

③ ✓ 10/5/12 ⑤

Approved Comm. Mtg. on August 21, 2012 CAR #12-1189

Routing Origin: ☐ CAO ☐ ENG. ☐ COMM. DEV. ☐ OTHER _____

Also attached: ☒ copy of CAR ☐ copy of document ☐ ACM Form ☐ # _____ originals

By: _____ forwarded to: _____
Initials

1.) Approved as to Content: _____
Department Director

Capital Improvements defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, inc. major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

Please Check the proper box: CIP FUNDED ☐ YES ☒ NO
Capital Improvement Projects

2.) Approved as to Funds Available: by T. J. K. [Signature] Date: 9/6/12
Finance Director

Amount Required by Contract/Agreement \$ 9,000⁰⁰ Funding Source: Revenue only

Dept./Div. Parks / Recreation Index/Sub-object PKR 030801 - K303 Project # N/A

Please Forward to DA in City Attorney's Office

3.) City Attorney's Office: Approved as to Form:# _____ **Originals to City Mgr. By:** _____

Harry A. Stewart _____ Cole Copertino _____ Robert B. Dunckel _____
Ginger Wald _____ D'Wayne Spence _____ Paul G. Bangel _____
Carrie Sarver _____ DJ Williams-Persad *Xw* _____

4.) Approved as to content: Assistant City Manager:

By: _____
Stanley Hawthorne, Assistant City Manager

By: _____
Susanne Torriente, Assistant City Manager

5.) City Manager: Please sign as indicated and forward originals to Mayor.

6.) Mayor: Please sign as indicated and forward originals to Clerk.

7.) To City Clerk for attestation and City seal.

INSTRUCTIONS TO CLERK'S OFFICE

8.) City Clerk: forwards ^{two} all originals of document to: Lisa Slagle

☒ Original Route form to Glynis Burney

RECEIVED
FT. LAUDERDALE
CITY ATTORNEY'S OFFICE
2012 SEP -6 PM 5:26

RECEIVED
FT. LAUDERDALE
CITY ATTORNEY'S OFFICE
2012 AUG 28 PM 2:06

$$10/3$$

**CITY OF FORT LAUDERDALE
FACILITY USE AGREEMENT**

THIS IS A USE AGREEMENT, made and entered into on this 31 day of October, 2012 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

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 agrees to use of the Race Track by USER 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.

The use of the facility is to commence on October 1, 2012 and end on September 30, 2013. The dates and times agreed to by CITY and USER for use of the facility is more fully described in Schedule A. This Agreement may be extended for up to two additional consecutive one year terms providing all terms, conditions and specifications remain the same and the extension is approved by USER and CITY.

USER agrees to pay the City \$ 750.00 per month, plus 6% state tax, to be paid in full on the first of each month in advance of use of the facility identified herein. If CITY AND USER agree to extend the agreement beyond original term then the rental amount shall increase as follows: \$800.00 per month, plus 6% state tax for the first extension term; \$850.00 per month, plus 6% state tax for the second extension term.

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. USER shall pay rental for facility only up to the time of such termination. If the facility is so damaged as to render fulfillment of the entire Agreement impossible before the USER has used the facility, then all advance payments made by USER to CITY shall be refunded.

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
1350 West Broward Boulevard
Fort Lauderdale, Florida 33312

FOR USER:

Broward County R.C. Race Club, Inc.
Attn: Bart Collins
18562 NW 24th Place
Pembroke Pines, FL 33029

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 shall revert to the City upon the expiration of this Agreement, or any extension thereof. These include but are not limited to, the track, stand, lights, electrical equipment, fencing, and storage sheds.

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), 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 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.

15. **GOVERNING LAW**

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

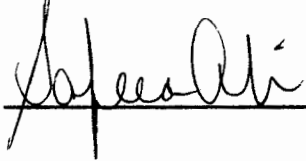
16. **EXTENT OF AGREEMENT**

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

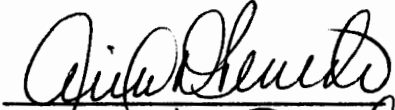
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGES FOLLOW]

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

WITNESSES:



[Witness type/print name]



[Witness type/print name]

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE

By 
_____ Mayor

By 
_____ City Manager

ATTEST:


_____ City Clerk

Approved as to form:


_____ City Attorney

WITNESSES:

Cathy Thompson

Cathy Thompson
[Witness type/print name]

Jader Lopez

Jader Lopez
[Witness type/print name]

USER

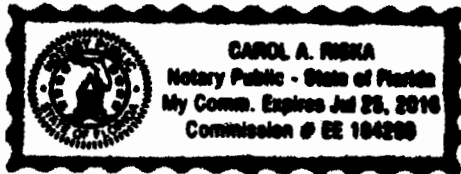
By: Bart Collins
Name: BART COLLINS

Title: President

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 25th day of July, 2012, by Bart Collins as President 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)



Carol A. Rieka
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: Wednesdays, Thursdays and Fridays from 5pm through 11pm and Saturdays from 7 am through 11:30 pm 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 provided by the CITY for pick up at locations to be determined by the CITY. 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.

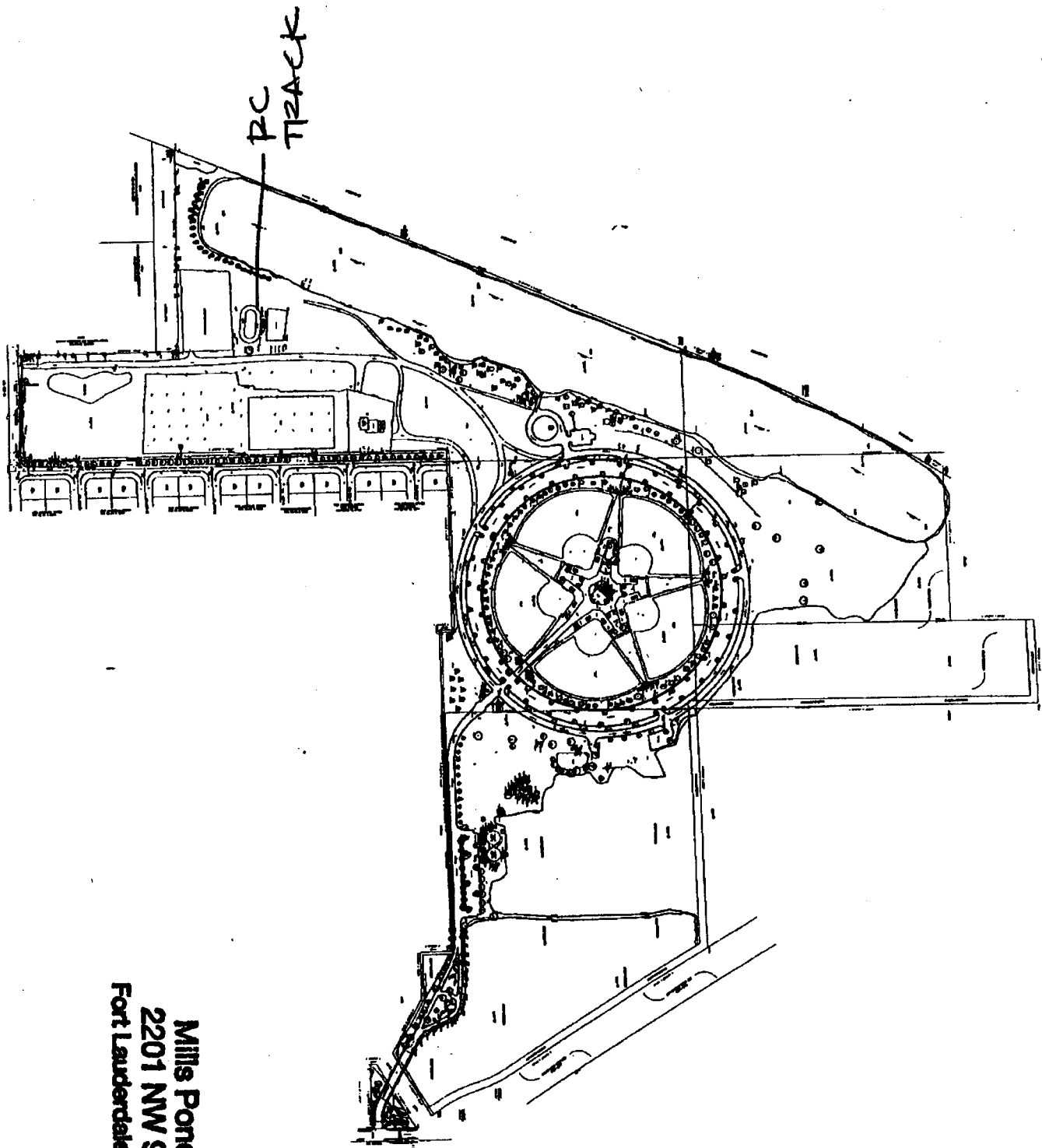
(4) USER shall not engage in any promotion, distribution, "give-away" program, advertising, or any similar activity, except that prizes for competitive activities may be awarded by USER. It is the responsibility of USER to insure that no prize is given in violation of any law.

(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.

SCHEDULE "B"
LOCATION MAP



Mills Pond Park
2201 NW 9th Ave
Fort Lauderdale, FL 33311