

Ordinance 2012-01

AN ORDINANCE AUTHORIZING AND DIRECTING THE VILLAGE ADMINISTRATOR TO EXECUTE A USE AGREEMENT WITH THE COMMERCIAL POINT RACING FOUNDATION, INC.

WHEREAS, for several years the Village of Commercial Point has allowed certain of its public streets to be used for purpose of hosting an annual go-kart street race referred to as the Commercial Point Grand Prix of Karting (the "Event");

WHEREAS, the organizers of the Event have formed the Foundation for the purpose of facilitating and coordinating the Event and related activities;

WHEREAS, the Foundation desires to continue to host the Event and make use of certain public streets within the Village and now wishes to enter into this Agreement to reserve the right to host the Event at the Village of Commercial Point on designated dates during the next three years; and

WHEREAS, the Council of the Village of Commercial Point desires that the Event continue to be held in the Village and has agreed to permit the Foundation to have access and use of certain public streets, subject to annual approval and in accordance with the terms and condition of this Agreement.

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Commercial Point, County of Pickaway, State of Ohio, a majority of the members elected thereto concurring that:

SECTION ONE. The Villager Administrator of the Village of Commercial Point is hereby authorized and directed to enter into a Use Agreement, in substantially the same format and content, as the document attached hereto as Exhibit "A" and incorporated herein by reference, on behalf of the Village of Commercial Point.

SECTION TWO. It is hereby found and determined that all formal actions of the Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council and that all deliberations of the Council and any of the decision making bodies of the Village of Commercial Point which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.

SECTION THREE. All prior legislation, or any parts thereof, which is/are inconsistent with this Ordinance is/are hereby repealed as to the inconsistent parts thereof.

SECTION FOUR. This Ordinance shall become effective upon the earliest date allowed by the laws of the State of Ohio.

Vote on Suspension of Readings:

Motion by: Kim Gooden-Kinney 2nd: Jason Thompson

Roll Call:

Yes Jim Kuzelka Yes Vidal Cruz Yes Jason Thompson
Yes Randy Shelton Yes Kimberly Gooden-Kinney Yes Clarence Wissinger

Vote on Passage of Ordinance and Declaring an Emergency:

Motion by: Kim Gooden-Kinney 2nd: Jason Thompson

Roll Call:

Yes Jim Kuzelka Yes Vidal Cruz Yes Jason Thompson
Yes Randy Shelton Yes Kimberly Gooden-Kinney Yes Clarence Wissinger

Adopted this 9th day of January 2012.

Joe Hammond, Mayor

Wendy Hastings, Fiscal Officer

Approved as to Form:

D. Michael Crites, Law Director

Exhibit A

USE AGREEMENT

THIS USE AGREEMENT (this "Agreement") is made and entered into on January 9, 2012, by and between the **VILLAGE OF COMMERCIAL POINT, OHIO**, an Ohio municipal corporation ("Village"), having an address at 10 West Scioto Street, Commercial Point, Ohio 43116, and **COMMERCIAL POINT RACING FOUNDATION, INC.**, an Ohio non-profit corporation whose Federal Tax Identification Number is 45-4204830 ("Foundation"), having an address at 11 East Scioto Street, Commercial Point, Ohio 43116.

RECITALS

WHEREAS, for several years the Village has allowed certain of its public streets to be used for purpose of the hosting an annual go-kart street race referred to as the Commercial Point Grand Prix of Karting (the "Event");

WHEREAS, the organizers of the Event have formed the Foundation for the purpose of facilitating and coordinating the Event and related activities;

WHEREAS, the Foundation desires to continue to host the Event and make use of certain public streets within the Village and now wishes to enter into this Agreement to reserve the right to host the Event at the Village on designated dates during the next three years; and

WHEREAS, the Village desires that the Event continue to be held in the Village and has agreed to permit the Foundation to have access and use of certain public streets, subject to annual approval and in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties wish to set forth terms and conditions upon which the Foundation may host the Event at the Village:

1. Grant of Use.

1.1. The Village hereby agrees, in accordance with the reservation and approval process set forth in Section 2, to permit the Foundation to have access and use of certain designated public streets ("Event Space") for the sole purpose of hosting the Event during the first complete weekend of August for the 2012, 2013 and 2014 calendar year (each such weekend in August is hereinafter referred to as an "Event Period"), which shall include Friday, Saturday and Sunday of such Event Period and a reasonable period of time before and after such Event Period. The Foundation's right to access and use the Event Space is subject to and subordinate to the Village's rights as set forth in Section 2.2.

2. Reservation and Approval Process for the Event Space; Village's Rights to the Event Space.

2.1. Reservation and Approval Process of the Event Space.

2.1.1. The Foundation shall not less than one hundred eighty (180) days prior to the commencement of each Event Period, submit to the Village Council, for its review and approval, a proposed plan for the then applicable Event Period ("Event Plan"). The Event Plan shall include, but not be limited, to the following: (i) the proposed layout of the Event Space, including the public streets to be designated as the race course and any additional space to be designated for seating and vendors; (ii) a schedule of the proposed Event activities; and (iii) a proposed safety plan as further described in Section 4.

Exhibit A

2.1.2. Village Council shall respond to submission of Event Plan within thirty (30) days of submission. Such thirty-day period may be extended as necessary upon notice to the Foundation if the Event Plan and/or the proposed Event Space raises issues that require additional information or time for analysis by Village Council or Village Engineer. The Foundation will cooperate with and use its best efforts to provide the Village Council with such additional information and take such additional steps to address any issues raised by the Event Plan or by the proposed Event Space.

2.2. Village's Right to the Event Space.

2.2.1. Village Council shall retain control of the Event Space at all times and reserves the right, at any time to:

(a) adjust and/or modify any Event Space, in whole or in part, as the Mayor or Village Council deems necessary for any street maintenance and repairs or otherwise as necessary for the public welfare and safety of the residents and visitors of the Village; and

(b) to clear and/or close the Event Space, in whole or in part, as the Mayor or Village Council deems necessary in case of an emergency or as otherwise necessary for the public welfare and safety of the residents and visitors of the Village.

2.2.2. Except in emergency situations, the Village shall make reasonable efforts to give the Foundation notice of any such adjustment or closing of all or part of the Event Space prior to the date of taking such action as set forth in Section 2.2.1(a) or Section 2.2.1(b). Upon receiving such notice, the Foundation and the Village shall work together to effect a reasonable accommodation and resolution of the situation.

2.2.3. The Foundation acknowledges and agrees that the Foundation's right to use the Event Space during an Event Period is subject to rights of the Village under Section 2.2.1(a) and Section 2.2.1(b), and the Foundation shall have no cause of action or claim against the Village in law or in equity for any damages for the Village's exercise of such rights.

3. Foundation's Use of the Event Space.

3.1. Permissible Activities. The Foundation's use of the Event Space is strictly limited to hosting of the Event and may only engage in such activities related thereto that are set forth in the Event Plan and approved by the Village Council. If at any time during the term of this Agreement, the Foundation engages in any other activities at the Event Space, this Agreement shall automatically terminate.

3.2. Compliance with the Law. The Foundation shall at all times, at its sole expense, comply with all present and future laws, and shall cause its agents, employees, contractors, vendors and/or invitees to comply with such laws, and obtain and maintain all permits and/or other governmental approvals required for the use by the Foundation of the Event Space.

3.3. Cost and Expense of the Event. The Foundation shall be responsible for all labor, costs and expenses associated with the Event. The Village shall neither be obligated to expense any funds related to the Event nor be required to allocate any Village resources not otherwise paid for by the Foundation for the Event.

4. Security and Emergency Medical Services.

4.1. The Foundation shall prepare a safety plan which shall be submitted for approval to the Village Council as part of the Event Plan. The safety plan shall detail actions to be taken by the Foundation in relation to

Exhibit A

security and emergency medical services to be provided for participants and spectators of the Event. The Safety Plan shall also include a list of providers to be responsible for such security and emergency medical services which must be approved by the Village. The Foundation shall be solely responsible for all costs and expenses associated with such security and emergency medical services.

5. Maintenance and Repair.

5.1. The Foundation shall make and pay for any and all maintenance and repairs to the Event Space, so that the Event Space will remain in the same or better condition than existed on the date prior to the commencement of the then applicable Event Period, this includes the same level of cleanliness which existed prior to the commencement of the Event Period. In the event that the Foundation fails to make such maintenance and repair, as applicable, to the Event Space and return the Event Space to its condition prior to the commencement of the Event Period, then the Foundation will reimburse the Village for any expense it may incur to cause such maintenance and/or repair.

6. Representation and Warranties.

6.1. Representation and Warranties of the Village. As of the date of this Agreement, the Village represents and warrants:

6.1.1. The Village is a municipal corporation duly organized and validly existing under the laws of the State of Ohio with requisite power and authority to execute, deliver and perform its obligations under this Agreement.

6.1.2. This Agreement has been duly authorized and approved by the Village, has been duly and validly executed and delivered by the Village and is a valid and legally binding agreement of the Village, enforceable against the Village in accordance with its terms, except to the extent that such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relative to or affecting the rights and remedies of creditors generally and by general principles of equity (regardless of whether in equity or at law).

6.1.3. The execution, delivery and performance of this Agreement by the Village will not breach any statute or regulation of any governmental authority, and will not conflict with or result in a breach of or default under any of the terms, conditions or provisions of any order, writ, injunction, decree, agreement or instrument to which the Village is a party.

6.2. Representations and Warranties of the Foundation. As of the date of this Agreement, the Foundation represents and warrants:

6.2.1. The Foundation is non-profit corporation that is duly organized and validly existing in good standing under the laws of Ohio.

6.2.2. The Foundation has the requisite power and authority to execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of the Foundation. The execution, delivery and performance of this Agreement by the Foundation requires no action by or in respect of, consent of, or filing with, any third party, including without limitation any governmental body, agency or official of the United States or any state or any political subdivision thereof.

6.2.3. This Agreement has been duly authorized and approved by the Foundation, has been duly and validly executed and delivered by the Foundation and is a valid and legally binding agreement of the Foundation, enforceable against the Foundation in accordance with its terms, except to the extent that such

Exhibit A

enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relative to or affecting the rights and remedies of creditors generally and by general principles of equity (regardless of whether in equity or at law).

6.2.4. The execution and delivery by the Foundation of this Agreement and the fulfillment of the obligations and promises made to the Village contemplated hereby (i) are not prohibited by and do not violate or constitute a default under the Foundation's organizational or governance documents, (ii) are not prohibited by and do not violate any provision of any applicable law, rule, regulation or other requirements of any national governmental authorities or of any state, municipality or subdivision thereof or of any authority, department, commission, board, bureau, agency or instrumentality of any of the foregoing, and (iii) has not resulted and will not result in any breach or violation of any terms, conditions or provisions of, or constitute a breach of or default under (immediately or after the giving of notice, passage of time or both) or conflict with, any contract, agreement or other instrument to which the Foundation is a party.

6.2.5. The Foundation shall promptly provide written notice in reasonable detail, to the Village whenever there is a commencement of, or any material development in, any material litigation or proceeding affecting the Foundation or the Event.

7. Insurance.

7.1. Throughout the Event Period, the Foundation shall, at its sole expense, procure and maintain general liability insurance, including bodily injury, property damage and any other casualties as the Village may designate against any and all damages and liability, on account of or arising out of injuries to or the death of any person or damage to property, however occasioned, related to the Event in amounts not less than \$1,000,000 per occurrence, \$5,000,000 in the aggregate.

7.2. All insurance provided for in Section 6.1 shall be in a form satisfactory to the Village and carried with insurance companies reasonably acceptable to the Village that are licensed or authorized to do business in the State of Ohio, are in good standing with the Ohio Department of Insurance and have a current rating issued with A.M. Best Company of not less than A-VII, and/or whose claim paying ability is rated no lower than A by Standard & Poor's Ratings Service and A2 by Moody's Investors Service. Insurance coverage shall be written as primary policy coverage and not contributing with or excess of any coverage which the Village may carry, and the Village shall be named as an additional named insured. The Foundation shall furnish the Village at the inception of this Agreement with a certificate of insurance evidencing that all such insurance is in effect and that the Village will be given at least thirty (30) days prior written notice of cancellation or non-renewal, and the Foundation shall further provide proof that premiums have been paid by the Foundation. The Foundation will annually with the submission of the Event Plan provide to the Village Council a certificate of insurance identifying the Village as an additional named insured.

7.3. In the event the Foundation shall fail to procure any contract of insurance required under the terms hereof or any renewal of or replacement for any contract of insurance that is expiring or has been canceled, the Village may, but shall not be obligated to, procure such insurance on behalf of the Foundation and the cost thereof shall be payable to the Village within ten (10) days following written demand of such reimbursement.

8. Indemnification.

8.1. The Foundation hereby agrees to indemnify and hold the Village and its Council, officers, employees, attorneys and agents harmless from and against any and all liabilities, obligations, damages, penalties, claims, demands, fines, suits, actions, proceedings, orders, decrees, judgments, costs and expenses (including reasonable attorney's fees and disbursements) of any kind or nature arising out of (i) the acts or omissions of the

Exhibit A

Foundation; (ii) any breach or violation of the terms and conditions of this Agreement by the Foundation; or (iii) the use the Event Space or from any activity, work, or other acts or things done, at the Event Space by the Foundation, its employees, contractors, invitees, volunteers, or agents. The indemnification obligations set forth in this Section 8.1 shall survive termination of this Agreement.

9. Acknowledgment of Relationship.

9.1. Nothing contained herein shall be deemed or construed by the parties or by any third party, as to convey an endorsement or sponsorship of the Village of the Foundation, the Event or any activities related thereto. Further, nothing contained herein shall be deemed or construed by the parties, or by any third party as creating the relationship of principal and agent, of partnership or of joint venture between the parties hereto, it being understood and agreed that no provision contained herein or any act of the parties hereto shall be deemed to create any relationship then as expressly stated herein.

10. Default and Termination.

10.1. Default by the Foundation. Any of the following actions shall be deemed a material default under this Agreement: (i) the failure of the Foundation, its agents, employees, volunteers, or contractors to use the Event Space in compliance with Village Code and applicable state and federal laws; and (ii) the failure of the Foundation to observe or perform any other covenant, agreement or condition contained in this Agreement.

10.2. Right to Terminate.

10.2.1. Termination by the Village. If the Foundation shall default in the performance or observance of any agreement or condition on its part to be performed or observed under this Agreement, and shall fail to cure said default within fifteen (15) days after written notice of said default from the Village (or such longer period) if said default is not of a nature that can be cured within said fifteen (15) day period provided that the Foundation has commenced the cure of such default within said fifteen (15) day period), then the Village may immediately, or at any time thereafter, and without further notice, terminate this Agreement. Notwithstanding anything herein to the contrary, the Village shall have the right to terminate and revoke this Agreement at any time upon written notice to the Foundation if the Village, in its sole discretion, believes the future use of the Event Space for the public safety might require it, whereupon this Agreement shall immediately terminate.

10.2.2. Voluntary Termination. Notwithstanding anything contained herein, this Agreement may be terminated upon the mutual written consent and approval of the parties.

11. Term.

11.1. The term of this Agreement shall be for a three (3) year period commencing on date of execution of this Agreement and ending on December 31, 2014.

12. Miscellaneous.

12.1. Entire Agreement. This Agreement contains the entire understanding between the parties hereto concerning the subject matter hereof and it is understood and agreed that all negotiations and agreements had between the parties are merged herein.

12.2. Amendment; Waiver. This Agreement may be amended, modified or supplemented only by an agreement in writing signed by the parties hereto. The parties agree that there are no oral agreements, understandings, representations or warranties that are not expressly set forth herein. Neither the failure nor any

Exhibit A

delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, or of any other right, power or remedy; nor shall any single or partial exercise of any right, power or remedy preclude any further or other exercise thereof, or the exercise of any right, power or remedy. Except as expressly provided herein, no waiver of any of the provisions of this Agreement shall be valid unless it is in writing and signed by the party against whom it is sought to be enforced

12.3. Assignment. The rights granted in this Agreement are for the exclusive benefit of the Foundation. The Foundation shall not assign or otherwise transfer the rights granted in this Agreement to any person or entity, without the prior written consent of the Village.

12.4. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been given when received if delivered by messenger or sent by overnight mail or on the third (3rd) business day following the date when mailed by first class, registered or certified mail, postage prepaid, addressed: (i) if to the Foundation, at the address specified above, or at such other address as the Foundation shall have furnished to the Village in writing; or (ii) if to the Village, at the address specified above, or at such address as the Village shall have furnished to the Foundation in writing.

12.5. Governing law; Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to conflicts of law principles. All disputes arising under this Agreement must be litigated in the Pickaway County Court of Common Pleas and the parties consent to the jurisdiction and venue of such Court.

12.6. Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall constitute an original, but all of which together shall constitute but one instrument. Signatures transmitted by facsimile shall have the same effect as original signatures.

12.7. Captions and Headings. The captions and headings of this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

[Signatures on the Next Page.]

Exhibit A

USE AGREEMENT

Signature Page

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year set forth above.

VILLAGE OF COMMERCIAL POINT, OHIO

BY: _____
Charles D. Hutchins, Village Administrator

COMMERCIAL POINT RACING FOUNDATION, INC.

BY: _____

Print Name: _____

Title: _____