

Adopted

8/2/05

Town of Riverhead Community Development Agency

Resolution # 16

Authorizes of Chairman to Execute License Agreement

COUNCILMAN DENSIESKI

Member offered the following resolution,

COUNCILMAN BARTUNEK

which was seconded by Member:

WHEREAS, Strong Island Street Wheels and TMO Radio have requested use of the Calverton site to host a car show on Sunday, September 18, 2005 for a fee of \$2,650 for one day's use of the facility; and

WHEREAS, the Town Attorney's Office has prepared a license agreement between the Town of Riverhead, and Strong Island Street Wheels and TMO Radio; and

WHEREAS, the Town of Riverhead is supportive of such community-oriented events;

WHEREAS, Strong Island Street Wheels and TMO Radio have been notified that they must apply for a Chapter 90 permit and met the insurance requirements indicated in the license agreement.

THEREFORE, BE IT RESOLVED, that upon completion and submission of a Chapter 90 permit the CDA hereby authorizes the Chairman to execute a license agreement as described with Strong Island Street Wheels and TMO Radio to hold Long Island Car Audio show.

AND BE IT FURTHER RESOLVED, that the Town Clerk shall provide a certified copy of this resolution to Community Development Agency Director Andrea Lohneiss and Bruce Sheppard, Director of Client Services and Event Marketing, TMO.

THE VOTE

Bartunek	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	Sanders	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
Blass	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no	Densieski	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
			Cardinale	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no

**THE RESOLUTION WAS WAS NOT
THEREFORE DULY ADOPTED**

LICENSE AGREEMENT FOR OUTDOOR EVENT

This Agreement is made and entered into as of this ____ day of _____, 2005, by and between Riverhead Community Development Agency, a public instrumentality of the Town of Riverhead, County of Suffolk and State of New York, with a mailing address of 200 Howell Avenue, Riverhead, NY 11901. ("CDA"), and Party 105, a limited liability company duly organized and existing under the laws of the State of New York, having a principal place of business at 1103 Stewart Avenue, Garden City, NY 11530 ("Promoter"):

WHEREAS, Promoter is in the business of organizing and promoting entertainment events for the general public; and

WHEREAS, CDA controls approximately 2900 acres of land in Calverton, New York, commonly known as Calverton Enterprise Park, which land is more particularly described on Exhibit A attached hereto (the "Park"); and

WHEREAS, Promoter desires to stage and promote a car audio show commonly known as "The Third Annual Long Island Car Audio Show," to be held on Sunday, September 18, 2005 at 10:00am to 7:00pm (the "Event"); and

WHEREAS, Promoter and CDA have agreed to terms under which Promoter will be granted the use of certain land at the Property.

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

1. Use of Property: CDA hereby grants Promoter a License providing Promoter with temporary and occupancy use of that portion of the Park depicted on the attached Exhibit A as the site for the Event (the "Property"), upon the terms and conditions set forth hereunder. This License will provide Promoter and its employees, representatives, agents, invitees and concessionaires exclusive use of the Property on September 18, 2005 (the "License Period") to accommodate the Event, including, without limitation, the set up for the Event, the preparation of the Property for the Event, including concession stands for food, beverages and merchandise, and other temporary structures and facilities necessary, appropriate or incidental to the staging of the Event, and the completion of garbage and rubbish cleanup actions required under paragraph 4 below.

2. Compliance With Laws: Promoter shall at all times comply with all applicable federal, state, county and municipal laws, regulations, ordinances, codes and restrictions, including, without limitation, compliance with Article 28 of the New York State Tax Law and applicable regulations thereunder, and will secure any and all permits or licenses required for its activities and operations carried out at the Property. Without limiting the generality of the foregoing, to the extent required by law, Promoter will secure a "Mass Gathering Permit" or such other assembly permit as is deemed necessary to conduct the Event from any municipality having jurisdiction over the Event, including the Commissioner of the Suffolk County Department of Health, prior to holding the Event. CDA agrees to provide information at its disposal and otherwise cooperate with Promoter in pursuing its application for any such permit(s) or license(s).

3. Compensation: In exchange for the License set forth above for the use of the Property in connection with the Event, Promoter shall pay CDA the sum of Two Thousand Six Hundred Fifty Dollars (\$2,650.00). All sums payable by Promoter to CDA under this Agreement shall be paid prior to September 18, 2005.

4. Responsibilities of Promoter: Subject to the terms of this Agreement, Promoter will be responsible for carrying out and shall have exclusive control of all operations associated with the Event and related activities, including without limitation, all food and beverage concessions, merchandising, parking, any video or audio filming or taping of the Event, security for the Event, provision of emergency medical services, lay-out and administration and operation of sanitary facilities. Following the Event, Promoter will promptly commence garbage and rubbish removal and cleanup (hereafter, "the cleanup") and shall diligently engage in such cleanup efforts so that the cleanup will be accomplished as soon as reasonably practicable (but in no event later than September 18, 2005). Buildings, facilities and grounds will be restored to the condition that existed prior to the Event (hereafter, the "restoration") and be completely clean and free of clutter and debris. Promoter will remove all refuse, rubble, garbage and debris created by the Event or Promoter's activities at the Property and dispose of the same at an appropriate waste facility.

In order to provide assurance that there will be sufficient resources to complete the cleanup and the restoration as set forth in the preceding paragraph, Promoter will deposit an additional sum of Two Thousand Six Hundred and Fifty Dollars (\$2,650.00) (the "Escrow Funds") with the Town of Riverhead (the "Escrow Agent"), which Escrow Funds will be disbursed by the Escrow Agent in accordance with

this Agreement. The Escrow Funds shall be deposited by Promoter as provided above on or before September 1, 2005. The Escrow Funds shall be disbursed as directed jointly by the parties hereto, except as otherwise provided herein. CDA and Promoter agree that the Escrow Funds shall be disbursed in satisfaction of costs associated with the cleanup and the restoration until the same are completed to the reasonable satisfaction of CDA. CDA agrees that Escrow Funds will be released upon the approval of the cleanup and restoration of the Property by the CDA, which approval will not be unreasonable withheld, conditioned or delayed. Upon completion of all cleanup and restoration work hereunder by Promoter to the reasonable satisfaction of CDA, any unexpended balance of the Escrow Funds will be returned to Promoter. In the event that Promoter and CDA cannot agree whether a reasonable cleanup and/or restoration standard has been accomplished, such dispute shall be resolved in accordance with the dispute resolution provisions of this Agreement. In the event that Promoter fails for any reason (other than a disagreement as to whether the cleanup standard has been met) to complete its cleanup and restoration work hereunder to the reasonable satisfaction of CDA, CDA shall have the right, after notice to Promoter, to apply any unexpended balance of Escrow Funds toward the reasonable costs and expenses of completing such cleanup and/or restoration work; provided that any remaining unexpended Escrow Funds after the completion of such work by CDA will be returned to Promoter.

5. Septic Waste. Promoter will be responsible for the handling, storage, processing (i.e., screening of foreign objects), treatment and disposal of all waste from portable toilets generated in connection with the Event and related activities. The parties shall cooperate in identifying and specifying methods of handling, storing, processing, treating and disposing of the waste.

6. Security. Promoter will provide all security services reasonably necessary to protect the health and safety of the concert goers as well as the general public, and generally to protect against damage to or loss of property, including the land, buildings, equipment and/or facilities provided by CDA hereunder for use in connection with the Event. Promoter will undertake all necessary coordination with state, county and local law enforcement agencies.

7. Insurance and Indemnification: Promoter will be responsible for providing comprehensive general liability insurance in the amount of not less than \$1,000,000. with a company or companies reasonably satisfactory to CDA. Promoter shall provide certificates of the foregoing insurance, showing CDA and the Town of Riverhead as additional insureds to the extent of their interest. Finally, Promoter agrees to indemnify and hold harmless CDA, the Town of Riverhead and their respective officers, employees, agents, representatives and officials from any and all loss or liability associated with the Event and related activities described herein, including liability for damages to property or for injuries or death to persons which may arise from, or be attributable or incident to the use by Promoter and its employees, agents, representatives and concessionaires, or any concert attendee, of the Property, excepting liability solely caused by the negligence or willful misconduct of CDA, the Town of Riverhead or their respective officers, employees, agents, representatives or officials. With respect to any suit or claim by CDA whether under this indemnification provision or otherwise, Promoter, for itself, its agents, employees and representatives, hereby expressly waives any defense which might preclude or limit either enforcement of this indemnification clause or any reasonable attorneys fees incurred by CDA securing compliance with the provision of this indemnification

agreement.

8. Miscellaneous Responsibilities of Promoter: Except with respect to any specific services, equipment and facilities to be provided by CDA under this Agreement, Promoter will be responsible for acquiring all services and materials and otherwise for carrying out all actions necessary for the Event and related activities to take place, including, but not limited to, all planning, marketing, promotions, sponsorship, operations, concessions, garbage removal, cleanup, construction and demolition or removal of all temporary structures, development and removal of systems to deliver adequate supplies of potable water, portable toilets, systems for removal of wastewater, ticketing, security, emergency medical service, traffic control, electrical power and communications. Promoter will obtain all necessary licenses, permits and approvals required for the Event and for construction of any temporary structure or system to be used at the Property in connection with the Event or related activities. In addition, Promoter will take all actions necessary to restore the Property to its condition existing prior to the commencement of operations under this Agreement, including, without limiting the generality of the foregoing, the removal of all temporary structures and systems.

9. Representations of CDA. CDA warrants and represents that (a) it has the full right, power and authority to enter into this Agreement and to grant the License, (b) Promoter shall have exclusive and uninterrupted use of the Property during the License Period, (c) the Property is in compliance with all applicable laws, rules and regulations and, to the best of CDA's knowledge, is safe for use by Promoter's employees, representatives, agents, invitees and concessionaires, as contemplated herein, and (d) at the commencement of the License Period, the Property (including all buildings and facilities thereon) will be completely clean and free of

clutter and debris.

10. Notices. Any notices hereunder shall be sent to the addresses set forth above by (a) certified mail, return receipt requested (deemed received four days following the date mailed, postage paid) or (b) nationally recognized overnight carrier (deemed received one day following the date sent).

11. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties; provided, however, that nothing herein shall be deemed to permit the assignment of this Agreement by either party without the express written consent of the other party.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties and no further agreement, express or implied, written or oral, exists with respect to the subject matter of this document.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

14. Dispute Resolution. The parties to this Agreement will submit any controversy or claim arising out of or relating to this Agreement which cannot be resolved by mutual agreement to binding arbitration under the rules of the American Arbitration Association. Such arbitration shall be conducted by an arbitrator experienced in arbitrating disputes of similar size and complexity as shall be jointly selected by the parties, or failing such joint selection within seven (7) days of the assertion of the controversy or claim, as shall be appointed by the President of the American Arbitration Association in the City of Albany, New York.

Arbitration shall commence upon appointment of the arbitrator and shall take place in New York City. Unless otherwise specified by the arbitrator in his decision as being unjust, all costs of arbitration shall be shared equally by the parties, and the parties shall be responsible for the costs of their respective attorneys and the expenses of witnesses that they may call. Notwithstanding any other provision of law, any arbitration process held pursuant to this Agreement shall be deemed confidential and no statements made therein shall be used in any other proceeding. The decision of the arbitrator shall be delivered in writing to the parties within seven (7) calendar days of the closing of the arbitration proceedings. The decision of the arbitrator shall be binding upon the parties.

In Witness Whereof, Promoter has caused this instrument to be signed in its corporate name by _____, its _____, hereunto duly authorized, and Town of Riverhead Community Development Agency has caused this instrument to be signed in its corporate name by Philip J. Cardinale, its Chairman, hereunto duly authorized, as of the day and the year first above written.

PARTY 105

By: _____

Riverhead Community Development
Agency

By: _____

Name: Philip J. Cardinale

Title: Chairman