready for patrons at opening time
* Record the number of pool users, water and air temperature, weather conditions, and water conditions on a daily basis and record results in the Premises log book
* Prepare safety equipment reports and Premises vandalism reports
* Actively supervise Premises patrons and enforce Premises rules and regulations
* Close the Premises at closing time, return all equipment to proper storage areas, and secure all entrances

Please note that lifeguards shall prioritize their supervisory duties above all other daily operations listed above.

1. Premises Closure Policy.

Arch Pools shall be empowered to temporarily close the pool or the Premises at large upon the occurrence of any of the following:

* If the ambient air temperature at the Premises measures below 55 degrees Fahrenheit, the Premises may be temporarily closed until such time that the temperature measures 55 degrees Fahrenheit or greater.
* If a weather event renders the Premises unsafe in the reasonable judgment of Arch Pools Premises Staff, the Premises may be temporarily closed until such time that the weather event abates in the reasonable judgment of Arch Pools Premises staff.
* If an Arch Pools Premises Staff member audibly detects thunder or visibly observes lightning, the Premises shall be temporarily closed until thirty consecutive minutes have passed without a subsequent thunder boom or lighting strike. Arch Pools shall have the authority to close the Premises for the remainder of the day if, in Arch Pools’ reasonable discretion, Premises operations cannot be safely or effectively resumed prior to the scheduled closing time.
* If vomit, feces, or blood is reported or observed in the lake, the Premises may be temporarily closed until such time that corrective action is completed and the lake is restored to the proper sanitary condition.
* If there is not sufficient Arch Pools Premises Staff present to safely operate the Premises in accordance with state or local codes or regulations.

The decision to close the Premises for any of the above reasons shall be made by Arch Pools Premises staff in their reasonable discretion. In the event that the Premises is closed due to Arch Pools Premises Staff shortage, Client shall receive a credit equal to the unstaffed period. In the event that the Premises is closed for any other reason, no refund shall be due.

Other than those expenses listed in the Management Fee description, all Premises operating expenses, including but not limited to the cost of utilities, state or local fees or taxes, Premises landscaping, and trash removal, shall be the financial responsibility of Client.

1. Building System Maintenance and Repairs.

Arch Pools shall timely report to Client all damage to the Premises structure and equipment of which Arch Pools has actual knowledge. With the exception of damage caused directly by the negligence of Arch Pools, Client shall be responsible for the cost and provision of repairs to, or replacement of, Premises structure and equipment. Concurrent with damage reports, Arch Pools shall estimate the cost for Arch Pools to repair or replace the damage at issue. If the total amount of such estimate is less than One Thousand Dollars ($1,000), Arch Pools shall perform the repair or replacement and bill Client for the cost on the next invoice. If the total amount of such estimate exceeds One Thousand Dollars ($1,000), Arch Pools shall provide Client with a quote for the services to be performed, and Client shall accept or reject Arch Pools’ performance of such services. Whether Client accepts or rejects Arch Pools’ performance of the services, Client shall ensure the timely repair or replacement of any damage and Arch Pools shall not be liable for any Premises operational closures resulting from delays in repair or replacement caused by Client.

In the event of an emergency with the high potential for excessive damage to the Premises structure and/or equipment, Arch Pools shall be empowered to perform emergency maintenance without Client pre-approval. In such an event, Client shall be billed for Arch Pools’ emergency services at Arch Pools’ standard hourly rates for such services.

1. Operational Plans.

*Aquatic Supervisory Manual / On-Site Log Book*. Arch Pools shall maintain an on-site log that shall include the following:

* A description of lifeguard and checker responsibilities
* Copies of lifeguard and CPO certifications
* Premises diagram

*Emergency Response Plan.* Arch Pools shall provide Client with a written emergency response plan that will prepare the Premises for evacuation, equipment shutdown, and inclement weather. The plan shall include emergency contact numbers for local first responders based on the requirements of the emergency.

*Aquatic Supervision Plan*. Arch Pools shall provide Client with a written aquatic supervision plan outlining the sight and sound supervision protocols for Arch Pools Premises Staff.

*Bloodborne Illness Plan*. Arch Pools shall provide Client with a written plan for mitigating the spread of bloodborne illness at the Premises.