

CITY OF FORT LAUDERDALE
FACILITY USE AGREEMENT

THIS IS A USE AGREEMENT, made and entered into on this _____ day of _____, 2018 by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, hereinafter referred to as "CITY,"

and

BROWARD COUNTY R.C. RACE CLUB, INC., a Florida non-profit corporation, hereinafter referred to as "USER."

In consideration of the covenants expressed in this Agreement,

1. TERMS OF AGREEMENT

- a. PURPOSE: CITY hereby provides written permission for the non-exclusive use of a portion of its owned facility at Mills Pond Park ("Park") known as the "Race Track" and depicted on Schedule B, attached hereto and made a part hereof.

CITY and USER agree that the use of the Race Track by USER is solely for the purposes and in accordance with the terms described in Schedule A, attached hereto and made a part hereof, and for no other purpose whatsoever, without written consent of the CITY.

- b. TERM: The term of this Agreement shall be for three years commencing on April 1, 2018 and ending on April 1, 2021. The specific days and times agreed to by CITY and USER for use of the facility is more fully described in Schedule A.
- c. FEE: Club shall pay City a fee for the use of the premises \$400 per month, plus any applicable State taxes. Such fee shall be payable in advance and without additional notice from the City delivered to the Director of Parks and Recreation, 701 South Andrews Avenue, Fort Lauderdale Florida 33316. The City has the right to request financial statements from the USER relating to the USER's occupancy and use of the Race Track.

2. COMPLIANCE WITH LAWS, PERMITS AND FEES

USER is responsible for complying with all applicable local, state and federal taxes, permitting and licensing requirements. USER shall at all times comply with all federal, state, county, and municipal laws, rules, regulations and ordinances or any other governmental agency that has jurisdiction.

USER shall obtain and pay for, in advance, any permit, license and applicable fees required during USER's use of facility.

3. ASSIGNABILITY

USER shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement, whether by assignment or novation, without prior written approval of CITY.

4. SEVERABILITY

If any section, subsection, sentence, clause, provision, or portion of this Agreement shall be held invalid for any reason, the remainder of this Agreement shall not be affected thereby.

5. NON-WAIVER

Failure of the CITY to insist upon the strict performance of any of the covenants, conditions and agreements of this Agreement in any one or more instances shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions and agreements.

6. INSURANCE

USER shall purchase and maintain continuously during the term of this Agreement, comprehensive general liability insurance with minimum combined single limits of \$1,000,000.00 per occurrence. CITY shall be included under said insurance policy as an additional named insured.

USER shall further provide proof of coverage to CITY and carry at USER's own cost and expense Workers Compensation Insurance and Employers' Liability Insurance, no less than coverages stated above, and unemployment insurance, as required by law.

USER shall provide proof of all required insurance coverages to CITY's Risk Manager and receive approval from Risk Manager prior to commencement of this Agreement.

7. INDEMNIFICATION

USER shall indemnify, defend, save and hold CITY fully harmless from and against any and all liabilities, claims, suits, actions, demands, losses, judgments or fines of every kind and nature, including all costs, expenses, attorney's fees, arising from or related to this Agreement or arising from, related to, or caused by USER's use of, or occupancy of the property described herein, or providing of services, or acts or omissions made during the term of this Agreement, including, but not limited to bodily injury, death and property damage. USER shall be liable for all costs incurred by CITY in and about any such claim, suit, action, demand or loss for investigation of same. This indemnification shall not be limited by any insurance required under this Agreement. This indemnification shall survive the expiration or termination of this Agreement.

8. NON-LIABILITY OF CITY

CITY shall not liable for any acts or omissions of USER for any conditions resulting from any provision under this Agreement or other activities of USER or agents of USER or patrons of USER. CITY shall not be liable for any damage or injury that may happen to USER, USER's agents, USER's patrons or property from any cause whatsoever, during this Agreement.

9. AMENDMENT

No modification, amendment or alteration of terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith. Any changes regarding the use of the facility must be mutually agreed upon by both USER and CITY and incorporated in a written amendment(s) to this Agreement.

10. TERMINATION

CITY has the unqualified and absolute right to terminate this Agreement at any time and that the permission granted by this Agreement shall immediately terminate upon exercise by CITY of such right, provided, however, that the CITY shall give notice to USER of termination at least 30 days before the effective time of such termination. CITY through its Director of Parks and Recreation has right to terminate or suspend this Agreement without notice to USER if the facility or other integral parts of the facility are destroyed or damaged by any foreseen or unforeseen

instance and fulfillment of the Agreement is impossible by CITY or when Director determines USER's activities may be or are detrimental to the public or to the CITY or has reason to believe any law is being violated by USER, or its agents, employees members or activity participants.

11. NOTICE

When either party desires to give notice unto the other, it shall be given by written notice, sent certified by U.S. Mail, return receipt requested, addressed to the party to whom it is intended, at the places last specified, and the places for giving notice shall remain such until they are changed by written notice in compliance with this subsection. For the present, the parties designate the following as respective places for giving notice, to wit:

FOR CITY:

Parks & Recreation Department
Attn: Director of Parks & Recreation
701 South Andrews Avenue
Fort Lauderdale, Florida 33316

FOR USER:

Broward County R.C. Race Club, Inc.
Attn: Michael Mennella
Mills Pond Park
2201 NW 9th Avenue
Fort Lauderdale, FL 33311

12. DAMAGES TO FACILITY–REIMBURSEMENT

USER shall not allow any injury, defacement, change, alteration or damage to the facility during its use of the facility by USER, an agent of USER or patron of USER. USER assumes all responsibility for the acts, omissions to act and conduct of all persons admitted to the facility by consent of USER or with the consent of any persons acting for or on behalf of the USER.

USER shall reimburse CITY for all expenses incurred by CITY that CITY incurs for the restoration of the facility to its condition at the commencement of this Agreement.

All improvements existing or hereinafter constructed by User at the Park shall become the property of the City. These include but are not limited to,

the track, stand, lights, electrical equipment, fencing, and storage sheds, but excluding the food shed, drivers stand, clay and all chairs, tables and equipment in the storage container, if removed within 30 days of termination of this Agreement.

13. NON-DISCRIMINATION

USER shall not in exercising any of the rights or privileges granted to USER herein on the grounds of race, color, sex, or national origin, discriminate or permit discrimination against any persons or group of persons in any manner.

USER shall comply with the applicable sections of Americans with Disabilities Act of 1990 (42 USC 126), as amended, which prohibits discrimination of handicapped individuals by denying them the right to participate in or benefit from the services provided pursuant to this Agreement. USER understands that USER is responsible for compliance with this Act. To the extent that any provisions of this Agreement are inconsistent with ADA, the requirements of the ADA shall control.

14. MISCELLANEOUS

CITY, through its authorized representatives, reserves the right to enter the facility at any time. CITY, through its authorized representatives, reserves the right to eject any person(s) from facility and upon exercise of this right; USER waives any right or claim for damages against CITY.

CITY reserves the right to remove from facility any of USER's effects or any effects of USER's agents or patrons remaining in the facility after the termination of this agreement or any extension thereof.

USER shall not pledge, mortgage or otherwise lien or cause any City property to be liened.

USER shall pay all reasonable attorney's fees to CITY for collection of all or any part of the terms of this agreement.

Pursuant to CITY Ordinance, Section 19-2, USER or USER's agents are prohibited from selling food of any kind, goods, wares or merchandise without first obtaining written approval by City Manager or by obtaining an award of an appropriate contract.

This Agreement constitutes a license to use and not a lease.

15. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Florida, with venue in Broward County, Florida.

16. EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between CITY and USER and supersedes all prior negotiations, representations or agreements, either written or oral.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGES FOLLOW]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

CITY OF FORT LAUDERDALE

By _____
DEAN J. TRANTALIS, Mayor

[Witness type/print name]

By _____
LEE R. FELDMAN, City Manager

[Witness type/print name]

(CORPORATE SEAL)

ATTEST:

JEFFREY A. MODARELLI, City Clerk

Approved as to form:
ALAIN E. BOILEAU, Interim City Attorney

KIMBERLY CUNNINGHAM MOSLEY,
City Attorney

WITNESSES:

USER:

BROWARD COUNTY R.C.
RACE CLUB, INC., a Florida
non-profit corporation

Print Name:

[Witness type/print name]

Title: _____

[Witness type/print name]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ as _____ of Broward County R.C. Race Club, Inc., on behalf of the corporation. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed, Printed
or Stamped

My Commission Expires:
Commission Number

SCHEDULE "A"

USER is permitted to use the Race Track during the following times: During all hours the park is open to the public including Wednesday nights from 6:00 p.m. through 10 p.m. and Saturday from noon through 11:30 p.m. for the following specified activity (activities) only: USER may utilize the Race Track for use by radio-operated electrical and gas powered cars involved in off-road and on-road racing. All races will be conducted under radio-operated auto racing rules. All radio-operated cars must have an operable muffler system in order to race at the Race Track.

USER shall furnish at no fee or cost, two (2) radio-operated cars for use by children and adults to participate in the races, and who do not otherwise have a membership with USER or cannot afford to pay the membership fee.

During and after permitted use, USER shall, at its expense, maintain the Race Track in a clean, attractive and orderly condition. USER shall be responsible for the prompt removal of all trash, litter, and debris which accumulates on or about the Race Track and which is attributable, directly or indirectly, to or arising out of its use, specifically including any litter left by USER members, visitors or spectators. USER shall deposit all such trash, litter and debris in the containers/bags provided by the CITY for pick up at locations to be determined by the CITY. CITY is responsible for maintaining grass, however, USER shall further be responsible for and reimburse CITY for any damage to any plants, shrubs, trees, or any CITY improvements such as sidewalks and paved surfaces in the vicinity.

All equipment and any other personal property of USER shall be protected and maintained solely by USER. USER acknowledges City assumes no responsibility whatsoever for any such item, and that the security and protection of any such item from theft, vandalism, the elements, acts of God, or any other cause, are strictly and solely the responsibility of USER. Storage of any items on or about the Race Track, while the Race Track is not in use, is at the sole risk of the USER.

The CITY shall be responsible for opening and closing the Park and its facilities and shall control gate admissions. Park keys will not be provided to USER's members.

USER is obligated to comply with the following conditions. USER acknowledges and agrees that breach of any such condition, or any obligation imposed under this Agreement, may result in immediate cancellation of this Agreement by City:

- (1) No alcoholic beverage of any nature whatsoever may be distributed, consumed, possessed or kept on or about Race Track.
 - (2) USER agrees to comply with all federal, state, and local laws, rules, and regulations, including the Code of Ordinances of the City of Fort Lauderdale and the City of Fort Lauderdale Parks and Recreation Rules and Regulations, as may be amended.
 - (3) Distribution of brochures, pamphlets, and other similar paper products are prohibited, except at tournaments, and only by the USER to promote radio operated auto racing or the particular event being held.
 - (4) USER shall not engage in any promotion, distribution, "give-away" program, advertising, or any similar activity, except that prizes for competitive activities may be awarded by USER. It is the responsibility of USER to insure that no prize is given in violation of any law.
 - (5) No broadcasting activities and no loud speakers are permitted, and no music, whether live or recorded by any means, may be played, unless such broadcasting, music or both is performed in conjunction with an activity or event approved in advance by the CITY or by Event Agreement.
 - (6) The Director must be notified of racing sessions, in writing, a minimum of fifteen (15) days prior to their scheduled dates, together with information pertaining to attendance levels, support personnel, and equipment setup requirements. An event agreement with CITY may be required and USER will be required to reimburse City for security and support personnel as deemed appropriate by City staff.
- (d) If USER desires capital improvements to the Race Track, all such work shall be done in accordance with proposals submitted to the CITY. All such work must be approved by the Director of Parks and Recreation for the CITY and meet all CITY and applicable Building Code requirements. All permitting shall be acquired by USER at its sole expense. No such construction shall begin prior to all required permits being obtained. USER acknowledges and agrees that the bidding requirements of the CITY apply to hiring of contractors and consultants for capital improvements. All such improvements shall become the property of the City.

Exhibit "B"
Location Map

