



Michigan Department of Natural Resources

OPERATING AGREEMENT

MISC-PRD-____ - ____

BETWEEN

THE STATE OF MICHIGAN, AS PERMITTER

AND

DETROIT BELLE ISLE GRAND PRIX, INC, AS PERMITTEE

This Operating Agreement, hereinafter called the "Agreement", is entered into by the State of Michigan through its **Department of Natural Resources** (DNR), hereinafter called "DNR" and/or "Permitter," and **Detroit Belle Isle Grand Prix, Inc.**, hereinafter called "Permittee," whose address is 300 Renaissance Center, Suite 2311, Detroit MI, 48243.

WHEREAS, pursuant to Section 503(1) of Public Act 451 of 1994 (1994 PA 451), as amended, MCL 324.503(1), the DNR is required to: protect and conserve the natural resources of the State; provide and develop facilities for outdoor recreation; prevent the destruction of timber and other forest growth by fire or otherwise; promote the reforestation of forest lands belonging to the State; prevent and guard against the pollution of lakes and streams within the State and enforce all laws provided for that purpose with all authority granted by law; and foster and encourage the protection and propagation of game and fish; and create, maintain, operate, preserve, and protect Michigan's significant natural and historic resources.

WHEREAS, the Purpose of this Agreement is to allow Permittee to conduct motorsports, racing, entertainment and other ancillary events (collectively, the "Events"), within the Premises described as: Belle Isle Park.

WHEREAS, the Director of the DNR, or his or her lawful designated Representative, has determined that the purpose of this Agreement is necessary to implement Part 5 of 1994 PA 451, as amended, because Permittee will be conducting the Events.

THEREFORE, Permitter and Permittee, for consideration specified in this Agreement, agree to the following terms and conditions:

1. **DESCRIPTION OF PREMISES** - Permitter hereby grants to Permittee, use of the Premises described as:

Sites and parking areas located on Belle Isle Park as designated by Permitter and Permittee including those areas more particularly depicted on Exhibit A attached hereto which include land owned or operated or leased by the State of

Michigan and/or the DNR located within Wayne County, State of Michigan subject to any modifications to the description of Premises mutually agreed upon by Permittee and Permittee.

This Agreement may be subject to the DNR's public notice process.

2. USE OF PREMISES

- A. Permittee hereby acknowledges that the use and occupancy of the Premises shall be subject to the provisions of 1994 PA 451, as amended, and confined to the following specific uses:
 - 1) To conduct the Events.
 - 2) Any other use which is agreed to in writing by both Parties.
- B. Permittee shall obtain Permitter's prior consent, in writing, signed by the Permitter, to use the Premises for any purpose not listed in this Section. Permitter may terminate this Agreement, as provided in Section 19, if at any time, Permittee uses the Premises, without express written permission by Permitter, for purposes other than those enumerated in this Section.
- C. **PROHIBITED ACTIVITIES** - Except as conducted in conjunction with the Events, the following activities on the Premises are prohibited:
 - 1) Authorizing public use of Premises in violation of any State law, order or regulation.
 - 2) Any planting of plants, removal of plants, landscaping or earthmoving on the Premises without the prior written consent of the Permitter.
 - 3) Any clearing activity outside the Premises.
 - 4) Dumping or disposal of garbage/trash, spare parts, hazardous material, scrap metal and other waste onto the Premises.
 - 5) Disposal of trees, tree tops, branches, roots, stumps, and other vegetative debris onto the Premises.
- D. Permitter may terminate this Agreement, as provided in Section 19, if prohibited activities occur on the Premises at any time during the term of this Agreement.

3. WASTE - Permittee agrees not to commit, or allow to be committed, any waste or nuisance on the Premises and will not use, or permit to be used, the Premises for any unlawful purpose.

4. ADMINISTRATION – The _____, or his/her designated representative, is the DNR Administrator of this Agreement (collectively, DNR Representative). The Permittee shall designate in writing to Permitter one(1) person and one(1) alternate person responsible to be the contact person for the Permittee regarding the administration of the Agreement. This person shall be authorized to make decisions regarding the maintenance and operation of the Premises.

5. CONDITION OF PREMISES - Permittee stipulates, represents and warrants that Permittee has examined the Premises, and that it is taking possession of the Premises in "as is" condition. Permittee acknowledges that it has not made an independent environmental assessment of the Premises, and agrees to maintain the Premises during the Time of Possession in its present condition

subject to ordinary wear and tear, weather and other Acts of God and acts of third parties beyond the control of Permittee.

6. **TERM** - Permitter shall grant use of the Premises to Permittee for a three (3) year initial term of possession beginning upon actual possession at 12:01 a.m. 39 days before the first day of the Events for each year, and ending at midnight on the 20th day following the final day of the Events (the "Time of Possession"), or such later date as may be mutually agreed upon by Permitter and Permittee. The beginning and ending Agreement term dates may be altered by mutual written consent to reflect the actual date of occupancy. Notwithstanding anything to the contrary herein, Permittee shall have the right to terminate this Agreement at any time upon ninety (90) days' written notice to Permitter.
7. **FEE** - Permittee shall pay a monetary Fee to Permitter in the amount of \$300,000.00 annually. The Fee shall be earmarked by Permitter for the improvement and preservation of Belle Isle Park.

Checks should be made payable to the State of Michigan. Payment is due annually beginning in 2019 no later than ninety (90) days after conclusion of the Events.

A \$10 per day Late Fee must be paid to Permitter by Permittee for every day beyond the designated due date that payment is made. Failure to pay rent on time will be grounds for the Permitter to terminate the Agreement in accordance with Section 19 below.

Payment should be mailed to: Roscommon Customer Service Center
8717 N. Roscommon Road
Roscommon, MI 48653
Attn: Concession/Lease Manager

8. **OPTION TO RENEW** - The initial term of this Agreement may be extended by Permittee upon written notice on or prior to September 1, 2021 for an additional two (2) year term, or such term as shall be agreed to between the Parties.
9. **SERVICES BY PERMITTEE** - Permittee shall furnish the following services at its own expense during the Time of Possession:
 - A. Permittee will lawfully operate and conduct the event as provided for in Section 2A above at its sole expense.
 - B. In performing services under this Agreement, Permittee must comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, Permittee must comply with any applicable state agency rules that the agency provides to Permitter.
10. **FEES** - Permittee may charge a fee or request donations in connection with Permittee's use of the Premises.
11. **ASSIGNMENT AND SUBLEASE** – Except as conducted in conjunction with the Events, Permittee shall not sell, mortgage, rent, assign, or parcel out the Agreement hereby granted, or any interest therein, or allow or permit any other person or party to use or occupy any part of the Premises, building, or spaces, covered by this Agreement for any purpose whatsoever without first obtaining the prior written consent of Permitter. Such action by Permittee without the prior

written approval of Permitter shall be cause for the immediate termination of this Agreement. Permittee may, however, enter into maintenance agreements with third parties to fulfill Section 5 above.

12. **DAMAGE and REPAIRS** - Permittee shall make repairs to the Premises resulting from damage that exceeds the normal wear and tear expected from the lawful and proper use of the Premises by Permittee for the Events subject to weather and other Acts of God and acts of third parties beyond the control of Permittee.
13. **INSPECTION of PREMISES** - Permitter and Permitter's agents and employees shall have the right at all reasonable times during the term of this Agreement, and any renewal thereof, to enter the Premises for the purposes of making any inspections, repairs, additions, or alterations as may be deemed reasonably appropriate by Permitter for the preservation of the Premises in the event that Permittee has breached its obligations under this Agreement.
14. **INDEMNIFICATION** - Permittee hereby covenants and agrees to indemnify and save harmless, the State of Michigan, its departments, officers, employees and agents, from any and all claims and demands, for all loss, injury, death or damage, that any person or entity may have or make, in any manner, arising out of any occurrence related to (1) issuance of this Agreement and caused by the acts or omissions of Permittee in violation of this Agreement; (2) subject to Sections 5 and 12, the Events; and (3) the use or occupancy of the Premises which are the subject of this Agreement by the Permittee, its employees, contractors, or its authorized representatives, except for losses, injuries, damages or death caused by the acts or omissions of the State of Michigan, its departments, officers, employees or agents.
15. **LIABILITY** – Except for losses, injuries, damages or death caused by the acts or omissions of The State of Michigan, its departments, officers, employees or agents, Permittee hereby releases, waives, discharges and covenants not to sue the State of Michigan, its departments, officers, employees and agents, from any and all liability to Permittee, its officers, employees and agents, for all losses, injury, death or damage, and any claims or demands thereto, on account of injury to person or property, or resulting in death of Permittee, its officers, employees or agents, in reference to the activities authorized by this Agreement.
16. **INSURANCE:** Permittee shall provide certificates of insurance listing **the State of Michigan, its departments, boards, agencies, commissions, officers, and employees as additional insureds**, to Permitter within thirty(30) calendar days following the execution and delivery of this Agreement to Permittee, and every year thereafter, for the following insurance coverage. The insurance policies shall provide that they may not be modified, canceled, or allowed to expire without thirty(30) days' prior written notice given to Permitter.
 - A. Permittee shall obtain General Liability Insurance, naming Permitter, its officers and employees as additional insureds and protecting against all claims, demands, suits, actions or causes of action and judgments, settlements or recoveries, for bodily injury or property damage arising out of

a condition of the Premises, or arising in connection with or as a direct or indirect result of the Permittee's use and occupancy of the Premises or its exercise of the right and privileges granted in the Agreement. Permittee agrees to maintain a minimum policy limit, in the amount of:

- \$ 500,000 per occurrence for property damage
- \$1,000,000 per occurrence for bodily injury
- \$2,000,000 aggregate

- B. As required by law, Permittee shall obtain Workers' Compensation Insurance for Permittee's employees' claims under Michigan Workers' Compensation Act or similar employee benefit act or any other state act applicable to an employee, along with Employer's Liability Insurance for claims for damages because of bodily injury, occupational sickness or disease or death of an employee when Workers Compensation may not be an exclusive remedy, subject to a limit of liability of not less than \$100,000 each accident.
 - C. As required by law, Permittee shall maintain automobile no-fault coverage for its owned or leased automobiles.
 - D. Permitter reserves the right to reassess the minimum policy limits requirement set forth above every five(5) years, or as reasonably determined necessary by Permitter.
17. **NON-DISCRIMINATION** - Permittee, its agents, employees and subcontractors shall comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453 as amended, MCL 37.2101 *et seq.*; MSA 3.548 (101) *et seq.*; the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101; MSA 3.550 (101) *et seq.*, and all other federal, state and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his/her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his/her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Permittee agrees to include in every subcontract entered into for the performance of this Agreement, this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Agreement.
18. **UNFAIR LABOR PRACTICES** - Permittee shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 *et seq.*; MSA 17.458(21) *et seq.* Under Section 4 of 1980 PA 278, MCL 423.324, the State may void a Contract, Lease, or Operating Agreement, if after award, the name of the Permittee appears in the register.
- A. **PREVAILING WAGES** – If execution of this Agreement involves work by a construction mechanic, and any part of that work is sponsored or financed in whole or in part by the State, then the following will apply:

The rates of wages and fringe benefits to be paid in each class of construction mechanics by Permittee cannot be less than the wage and fringe

benefit rates issued by the Michigan Department of Energy, Labor and Economic Growth, Wage/Hour Division, in its schedule of occupational classification and wage and fringe benefit rates for the locality in which the work is to be performed.

- B. Permittee or any subcontractor, manufacturer or supplier of Permittee appears in the register compiled by the Michigan Department of Labor and Economic Growth, pursuant to 1980 PA 278, as amended, MCL 423.321 *et seq.*; MSA 17.458(21) *et seq.* (Employers Engaging in Unfair Labor Practices Act) and such entity is not suspended or terminated from participation as a subcontractor, manufacturer or supplier of Permittee in the Events. This covenant is cross-referenced in Section 18.

19. CANCELLATION -

- A. Permitter may cancel this Agreement provided Permittee is notified in writing at least thirty(30) days prior to the effective date of cancellation and any one of the following occur provided that Permittee has not cured the conduct giving rise to such notification within such thirty (30) day period:
 - 1) The Premises are no longer being used for the purposes identified in this Agreement.
 - 2) Permittee knowingly and intentionally provided Permitter with information, in its application for this Agreement or at any time during the Agreement term, that was false or fraudulent.
 - 3) Permittee fails to perform any of its obligations under this Agreement, and such failure is not cured within ninety(90) calendar days after written notice of default to Permittee.

20. QUIET ENJOYMENT - Upon payment of the rent and the performance of the conditions outlined herein, Permittee may peacefully and quietly have, hold, and enjoy the Premises.

21. HOLDOVER TENANCY - If Permittee remains in possession of the Premises after the natural expiration of this Agreement, without the consent of Permitter but without a renewal of this Agreement, pursuant to Section 8, a new tenancy from year-to-year shall be created between Permitter and Permittee. The new tenancy shall be subject to all of the terms and conditions of this Agreement, except that such tenancy shall be terminable upon fifteen(15) days written notice served by either party.

22. NOTICES - Any notice(s) to Permitter or to Permittee required by this Agreement shall be complete if submitted in writing and transmitted by personal delivery (with signed delivery receipt), or certified or registered mail, return receipt requested. Unless either party notifies the other in writing of a different mailing address, notices to Permitter and Permittee shall be transmitted to the addresses listed below:

To PERMITTER:

Land Administering Division (LAD)

and

State of Michigan
Department of Natural Resources
Chief,
P.O. Box
Lansing, MI

State of Michigan
Department of Natural Resources

P.O. Box
Lansing, MI

To PERMITTEE:

and Permittee Alternate

Detroit Belle Isle Grand Prix, Inc.
300 Renaissance Center, Suite 2311
Detroit, MI 48243
Attn: President

- 23. NOTICES – EFFECTIVE TIME/DATE** - Notices shall be deemed effective as of 12:00 noon, Eastern Standard Time (EST) on the third (3rd) business day following the date of mailing, if sent by mail. Business day is defined as any day other than a Saturday, Sunday, or legal holiday. A receipt from the U.S. Postal Service, or comparable agency performing such function, shall be conclusive evidence of the date of mailing.
- 24. INTERPRETATION** - This Agreement shall be interpreted in accordance with the laws of the State of Michigan.
- 25. MODIFICATION** – This Agreement shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance. No modifications of this Agreement are effective unless in writing, signed by the parties, and executed in the same manner as this Agreement was originally executed. A party may waive or release the other party's breach or default only in writing.
- 26. SEVERABILITY** - Should any provision of this Agreement, or any addenda thereto, be found to be illegal, or otherwise unenforceable by a court of law, such provision shall be severed from the remainder of the Agreement, and such action shall not affect the enforceability of the remaining provisions of the Agreement.
- 27. GOVERNING LAW** – This Agreement is governed by, and construed in accordance with, the laws of the State of Michigan. Any dispute arising under this Agreement must be resolved in the Michigan Court of Claims.
- 28. REQUIRED APPROVALS** - This Agreement shall not be binding or effective on either party until executed (and witnessed and notarized as necessary) by Permitter and Permittee.
- 29. WAIVER OF DEFAULT** – The failure of a party to insist upon strict adherence to any term of this Agreement does not deprive the party of the right to insist upon strict adherence to that term, or any other term, of this Agreement.

- 30. ENTIRE AGREEMENT AND ENCLOSURES** - This Agreement constitutes the entire agreement between the parties with regard to this transaction and may be amended only in writing and executed in the same manner as this Agreement was originally executed. This Agreement supersedes all proposals or other prior agreements and all other communications between the parties relating to this transaction.

**PERMITTER
WITNESS(ES) TO PERMITTER**

**STATE OF MICHIGAN
BY THE
DEPARTMENT OF NATURAL RESOURCES**

Witness(es)

Witness Signature

Date

_____, Chief Date
DNR, _____ Division

(please print name)

Witness(es)

Witness Signature

Date

(please print name)

STATE OF MICHIGAN, COUNTY OF _____

The foregoing instrument was acknowledged before me on this _____, day of _____, _____ by _____, _____ Division Chief, for the Michigan Department of Natural Resources.

_____, Notary Public
(please print name)

My Commission Expires: _____

Acting in the County of: _____

PERMITTEE –

IN WITNESS WHEREOF, the parties to this Operating Agreement subscribe their names on the date set forth below:

WITNESS TO PERMITTEE

Witness

(please print)

Witness Signature _____
Date

Permittee

(please print)

Permittee Signature _____
Date

Title: _____

Federal ID No. _____

Witness

(please print)

Witness Signature _____
Date

Permittee

(please print)

Permittee Signature _____
Date

Title: _____

Federal ID No. _____

State of Michigan, County of _____

The foregoing instrument was acknowledged before me on this _____ day of _____, by _____, for Permittee.

_____, Notary Public

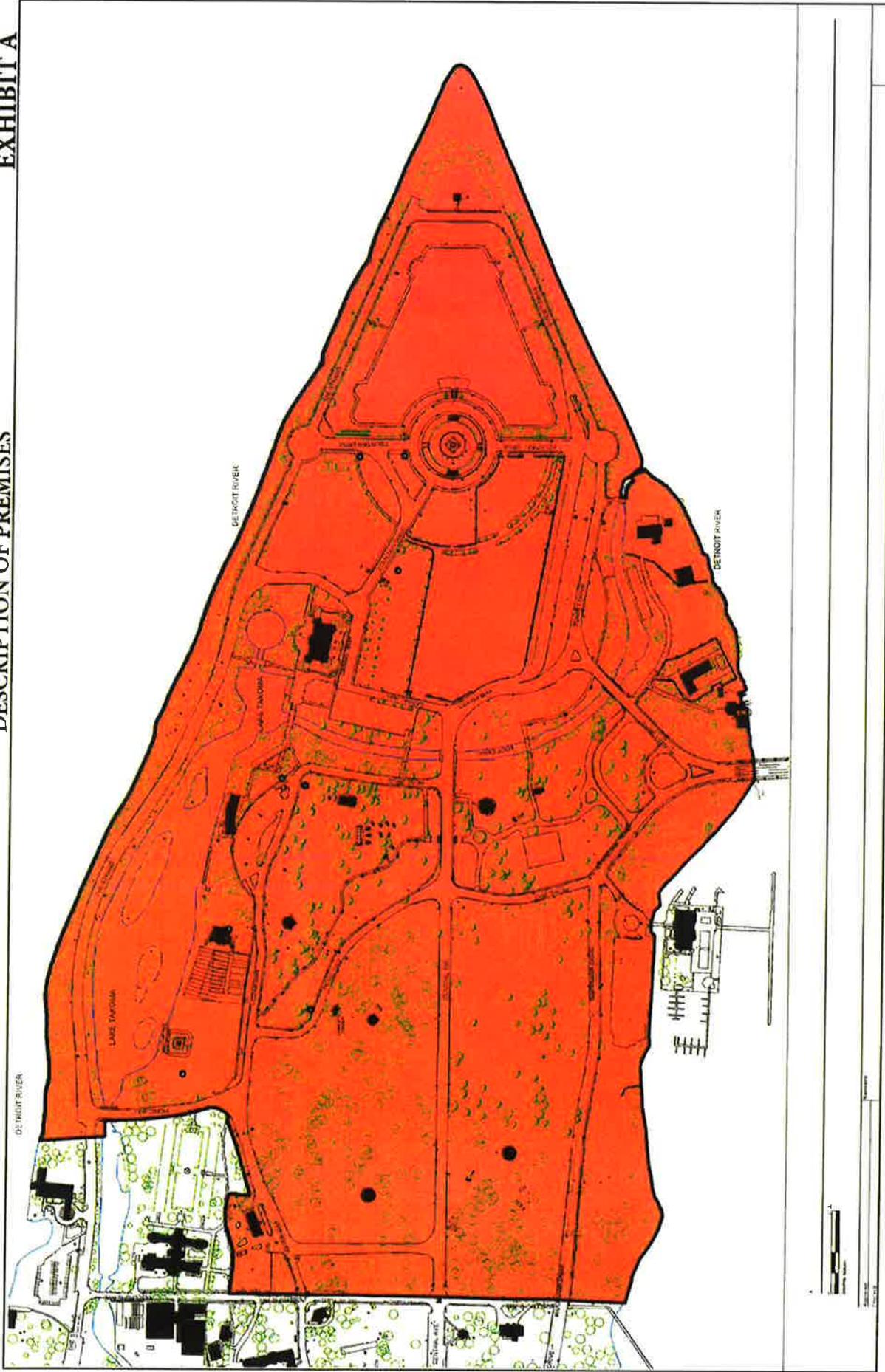
State of Michigan, County of _____

My Commission expires: _____

Acting in the County of _____

DESCRIPTION OF PREMISES

EXHIBIT A



Q P O N M L K J I

