

CITY OF FORT LAUDERDALE FACILITY USE LICENSE AGREEMENT

THIS IS A FACILITY USE AGREEMENT, (“Agreement”), made and entered this _____ day of _____, (“Effective Date”), is by and between:

THE CITY OF FORT LAUDERDALE, a Florida municipality, (“CITY”), whose principal place of business is 100 North Andrews Avenue, Fort Lauderdale, FL 33301,

and

BROWARD COUNTY R.C. RACE CLUB, INC., a Florida non-profit corporation, whose principal place of business is Mills Pond Park, 2201 NW 9th Avenue, Fort Lauderdale, FL 33311, hereinafter referred to as (“USER” or “Contractor”).

WHEREAS, the CITY owns Mills Pond Park (“Facility”), located at 2201 NW 9th Avenue, Fort Lauderdale, FL 33311; and

WHEREAS, the CITY is willing to permit USER to use a portion of the facility under the terms and conditions set forth in this Agreement;

NOW THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CITY and Broward County R.C. Race Club, Inc., agree as follows:

1. TERMS OF AGREEMENT

- A. 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. The term of this Agreement shall be for three years commencing on May 21, 2024 and ending on May 20, 2027. The specific days and times agreed to by CITY and USER for use of the facility is more fully described in Schedule A.
 - a. USER shall pay City a fee in the amount of \$400 per month, plus any applicable State taxes, for the use of the premises. 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. FACILITY USE

Use of the facility by the USER is not an interest in real property.

4. EFFECTIVE DATE

This Agreement shall become effective upon the date that it is executed by the last party to this Agreement.

5. 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.

6. SEVERABILITY

If any paragraph, section, subsection, sentence, clause, provision, or portion of this Agreement shall be held invalid by a court of competent jurisdiction, for any reason, such holding shall not affect the remainder of this Agreement, which shall remain in full force and effect.

7. 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. Failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision. Nothing contained in this Agreement is intended nor shall anything in the Agreement be construed to waive City's rights and immunities under the law or the City's sovereign immunity or the limitations contained in Section 768.28, Florida Statutes, as may be amended from time to time.

8. INSURANCE

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Contractor, at its sole expense, shall provide insurance of such types and with such terms and limits

as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the City's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the City, and these coverages, limits, and/or endorsements shall in no way be required to be relied upon by the Contractor for assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

Insurance Certificate Requirements

- a. The Contractor shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the License term.
- b. The Contractor shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.

- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Contractor shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on the general liability policy.
- g. The title of the Agreement, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Contractor has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Contractor's expense.

If the Contractor's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the Contractor that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Contractor's insurance policies.

The Contractor shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the Contractor's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.

9. INDEMNIFICATION

USER shall protect and defend, counsel being subject to the CITY's approval, and indemnify, and hold CITY, and the CITY's officers, employees, and agents fully harmless, from and against any and all lawsuits, penalties, damages, settlements, decrees, costs, charges, and other expenses or liabilities of every kind, sort, or description, claims, suits, actions, demands, losses, judgments or fines of every kind and nature, including all costs, expenses, attorney's fees, and any award or costs at both the trial and appellate levels, in connection with or 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 in USER's performance or nonperformance made during the term of this Agreement. Without limiting the foregoing, any and all such claims, relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged, infringement of any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, are included in the indemnity. 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.

10. NON-LIABILITY OF CITY

CITY shall not be 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.

11. 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.

12. 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.

13. 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

Christopher J. Lagerbloom, ICMA-MA
City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

FOR USER:

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

14. 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.

15. NON-DISCRIMINATION

Contractors doing business with the city shall not discriminate against their employees based on the employee's race, color, religion, gender, gender identity, gender expression, marital status, sexual orientation, national origin, age, disability or any other protected classification as defined by applicable law.

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. USER shall have the continuing obligation of compliance with the Americans With Disabilities Act, as same may be amended from time to time, with respect to the Project.

16. PUBLIC RECORDS

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-828-5002, CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301, PRRCONTRACT@FORTLAUDERDALE.GOV

Contractor shall comply with public records laws, and Contractor shall:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2019), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by

the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

17. 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 in any public park area, public beach area or adjacent rights-of-way to any public park area of the city 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.

18. GOVERNING LAW; VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the courts in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.

19. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

20. THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this Agreement.

21. 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.

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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

[Witness type/print name]

By: _____
DEAN J. TRANTALIS,
Mayor

[Witness type/print name]

By: _____
CHRISTOPHER LAGERBLOOM, ICMA-MA
City Manager

ATTEST:

(CORPORATE SEAL)

By: _____
JEFFREY A. MODARELLI,
City Clerk

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

By: _____
KIMBERLY CUNNINGHAM MOSLEY,
Assistant City Attorney

WITNESSES:

USER:

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

Print Name: Alfredo Morales

[Witness type/print name]

Title: President

[Witness type/print name]

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 2020, by Alfredo Morales, as President of Broward County R.C. Race Club, Incorporated, a Florida Not For Profit Corporation.

(SEAL)

(Signature of Notary Public – State of Florida)

Print, Type or Stamp Commissioned Name of
Notary Public)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

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 ensure 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.

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

