TEMPORARY USE AGREEMENT

THIS TEMPORARY USE AGREEMENT (the “Agreement”) is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015 (the “Effective Date”), by and between DANIA ENTERTAINMENT CENTER, LLC, a Delaware limited liability company (hereinafter referred to as “DEC” or alternatively the “Parking DEC”) and the CITY OF DANIA BEACH, a Florida municipal corporation (the “City”).

# RECITALS

WHEREAS, DEC is the owner of certain real property located in the City on which is located a pari-mutuel facility which real property is more particularly described in Exhibit A attached hereto and commonly known as the “Dania Jai Alai” (hereinafter referred to as the “Property”); and

WHEREAS, the City is the owner of certain right-of-way within which parking has been constructed which is more particularly described on Exhibit B attached hereto (the “Reconfigured Parking”) and which presently serves Frost Park; and

WHEREAS, DEC and the City entered into a Second Amended and Restated Development Agreement dated November 6, 2014 and approved by Resolution No. 2014-072 (the “Development Agreement”) for the renovation, expansion and redevelopment of the Property; and

WHEREAS, the Development Agreement provides for the reconstruction and reconfiguration of the parking located within the right-of-way of Fronton Boulevard serving Frost Park as part of the improvements to Fronton Boulevard; and

WHEREAS, the Development Agreement further provides that DEC and the City shall enter into a Temporary Use Agreement to permit parking in the northwest corner of the Property located east of Frost Park during the construction of the Reconfigured Parking located within Fronton Boulevard.

NOW, THEREFORE, for and in consideration of the mutual terms and conditions contained in this Agreement, the sufficiency and adequacy of which are hereby acknowledged by the parties hereto, the parties to this Agreement do hereby agree as follows:

1. License. DEC hereby grants to the City the temporary right and license to use a minimum of sixty (60) parking spaces in the area graphically depicted on Exhibit C (the “Temporary Parking Area”) attached hereto for the parking of passenger vehicles for the use and benefit of Frost Park. All vehicular access to and from the Temporary Parking Area shall be via the access point highlighted on Exhibit C. The City hereby accepts the Temporary Parking Area in its “as-is, where-is” condition without any representation or warranty from DEC and without recourse to DEC.
2. Term of License. Unless terminated early as provided herein, the term of this Agreement shall commence on the date that is seven (7) days after DEC delivers written notice (which may be by electronic mail solely for the purpose of giving notice of commencement under this Section 2) of its desire to decommission and commence construction on the Reconfigured Parking (the “Construction Date”) and shall expire the earlier of (a) December 31, 2015 or (b) upon the acceptance of the Reconfigured Parking by both the City and Broward County, as required. The parties understand that once the Reconfigured Parking is decommissioned, it will no longer be available for parking for Frost Park during the term of this Agreement.

3. Use of the Temporary Parking Area. Subject and pursuant to the terms, conditions and limitations stated herein, DEC hereby grants to the City the right to use the unreserved parking spaces for the parking of passenger vehicles (the “Parking Spaces”) located in the Temporary Parking Area, together with the non-exclusive right of pedestrian and vehicular access to and from the Parking Spaces as graphically depicted on Exhibit C. The use of the Parking Spaces shall be subject to the following terms and conditions:

(a) Frost Park. The use of the Parking Spaces and the Temporary Parking Area is limited to the residents and other visitors and authorized users of Frost Park, and for no other purpose, without DEC’s consent.

(b) Hours of Operation. The Temporary Parking Area shall be open and accessible daily from 8:00 a.m. to 9:00 p.m. (Monday through Sunday).

(c) Maintenance. The City shall be responsible, at its sole cost and expense, for maintaining the Temporary Parking Area in a clean and safe condition, including, without limitation, general upkeep and trash removal.

(d) Liability and Damages. The City and any residents, visitors or other authorized users of Frost Park utilizing the Temporary Parking Area for parking shall be responsible for any damage to their vehicles or personal property in such vehicles while on the Temporary Parking Area. The City shall be responsible for any damage to the Temporary Parking Area and for damage to any vehicles or property of third parties using the Temporary Parking Area.

(e) Indemnification. The City shall indemnify and hold DEC harmless from and against all liability, claims, suits, judgments, damages, costs and expenses (including reasonable attorneys’ fees) which it may be subject or suffer, arising from or in connection with (i) the use or occupancy of the Parking Spaces or the Temporary Parking Area by the City, its residents, visitors or other authorized users, (ii) any act or omission of City or its residents, visitors or other authorized users in connection with their use or occupancy of the Parking Spaces or the Temporary Parking Area, (iii) any failure to comply with the rules and regulations for the Temporary Parking Area, described below, and (iv) any termination of the license to use the Parking Spaces resulting from any act or omission of the City, its residents, visitors or other authorized users. The provisions of this Section 3(d) shall survive the termination or expiration of this Agreement.

(f) Rules and Regulations. The City acknowledges that the use of the Parking Spaces shall be subject to all rules and regulations now or hereinafter in effect pertaining to the use of the Temporary Parking Area provided in this Agreement and as may be provided by DEC in writing to the City. The City agrees to reimburse DEC for any expense incurred as a result of any violation thereof, including any towing expense of any vehicle parked in violation of this Agreement.

(g) Relocation. The parties understand that DEC is actively renovating the existing pari-mutual facility located on the Property, including certain site related improvements. DEC shall have the right, upon giving the City ten (10) days prior written notice, to relocate the Temporary Parking Area to the area graphically depicted on Exhibit D (“Relocated Temporary Parking Area”). The Relocated Temporary Parking Area shall be used by the City, its residents, visitors and other authorized users of Frost Park upon the same terms and conditions as set forth in this Agreement.

4. Coordination of Construction. In connection with the relocation and reconstruction of the Reconfigured Parking, DEC shall provide the City with periodic updates on any closing of Fronton Boulevard, any sidewalks and/or existing crosswalks servicing the Temporary Parking Area or the Relocated Temporary Parking Area. Any updates shall be provided in writing (which may be by electronic mail solely for the purpose of providing the information required by this Section 4) and provided to Mark Felicetty, Parks and Recreation Director at mfelicetty@ci.dania-beach.fl.us on behalf of the City.

5. Events of Default. The occurrence of the following shall constitute an “Event of Default” under this Agreement: any failure by DEC or the City to observe and perform any other term, covenant or condition of this Agreement to be observed or performed by the party where such failure continues for thirty (30) days after written notice thereof from another party hereto; provided, however, that if the breach or nonperformance is of such a nature that it cannot be cured within thirty (30) days, the breached party shall be deemed to have cured if cure is commenced promptly (which, in no event shall be later than thirty days following notice) and diligently pursued to completion to the reasonably satisfaction of the party that is the beneficiary of such term, covenant or condition.

6. Remedies. Upon the occurrence of any Event of Default, DEC or the City shall have the right to terminate the respective license granted herein as its sole remedy.

7. Insurance. The City shall obtain and maintain throughout the term of this Agreement insurance reasonably acceptable to DEC, naming DEC as an additional insured, in amounts not less than $1,000,000 (per occurrence) for commercial general liability and $1,000,000 for property damage. The City shall provide DEC with a copy of the insurance policy, and the applicable endorsement thereto, evidencing such coverage including a certificate of insurance on the applicable ACORD form.

8. Indemnity. [See 3(e) above]

9. Waiver. No term, covenant or condition of this Agreement shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any term, covenant or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same of any other term, covenant or condition. Notwithstanding anything to the contrary contained herein, in no event shall either party be liable for any punitive, speculative or consequential damages.

10. Notice. Any notice required to be given under this Agreement shall be given, unless otherwise provided herein, in writing and shall be delivered in person or by registered or certified mail, postage prepaid, and addressed to the following:

 If to DEC: Mr. Scott Savin

 Dania Entertainment Center, LLC

 301 East Dania Beach Boulevard

 Dania Beach, FL 33009

 Email: ssavin23@gmail.com

 With copy to:

 Janna P. Lhota, Esq.

 Holland & Knight LLP

 515 East Las Olas Boulevard

 Suite 1200

 Fort Lauderdale, FL 33301

 Email: janna.lhota@hklaw.com

 If to City: Mr. Robert Baldwin

 City Manager

 City of Dania Beach

 100 W. Dania Beach Boulevard

 Dania Beach, Florida 33004

 Email: rbaldwin@ci.dania-beach.fl.us

With copy to:

Thomas J. Ansbro, Esq.

City Attorney

City of Dania Beach

 100 W. Dania Beach Boulevard

 Dania Beach, Florida 33004

Email: tansbro@ci.dania-beach.fl.us

11. Amendments. This Agreement may be modified, amended or otherwise altered only in writing, signed by the City and DEC, or its respective successors or assigns.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the City and DEC and its respective successors and assigns. Notwithstanding the foregoing, the City may not assign its rights under this Agreement without the prior written consent of DEC, which consent may be withheld in DEC’s sole discretion.

13. Counterparts. This Agreement may be executed in multiple counterparts with the same effect as if all parties had executed the same document. Signatures of the parties transmitted by facsimile or electronically shall be deemed to be their original signatures for all purposes.

In witness whereof, DEC and the City have executed this Temporary Use Agreement on the date first written above.

**Dania Entertainment Center, LLC, a Delaware limited liability company:**

## By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF FLORIDA )

COUNTY OF BROWARD )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2015 by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ an authorized signatory for Dania Entertainment Center, LLC, a Delaware limited liability company, on behalf of the corporation. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is personally known to me or has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

(SEAL)

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public-State of\_\_\_\_\_\_\_\_\_\_

Commission Number: \_\_\_\_\_\_\_\_\_\_

**The City of Dania Beach, a Florida municipal corporation:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Marco Salvino, Sr., Mayor

 \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2015

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Robert Baldwin, City Manager

 \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2015

Approved as to form and legality by: Office of the City Attorney

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Thomas J. Ansbro, Esq.

 \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2015

 (CITY SEAL)

STATE OF FLORIDA )

COUNTY OF BROWARD )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2015 by MARCO SALVINO, SR., as Mayor for the City of Dania Beach, a Florida municipal corporation. Marco Salvino, Sr. is personally known to me or has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public - State of Florida

Commission Number: \_\_\_\_\_\_\_\_\_\_

STATE OF FLORIDA )

COUNTY OF BROWARD )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2015 by ROBERT BALDWIN, as City Manager for the City of Dania Beach, a Florida municipal corporation. Robert Baldwin is personally known to me or has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public - State of Florida

Commission Number: \_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**Legal Description – the Property**

All of the Dania Jai Alai Plat, according to the Plat thereof as recorded in Plat Book 177, Page 170 of the Public Records of Broward County, Florida.

Said lands lying in the City of Dania Beach, Broward County, Florida and containing 50.462 acres, more or less.

**Exhibit B**

**Legal Description – the Reconfigured Parking**

**Exhibit C**

**Temporary Parking Area**

(see attached)

**Exhibit D**

**Alternate Temporary Parking Area**

(see attached)