

Promotions & Recreation Committee Special Meeting

Date: Wednesday, February 17th, 2016
Time: 5:30 P.M. Concurrently w/ Finance Meeting
Place: Kewaunee County
Administration Center
810 Lincoln Street
Kewaunee, WI 54216

The Committee welcomes all visitors to listen and observe, but only Committee members and those invited to speak will be permitted to do so. Persons with disabilities needing special accommodations to attend or participate should contact the County Administrator's Office at (920) 388-7164 prior to the meeting so that accommodations may be arranged.

A majority of the members of the County Board of Supervisors or any of its committees including:

Finance & Public Property

Human Services

Law Enforcement & Emergency Management

Promotion & Recreation

Personnel, Advisory & Legislative

Aging Services Unit Advisory

Land & Water Conservation

Health, Child Support, & Veterans Service

Extension Education, County Farm, & Zoning

Highway & Solid Waste

may be present at this meeting to listen, observe, and participate. If a majority of any such committee is present, their presence constitutes a "meeting" under the Open Meeting Law as interpreted in State ex rel. Badke v. Greendale Village Board, 173 Wis. 2d 553 (1993), even though the visiting body will take no action at this meeting.

Agenda

1. Call to Order – Roll Call
2. Approval of Agenda
3. Discuss Lease with Rock'EM Entertainment for future use of the Kewaunee County Fairgrounds Racetrack with possible action
4. Unfinished Business or Other Business as Allowed by Law
5. Adjournment

The Committee welcomes all visitors to listen and observe, but only Committee members and those invited to speak will be permitted to do so. Persons with disabilities needing special accommodations to attend or participate should contact the County Promotions and Recreation Department at (920) 388-0444 prior to the meeting so that accommodations may be arranged. Action may be taken on any or all items listed on the agenda.

Racetrack Lease Agreement

This **AGREEMENT** is entered into between:

Kewaunee County
810 Lincoln Street
Kewaunee, WI 54216, County,

and

Rock 'EM Entertainment, Inc.
149 Hickory Drive
Delafield WI 53018, Promoter.

RECITALS

WHEREAS, this Agreement is to permit Promoter to engage in activities related to the promotion of automobile races upon county property otherwise known as the Kewaunee County Fairgrounds during the term of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, and for the mutual promises set forth herein, the parties agree as follows:

1. **Leased Premises.** County hereby agrees to grant a non-exclusive lease to Promoter for the clay racetrack, infield, pit area and appurtenant facilities including grandstand, restroom facilities, announcer's booth, grandstand concession stand, and parking areas, all located on the Kewaunee County Fairgrounds in the Village of Luxemburg upon the terms and conditions and for the period set forth hereafter.
 - a. Promoter shall have exclusive use of the Track Maintenance building on a year-round basis during the term of this Agreement. County extends to Promoter an option to vacate the Track Maintenance building during winter months and will provide Promoter a \$100 per month credit toward the next seasons rental.
 - b. County hereby agrees to lease additional buildings located on the Kewaunee County Fairgrounds, during such times as the Fairground buildings are open and not being used in connection with the Kewaunee County Fair.
 - c. Should Promoter have a need for overnight camping, permission should be requested prior to the event. Permission will not be unreasonably withheld. Promoter will also be responsible for the security of the grounds, guests and their property whenever campers remain after regular racing hours.
2. **Rental.** Promoter shall pay to County the sum of one thousand five hundred dollars (\$1,500.00) per night for each night automobile racing is conducted at the Kewaunee County Fairgrounds.
 - a. A 25% second event discount will be offered on multiple events within a given 72-hour period. This discount will not apply to events that are re-scheduled from earlier in the season.
 - b. County will provide up to two additional racing dates for higher risk events. Rent for these events is set at \$400. These dates are expected to be utilized for vehicles other than the weekly classes run at the track or events held prior to the customary opening date of the last full week in April.
 - c. Rental payments shall be due and payable in advance. Payments must be made to the Kewaunee County Promotions and Recreation Director, personally, or received in the

office of the Kewaunee County Promotions and Recreation Director no later than the close of business on the date upon which a racing event is scheduled to be conducted.

- d. There is no rental charge for races cancelled due to rain, bona fide emergencies or acts of God. Promoter agrees to consult with Promotions and Recreation Director before making the decision to cancel for any reason.
- e. Promoter shall provide to County the following information to the Promotions and Recreation Director by Thursday of the week following an event:
 - 1. The number of persons admitted by paid attendance.
 - 2. The number of cars participating (by class) in the event.
 - 3. A copy of the weekly pit sign-in sheets indicating pit attendance.

3. **Utilities, Track Repair, Mowing and Grading.**

- a. County will provide electricity required for operation of the premises and the stock car racing to be presented by Promoter. County will provide water for the concession areas, grandstand and restrooms. Promoter is responsible for maintaining a separate water meter and paying the cost for water used to water the track surface. (**Note.** County will not pay to fill water tankers/trucks to water the track. County does have a retention pond that Promoter may draw water from for this purpose.)
- b. County will provide grass-cutting services as needed.
- c. County will make any repairs needed to the track and to bring it into proper condition before the beginning of each racing season. County will notify Promoter immediately upon completion of the first repairs/maintenance of the track of each season. Promoter shall have seven (7) days after notice of the first repairs/maintenance of the track to raise any objections as to the condition of the track. Thereafter, County will do all grading on the track surface at County's expense during the race season to maintain the track in the condition it was after the first repairs/maintenance of the season. All grading of the track will be at County's direction, including the means, method and timing of the grading.
- d. Promoter shall be responsible to leave the racetrack in the same condition as it was prior to the execution of this agreement, normal wear and tear excepted. Clay material added to the track needs prior approval from County before placement and incorporation into the existing track.
- e. Promoter shall install, at its own expense, any additional fences or guardrails that may be required by Promoter's insurer. Any such posts or guardrails or other fence material installed by Promoter on the premises for stock car racing purposes shall become the property of County upon such installation and Promoter shall not have any right to remove such materials upon termination of this Agreement or any renewal thereof. An inventory of the items previously purchased and not covered by this provision is attached.
- f. Promoter shall be responsible for repairing all damage to fences and guardrails caused by racing events. It is not necessary for Promoter to repair damage to the fence or guardrails on a weekly basis unless the damage presents a safety concern for participants, spectators or other persons present at the Leased Premises or the repair is necessary according to the terms of any policy of insurance owned by Promoter or County on the Leased Premises. Promoter shall be responsible for the first \$1,500 to repair the fence and County agrees to contribute 50% of any cost to repair the fence in excess of the first \$1,500. Promoter shall provide estimates and receive County's approval prior to repairing the fence if it is reasonably anticipated the costs to repair will exceed \$1,500. Alterations to the track surface and configuration of guardrails or entrances must have prior approval of County.
- g. Promoter shall be allowed to construct additional structures for occupancy by race attendees, including but not limited to a concession building, VIP suites, viewing platforms, catwalks, etc. Any such structures must be certified by a licensed engineer, at Promoter's expense, prior to public occupancy. Plans for such structures must be approved by County prior to construction. Any structures anchored to the ground or other existing

structures at the facility will be deemed “permanent” and Promoter shall not have any right to remove such materials upon termination of this Agreement or any renewal thereof unless previously agreed upon in writing.

4. **Cleaning.** Promoter agrees that within twelve (12) hours after each racing event Promoter will arrange to have the area in, around, and under the grandstand, including but not limited to, all restroom areas that were open to the public during the racing events, parking areas, midway, bleachers (grandstand), track, pit, and infield areas thoroughly cleaned. Promoter shall power wash the grandstand, from time to time, as needed. At the end of each racing season, Promoter shall thoroughly clean the Leased Premises and remove all perishable items from the Leased Premises. Promoter agrees to properly secure and winterize the Leased Premises at the end of each racing under the direction of County.
5. **Maintenance.** Promoter agrees to provide, at his own cost, small maintenance service around the track area. It is stipulated by the parties that the performance by Promoter of his obligation with respect to maintenance shall be to the satisfaction of County. Any damage to the premise occurring when the same is not in use by Promoter shall not be the responsibility of Promoter, it being agreed however, that Promoter shall be responsible to repair any damage to the premises which occurs during the times when Promoter is in control of the premises either for actual racing events, for preparation, or for clean up. In the event County provides for Promoter any materials or tools or other supplies used in connection with the purposes of this Agreement or Promoter’s obligations hereunder, County shall bill such expense to Promoter who shall immediately pay the same. County, at its expense, will provide toilet tissue and paper towels for the restrooms.
 - a. County will hold other tenants responsible to return racetrack and other facilities to as good or better condition when those events are held during the regular racing season. Promoter will have the option to do a walk through inspection of the area with County before and after such events in order to document any potential problem spots.
 - b. Other tenants will be required to furnish “Loss of Income” insurance naming Promoter and County as additional insured.
6. **Concessions.** Promoter shall have exclusive concession privileges during the term of this Agreement, for all events sponsored or promoted by Promoter. Said rights include, but are not limited to, the right to sell food and beverages for human consumption. The rental fee set forth in Paragraph 2 of this Agreement also includes rights to occupy and operate this building during racing events promoted by Promoter.
 - a. Promoter shall obtain agreement of County before making any subsequent improvements or additions to the Concession Facility. Promoter shall also consult with County before making any repairs, of a non-emergency nature, to the Concession Facility. If emergency repairs are necessary, Promoter shall promptly notify County of the nature of damage and the actions taken by Promoter to correct it.
 - b. Promoter shall have the right to use the Concession Facility only for the purpose stated in this agreement. Promoter shall obtain all permits necessary for the sale of food and drink for human consumption to the public, under either state law or local ordinance.
 - c. Promoter shall maintain the Concession Facility and any other facilities installed by it on the Leased Premises in a safe and sanitary condition. Promoter shall keep the Concession Facility and any other facilities installed by it on the Leased Premises painted and in good repair to create a pleasant environment and appearance for the general public attending events at the Kewaunee County Fairgrounds. Promoter shall be responsible for any damage done to the Concession Facility or equipment through misuse or neglect. Any concessions equipment not being utilized shall be turned over to County for reassignment, storage or disposal.

- d. Promoter understands County may rent or permit other groups or organizations to use the Concession Facility for the purposes of selling food and drink for human consumption to the public during events not sponsored by Promoter.
7. **Signage & Sponsorships.** Promoter shall have the exclusive right to construct, erect, or lease signs and advertisements, upon the Leased Premises. The parties recognize and agree that certain signs and structures for the placement of signs and advertisements upon them have already been erected on the premises at Promoter's sole expense and with the consent of Kewaunee County. Any expansion of or additions to the existing signage shall be subject to the approval of the Finance and Public Property Committee of the Kewaunee County Board of Supervisors, which shall not be unreasonably withheld.
 - a. Promoter agrees that it will maintain the signs and represents that the content of all signs shall be consistent with and suitable for the family centered activities generally conducted at the Kewaunee County Fairgrounds. County shall have the right to restrict or prohibit any advertising County deems offensive or contrary to the best interests of County. County shall be allowed to fully cover or remove any billboard or sign at the request of another tenant for the term of said tenant's occupancy. Signs will be restored to their original state prior to Promoter's next event.
 - b. Promoter reserves the right to market various sponsorship opportunities for the Fairgrounds facility, including but not limited to naming and beverage pouring rights. Promoter agrees to comply with terms of such an agreement, provided it does not adversely affect its ability to produce a successful racing program.
 - c. Promoter may market naming rights and other promotional opportunities for the racetrack, providing it does not conflict with any agreements previously made by County. Any agreements that would change the name of the facility or in any other way substantially affect County will require prior approval.
8. **Security.** Promoter agrees to provide such security personnel as shall be necessary to insure that peace and orderly conduct are maintained during racing events and further to provide ambulance and emergency medical services as may be reasonably necessary to safeguard participants and spectators.
9. **Security Deposit.** Promoter shall provide County with a cash deposit of \$5,000 prior to each racing season of this Agreement. If for any reason Promoter is unable to fulfill this contract, County shall be entitled to claim any balance due as well as any potential income lost due to the cancellation of the contract. Promoter may request return of the security deposit at the end of each racing season provided all sums due and owing under this contract are paid in full.
10. **Clay Fee.** In addition to the Rental provided for in Paragraph 2 of this Agreement, Promoter shall provide County with an annual Clay Fee in the amount of \$1,000. County will retain the \$1,000 Clay Fee from the Security Deposit at the end of each racing season to satisfy the Clay Fee.
11. **Fire Protection Fees.** Promoter is responsible for any fire protection or rescue fee due a local unit of government arising from a fire/rescue call to the Leased Premises during a racing event held by Promoter. Promoter remains responsible for any fire/rescue protection fees unless the fire/rescue call is wholly detached and unrelated to Promoter's racing event. (**Note.** Local units of government bill for fire/rescue services when they are called out. Often these fees are covered by the person(s) directly involved in the rescue call. When individuals do not pay the fees, local units of government bill the property owner of the location of the fire/rescue call. This provision requires the Promoter to pay fire/rescue fees if there is an emergency call to the Leased Premises during a racing event held by Promoter.)

12. **Insurance.** During the full term of this Agreement Promoter shall, at its sole cost and expense, maintain a policy or policies of insurance. Each year of this Agreement Promoter shall provide to County at the office of the Kewaunee County Promotions and Recreation Director at E4280 County F, Kewaunee, Wisconsin 54216, not later than one week prior to the first use of the Leased Premises, a certificate of insurance showing liability coverage owned by Promoter. The coverage shall be by an admitted company. County of Kewaunee and the Kewaunee County Fair Association shall be named as additional insured under the policy provided hereunder. It shall be a precondition to the effectiveness of this Agreement that a copy of the proposed insurance contract is provided to County. This Agreement shall not become effective, even though fully executed, unless the required policy is provided. The following minimum coverages are required:

- a. *Commercial General Liability.*
 - 1. General Aggregate, Per Event \$5,000,000
 - 2. Products Completed Operations Aggregate \$5,000,000
 - 3. Each Occurrence \$1,000,000
 - 4. Personal & Advertising Injury \$1,000,000
 - 5. Damage to Premises \$300,000
 - 6. Participant Legal Liability \$1,000,000
 - 7. Liquor liability – each common cause \$1,000,000
 - 8. Liquor liability – Aggregate \$2,000,000
- b. *Excess Liability*
 - 1. General Aggregate \$1,000,000
 - 2. Each Occurrence Limit \$1,000,000
- c. *Participant Accident*
 - 1. Accidental Death \$10,000
 - 2. Accidental Dismemberment \$10,000
 - 3. Excess Medical \$10,000
- d. *Workers Compensation.* If and as required by the State of Wisconsin.
- e. *Other Insurance.* If and as required by the State of Wisconsin.

13. **Hold Harmless.**

- a. County shall indemnify and hold harmless Promoter against all claims, demands, causes of action, suits or judgments including expenses occurred in connection therewith for death or injuries to persons, or for loss of or damage to property arising out of or in connection with structural defects of the Leased Premises not caused by Promoter, his agents, employees, invitees or others under Promoter's control.
- b. Promoter shall indemnify and hold harmless County against all claims, demands, causes of action, suits or judgements including expenses occurred in connection therewith for death or injuries to persons, or for loss of or damage to property arising out of or in connection with the use and occupancy of the Leased Premises by Promoter, his agents, employees, invitees or others under Promoter's control. County shall not be responsible for any damage, injury or death arising from any act or omission in connection with the operation, management, or maintenance of any equipment or facility on the Leased Premises by Promoter, his agents, employees, invitees or others under Promoter's control. Promoter shall assume all such liability and indemnify County against any liability arising there from. Should an action be commenced in which County is made a party defendant due to the acts of Promoter, his employees, agents, invitees or others under his control Promoter shall pay, upon demand, County's counsel fees and any damage or other awards resulting from such action. Promoter shall at all times indemnify County against any judgments resulting as aforesaid.

14. **Subleasing.** Any subleasing of the rights conveyed hereunder by Promoter is strictly prohibited.

- b. Either Party may, from time to time, specify in writing to the other Party a different person or address for notice.
 - c. Any notice shall be effective only upon delivery.
21. **Nuisance.** Promoter shall not allow any waste or nuisance on the premises, or use or allow the premises to be used for any unlawful purpose.
22. **Alterations.** Promoter shall not make, without first obtaining the written consent of County, any alterations, additions, or improvements, in, to or about the premises. Any alterations, improvements or additions made to the premises shall remain with premises at the termination of this Agreement unless the same can be removed without damaging the premises. All business signs or placards shall be removed by Promoter at termination. Promoter, in removing any signs, placards, alterations, improvements or additions (that can be removed without causing damage to the premises), shall restore the premises to the same condition as when received.
23. **Surrender.** Promoter agrees to quit and deliver the premises to County peacefully and quietly at the termination of the Agreement, in good condition, reasonable wear and tear excepted.
24. **Waiver.** The waiver by a party of any breach or failure of the other party to perform any covenant in this Agreement shall not constitute a waiver of any subsequent breach.
25. **Applicable Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. In the event that any provision hereof shall be determined to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other or remaining provisions hereof which shall be severable.
26. **Understanding.** Nothing contained in this Agreement shall be deemed or construed by the parties nor by any third party as creating the relationship of employee and employer, principal and agent or of partnership or of joint venture between the parties.
27. **Force Majeure.** Either party's performance of any part of this Agreement shall be excused to the extent that it is hindered, delayed or otherwise made impractical because of flood, riot, fire, explosion, war, acts or omissions of the other party or any other cause, whether similar or dissimilar to those listed, beyond the reasonable control of that party.
28. **Severability.** The provisions of this Agreement shall be interpreted, when possible, to sustain their legality and enforceability as a whole. In the event any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provision of this Agreement shall be in any way affected thereby.
29. **Amendments.** No modification, addition, deletion, revision, alteration or other change to this Agreement shall be effective unless, and until such is reduced to writing and executed by the parties.
30. **Benefit.** The conditions, covenants, and agreements in this Agreement shall be binding upon and inure to the benefit of the parties, their heirs, personal representatives, successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have executed, this Agreement as of the day and year first above written.

FOR THE COUNTY

Scott Feldt
County Administrator

Dated: _____

FOR THE PROMOTER
Rock 'EM Entertainment, Inc.

By: Eric Mahlik
Its: _____

Dated: _____

By: Ron Cochrane
Its: _____

Dated: _____