

2018 MANAGEMENT AGREEMENT

THIS 2018 MANAGEMENT AGREEMENT (this "Agreement") is entered into as of the 1ST day of January, 2018, between TOOELE COUNTY, a body corporate and politic of the State of Utah ("County"), whose address is 47 South Main Street, Tooele, Utah 84047, and UTAH MOTORSPORTS CAMPUS, INC., a Utah corporation ("Manager"), whose address is 512 Sheep Lane, Grantsville, UT 84074.

RECITALS

A. The County is the fee title owner of that certain real property located in Tooele County, Utah known as the Utah Motorsports Campus (the "**Land**" and together with all buildings and improvements located thereon, the "**Property**"). The Land is located in Tooele County, Utah, and is more particularly described as follows:

Lot 1, DESERET PEAK P.U.D. PHASE 5, according to the Official Plat thereof on file and recorded December 6, 2006 as Entry No. 273563 in the Office of the Recorder of Tooele County, State of Utah.

B. A lawsuit (the "**First Lawsuit**") was filed by Center Point Management, LLC, a Wyoming limited liability company, ("**Center Point**") as plaintiff, against the County and Mitime Utah Investment, LLC ("**Mitime**"), an affiliate of Manager, as defendants, in the Third Judicial District Court in and for Tooele County ("**Court**"), State of Utah, Case No. 15030147, contesting a proposed sale of the Property by County to Mitime pursuant to the terms of a proposed purchase agreement.

C. On December 17, 2015, the Court in the First Lawsuit enjoined the County from selling the Property to Mitime pursuant to the terms of the proposed purchase agreement.

D. As a result of the Court's order, the County desired to operate the motorsports park while it reassessed the potential sale of the Property to Mitime or any other third party and, as a stop gap, entered into that certain Management Agreement, dated January 6, 2016 (the "**2016 Management Agreement**") which provided for management of the property, for the benefit of County, by Manager.

E. Another lawsuit (the "**Second Lawsuit**") was filed by Center Point, as plaintiff, against the County, Mitime, and the Tooele County Redevelopment Agency (the "**RDA**"), as defendants, in the Third Judicial District Court in and for Tooele County, State of Utah, Case No. 160906120, contesting the sale of the Property by County to the RDA.

F. As a result of the Second Lawsuit, the County desired to operate the motorsports park while it continued its efforts to sell the Property to a third party and, as a stop gap, entered into that certain Management Agreement, dated January 1, 2017 (the "**2017 Management Agreement**") which provided for management of the property, for the benefit of County, by Manager.

G. The Property is currently managed by Manager pursuant to the 2017 Management Agreement.

H. Manager has significant experience in managing racetracks and effectively managed the Property for the benefit of the County in 2016 and 2017.

I. The County has now resolved the Second Lawsuit, and desires to operate the motorsports park while it continues its efforts to sell the Property. In order to attempt to preserve the value of the Property until it can be sold, to protect the jobs of citizens of Tooele County working at the Property, to generate tax revenue from the operation of the Property prior to the sale of the Property and to enable the Property to be utilized for the upcoming race year, the County desires to retain Manager to manage the operations of the Property for calendar year 2018.

AGREEMENT

NOW, THEREFORE, FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the County and Manager agree as follows:

1. Management Agreement. The County hereby retains Manager, and Manager agrees, to manage and operate the Property as a motorsports park for the period commencing on January 1, 2018 (the "Commencement Date") and expiring on the first to occur of (a) the sale or lease of the Property (a "Transfer") by the County, (b) the termination of this Agreement in accordance with Section 10.5 below, or (c) December 31, 2018 (as such period may be extended by the mutual consent of both parties), the ("Term"). In connection with the foregoing, Manager will have the exclusive right and obligations to undertake the day-to-day operations of the Property during the Term. This includes, but is not limited to, the exclusive rights and obligations with respect to event planning and management, facility rental, marketing and advertising of the Property and special events, hiring and terminating full-time and part-time employees of the Property, security and maintenance. Without limiting the foregoing, the Manager shall provide the following specific services and shall have the following rights:

1.1 Personnel. Manager shall employ a sufficient number of capable employees to enable it to operate and manage the Property as a motorsports park. All matters pertaining to the employment, supervision, compensation, promotion and discharge of such employees are the responsibility of Manager, and the County shall have no liability or obligation with respect to such matters. Manager is in all respects the employer of such employees. Manager shall comply fully with all applicable laws and regulations related to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions and other employer-employee related subjects.

1.2 Leasing and Race Events. Manager shall have the exclusive right on behalf of the County to lease all or portions of the Property to third parties and to schedule, organize and use the Property for racing events, concerts and other events during the Term, all in accordance with the terms and specifications reasonably determined by Manager. Manager shall enter into such leases or contracts for racing events in its own name. Manager shall have the exclusive right to use such space on the Property as Manager determines necessary to fulfill its obligations hereunder.

1.3 Maintenance. Manager shall maintain the Property or cause the Property to be maintained in good, clean and orderly condition and repair; provided, that notwithstanding anything to the contrary in this Agreement, Manager shall have no obligation to make capital repairs or capital improvements to the Property pursuant to this Agreement, unless otherwise agreed in writing.

1.4 Procurement. Manager may purchase all necessary supplies, fixtures, furniture, equipment, materials and other operating assets (the "2018 Operating Assets") required from time to time to operate the Property. Except to the extent consumed in the operation of the Property or discarded in the ordinary course of business, such 2018 Operating Assets shall be the property of the County at the expiration of the Term. In connection with the purchase of 2018 Operating Assets, the County shall follow, and Manager shall cooperate with, the County's procurement requirements.

1.5 Licenses and Permits. Manager shall obtain and maintain all licenses and permits required in connection with the operation of the Property, and shall comply with all applicable laws, ordinances, rules and regulations relating to the operation of the Property. The County shall execute and deliver all applications and other documents and shall otherwise cooperate with Manager in connection with applying for, obtaining and maintaining all such licenses and permits.

1.6 Books and Records.

1.6.1 Manager shall keep full and adequate books of account and such other records as may be appropriate to reflect the financial operations of the Property, and shall maintain files containing all agreements relating to the operation of the Property, such as service contracts and leases. The County (and any persons designated by the County) shall have access to such books, records and files at all reasonable times.

1.6.2 The County may audit such books and records, which audit shall be at the County's expense unless an error in such books and records is discovered equal to or greater than ten percent (10%) of the gross revenues of the Property, in which case Manager shall bear the cost of the audit.

1.7 Receipts and Expenses. On behalf and in the name of the County, Manager shall be entitled to receive all monies received from the operation of the Property during the Term and to disburse and pay all costs and expenses of operating, managing and maintaining the Property during the Term and purchasing the 2017 Operating Assets. If at any time the funds from the operations of the Property are not sufficient to pay the bills or charges that have been or will be incurred with respect to the Property, Manager shall pay such amounts, subject to reimbursement pursuant to Section 4 below.

2. Management Fee. During the Term, the County shall pay to Manager, and Manager shall accept, as a management fee for the services to be rendered by Manager under this Agreement, an amount equal to the one percent (1%) of actual cash receipts derived from the Property during the Term. Such management fee shall be due and payable upon the expiration of the Term. In the event the County desires to Transfer the Property, the County shall give the Manager at least twenty (20) days prior written notice of the closing date of such Transfer. Upon receipt of such notice, Manager shall provide the County notice of the management fee such that the management fee shall be paid by the County at the closing of the Transfer.

3. Operating Assets. As set forth in Section 1.4, Manager shall purchase on the County's behalf the 2018 Operating Assets for the Property. Manager shall provide the County access to the records and supporting documentation relating to the cost of 2018 Operating Assets. The County shall reimburse Manager for the 2018 Operating Assets at the earlier of the closing of any Transfer of the Property or expiration of the Term.

4. Profits and Losses. The County and Manager agree that the County shall be responsible for all operating losses relating to the management, maintenance and operation of the Property and the County shall be entitled to all operating profits (if any) arising from the operation of the Property during the Term.

Notwithstanding the preceding, the parties agree that the County shall not be responsible for operating losses which exceed one million Five Hundred Thousand dollars (\$1,500,000.00). Any operating losses in excess of one million Five Hundred Thousand dollars (\$1,500,000.00) during the Term shall be the responsibility of Manager. Following the expiration of the Term, Manager shall provide the County financials statements certified by Manager showing the profits or losses of the Property. Any profits shall be remitted to the County by Manager within five (5) days of such financial statement. Any losses shall be paid by the County to Manager within twenty (20) days of receipt of such statement. Notwithstanding the foregoing, in the event the County desires to Transfer the Property, the County shall give the Manager at least twenty (20) days prior written notice of the closing date of such Transfer. Upon receipt of such notice, Manager shall provide the County notice of the profits or losses such that the profits or losses shall be paid by or to the County as applicable at the closing of the Transfer. For purposes of this Agreement, profits and losses (a) will be determined using cash accounting methods, and (b) will include the reasonable expenses incurred in connection with the dissolution of Manager if the property is transferred to a person unaffiliated with Manager.

5. Property Taxes. The County shall pay all real property taxes applicable to the Property during the Term, it being understood that because the County is Tooele County, no real property taxes should be due and payable during the Term. Subject to reimbursement for losses pursuant to Section 4, Manager shall pay all taxes assessed against and levied on all fixtures, equipment and other personal property related to the operation of the Property.

6. Utilities. Subject to reimbursement for losses pursuant to Section 4, Manager shall pay all costs, expenses, charges and amounts, of whatever kind or character, for all water, telephone, protective services, trash disposal and other utilities and services supplied to the Property, together with any taxes on such utilities and services. The County shall be responsible for making water, sanitary sewer, storm sewer, electricity, natural gas and telephone access available to the Property during the Term. Manager shall be responsible for making all other utilities and services available to the Property.

7. Insurance. As an operating expense, Manager shall obtain proper and sufficient liability insurance in the minimum sum of One Million Dollars (\$1,000,000) to indemnify its officers, directors, members and the County from risks associated with the management and operation of the Property, and shall name the County as an additional insured. In addition, Manager shall require liability waivers and additional insurance coverage by organizations and entities renting or using the Property for events.

8. Indemnification and Hold Harmless. Manager shall indemnify and hold harmless the County, the County's agents, successors and assigns from and against all claims, damages and actions, including reasonable attorney's fees and expert witness fees, arising out of or that are caused in whole or in part from Manager's active negligence or willful misconduct operation of the racetrack and other activities contemplated hereunder, and any default or breach of any warranty, representation, or covenant of Manager hereunder. For clarity, in no event shall Manager indemnify and hold harmless the County for claims, damages or actions relating to the First Lawsuit or the Second Lawsuit. As used in this Section 4, "willful misconduct" means an intentional, wrongful act actually performed by Manager or its employees, agents or representatives, and "active negligence" means either (a) an act actually performed by Manager or its employees, agents or representatives in a negligent manner, or (b) the failure of Manager or its employees, agents or representatives to take commercially reasonable action after receiving actual knowledge of a fact that would cause a prudent property manager, acting in a commercially reasonable manner, to take such action.

9. Deed of Trust. To secure all payments by the County under this Agreement, the County, as trustor, shall execute and deliver to First American Title Insurance Company, as trustee, for the benefit

of Manager, as beneficiary, a trust deed encumbering the Property in the form attached hereto as Exhibit "A". The requirement for this deed of trust is separate and apart from the requirement that the County similarly executed a deed of trust as trustor pursuant to the 2016 Management Agreement, the 2017 Management Agreement, and in connection with the liquidation of the amounts owing from County to Manager for the years 2016 and 2017.

10. General Provisions.

10.1 No Partnership. The County and Manager do not by this Agreement, in any way or for any purpose, become partners or joint venturers with each other in the conduct of Manager's business or otherwise.

10.2 Notices. All notices, claims, demands, and other communications of similar import to be given by any party to this Agreement to any other party hereto shall be in writing, shall be given by personal delivery, receipted delivery services, or by registered or certified mail, first class postage prepaid, return receipt requested, and shall be delivered or addressed as follows:

It to the County:

Tooele County
47 South Main Street
Tooele, UT 84074
Telephone: (435) 843-3100
Attn: Shawn Milne, County Commissioner

with a required copy to:

Scott Broadhead
Tooele County Attorney
Gordon R. Hall Courthouse
74 South 100 East, #26
Tooele, UT 84074
Telephone: (435) 843-3120

If to Manager:

Utah Motorsports Campus, Inc.
512 Sheep Lane
Grantsville, UT 84074
Attn: Willem Geyer
Telephone: (801) 292-1833

with a required copy to:

Hans P. Fleischner, Esq.
Law Offices of Hans P. Fleischner, APC
74-075 El Paseo, A15,
Palm Desert, CA 92260
Telephone: (760) 779-9777

The above addresses may be changed for future communications or delivery of notices or documents hereunder by giving written notice of such change to the other party. Notice for all purposes under this Agreement, regardless of the form in which given, shall be deemed given when received by the addressee thereof.

10.3 Severability. If any provision of this Agreement or the application of any provision of this Agreement to any person or circumstance shall to any extent be invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which such provision is held invalid shall not be affected by such invalidity. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10.4 Sale of Property; Appeal. Nothing in this Agreement shall be construed to require (a) the County to sell the Property to Mitime, Manager or their affiliates, or (b) Mitime, Manager or their affiliates to purchase the Property from the County. Neither the County nor Manager waive its right to appeal the Court's decision relating to the First Lawsuit or Second Lawsuit and if such appeal is made, each party consents to such appeal and agrees to reasonably cooperate with such appeal.

10.5 Termination. Each of Manager and the County shall have the right to terminate this Agreement upon sixty (60) days prior written notice to the other party.

10.6 Authorization. Each individual executing this Agreement does represent and warrant to each other so signing (and each other entity for which another person may be signing) that he has been duly authorized to deliver this Agreement in the capacity and for the entity set forth where he signs.

10.7 Attorneys' Fees. If any action is brought to enforce or interpret any of the provisions of this Agreement, the party prevailing in such action shall be entitled to recover from the other reasonable attorneys' fees and costs (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

10.8 County's Representative. The County shall designate one of its department heads or commissioners to serve as the County's representative (the "County's Representative") in all communications with Manager under this Agreement. The initial County's Representative shall be Commissioner Shawn Milne. The County's Representative shall be responsible for approving all matters

requiring the County's approval or input under this Agreement. Manager shall be entitled to rely on all advice and approvals provided by the County's Representative.

10.9 Miscellaneous. The captions to the Sections of this Agreement are for convenience of reference only and shall not be deemed relevant in resolving questions of construction or interpretation under this Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No amendment to this Agreement shall be binding on the County or Manager unless reduced to writing and signed by both parties. Unless otherwise set forth in this Agreement, all references to Sections are to Sections in this Agreement. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Utah. Venue on any action arising out of this Agreement shall be proper only in the District Court of Tooele County, Utah. In no event shall either Party be liable to the other party for consequential, special or punitive damages in connection with this Agreement. **THE COUNTY AND MANAGER WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ALL MATTERS ARISING OUT OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the County and Manager have executed this Agreement on the respective dates set forth below, to be effective as of the date first set forth above.





<u>COUNTY:</u>	<u>MANAGER:</u>
TOOELE COUNTY, a body corporate and politic of the State of Utah	UTAH MOTORSPORTS CAMPUS, INC., a Utah corporation
	
Shawn Milne, County Commissioner	Xinggu Wang, President
	Date: _____
Myron Bateman, County Commissioner	
	
Wade B. Bitner, County Commissioner	
Date: <u>2 May 2018</u>	

EXHIBIT A
TO
2018 MANAGEMENT AGREEMENT

PREPARED BY AND WHEN
RECORDED RETURN TO:

UTAH MOTORSPORTS CAMPUS, INC.
512 Sheep Lane
Grantsville, UT 84074

UTAH DEED OF TRUST

THIS INSTRUMENT is executed as of the 1ST day of January 2018, by TOOELE COUNTY, a body corporate and politic of the State of Utah ("**Trustor**"), whose address is 47 South Main Street, Tooele, Utah 84047, in favor of FIRST AMERICAN TITLE INSURANCE COMPANY ("**Trustee**"), whose address is 215 South State Street, Suite 380, Salt Lake City, Utah 84111, and UTAH MOTORSPORTS CAMPUS, INC., a Utah corporation ("**Beneficiary**"), whose address is 512 Sheep Lane, Grantsville, UT 84074.

TRUSTOR CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, certain real property (the "**Property**") situated in Tooele County, State of Utah, described as follows:

Lot 1, DESERET PEAK P.U.D. PHASE 5, according to the Official Plat thereof on file and recorded December 6, 2006 as Entry No. 273563 in the Office of the Recorder of Tooele County, State of Utah

TOGETHER WITH all buildings, fixtures and improvements on the Property and all water rights, rights-of-way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances on or after the date of this instrument used or enjoyed with all or any part of the Property;

FOR THE PURPOSE OF SECURING for the benefit of Beneficiary the following obligations: (i) the timely payment and performance of the obligations of Trustor under this instrument, under that certain 2018 Management Agreement of even date with this instrument (the "**2018 Management Agreement**"), executed by Trustor, as maker/obligor, in favor of Beneficiary, as payee/obligee, and under any other instruments given to further evidence or secure such obligations, as this instrument, the 2018 Management Agreement or such other instruments may be extended, renewed, modified, amended or replaced from time to time; (ii) the payment of any loans or advances made after the date of this instrument for any purpose by Beneficiary to Trustor; and (iii) the payment of any sums expended or advanced by Trustee or Beneficiary to protect the security of this instrument. Notwithstanding anything to the contrary contained in this instrument, if Beneficiary has not already given at least thirty (30) days' written notice of default to Trustor,

Beneficiary shall, prior to exercising its remedies under this instrument, give written notice to Trustor specifying the default that has occurred and allow Trustor a period of thirty (30) days in which to cure said default.

TRUSTOR AGREES to pay all taxes and assessments on the Property, to pay all charges and assessments on water or water stock used on or with the Property, not to commit waste, to maintain adequate fire insurance on any improvements on the Property, to pay all costs and expenses of collection (including reasonable trustee's and attorneys' fees in the event of default in payment of the indebtedness secured by this instrument) and to pay reasonable trustee's fees for any of the services performed by Trustee under this instrument, including a reconveyance of the Property.

TRUSTOR REQUESTS that a copy of any notice of default and of any notice of sale under this instrument be mailed to Trustor at the address set forth in the first paragraph of this instrument.

TRUSTOR has executed this instrument to be effective as of the date first set forth above.

TRUSTOR:

TOOELE COUNTY

By _____
Name _____
Its _____

State of Utah)
) ss.
County of Tooele)

The foregoing instrument was acknowledged before me this _____ day of March, 2018, by _____, the _____ of Tooele County.

(Seal)

Notary Public

My Commission Expires:

Residing at:
