

ORDINANCE NO. 2016-33-OAB

**ORDINANCE OF THE TOWNSHIP OF BERKELEY, COUNTY OF
OCEAN, STATE OF NEW JERSEY, AUTHORIZING THE EXECUTION OF
A LEASE WITH THE PINE BARRENS MODELERS RC CLUB**

November 14, 2016

WHEREAS, the Mayor and Council previously received a request to utilize Township property for a flying field from the Pine Barren RC Modeler Club ("Club"), a non profit organization; and

WHEREAS, the Club has requested to use a vacant piece of land behind the Township Department of Public Works building and the governing body wishes to authorize the lease of this property for its use by the Pine Barren RC Modeler Club.

NOW, THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Berkeley, County of Ocean, State of New Jersey as follows:

SECTION 1. That the governing body does hereby authorize the Mayor and Township Clerk to execute a Lease Agreement between the Township of Berkeley and the Club for the property behind the Department of Public Works, precise area to be marked and designated on a sketch by the Director of Public Works, for a term of five (5) years with a five (5) year extension option, which shall be in a form acceptable to the Township Attorney.

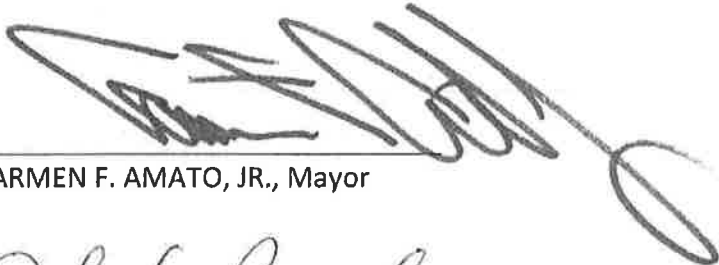
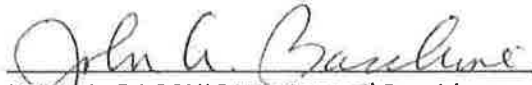
SECTION 2. This lease is authorized pursuant to the provisions of N.J.S.A. 40A:12-14(c).

SECTION 3. That the Club shall be required to pay the sum of one (\$1.00) dollar per year to the Township of Berkeley.

SECTION 4. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

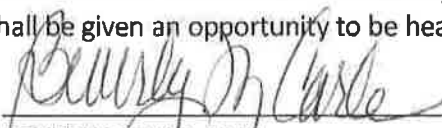
SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 6. This ordinance shall take effect after second reading and publication as required by law.


CARMEN F. AMATO, JR., Mayor
JOHN A. BACCHIONE, Council President
SOPHIA GINGRICH, Council Vice President

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed on first reading at a regular meeting of the Township Council of the Township of Berkeley, in the County of Ocean, State of New Jersey, held on **November 14, 2016**, and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the **5th day of December, 2016**, at 6:00 p.m., or as soon thereafter as this matter can be reached, at the meeting room of the Municipal Building located at 627 Pinewald-Keswick Road, Bayville, New Jersey, at which time all persons interested shall be given an opportunity to be heard concerning this ordinance.


BEVERLY CARLE, RMC
Township Clerk, Township of Berkeley

LEASE AGREEMENT

THIS LEASE AGREEMENT made this 5th day of December, 2016,

BETWEEN: TOWNSHIP OF BERKELEY, a municipal corporation of the State of New Jersey, having its principal offices located at Pinewald-Keswich Road, Bayville, New Jersey 08721 (hereinafter referred to as "Township");

AND: PINE BARRENS MODELERS RC CLUB, having a mailing address of P.O. Box 38, Bayville, New Jersey 08721 (hereinafter referred to as "Lessee").

W I T N E S S E T H:

WHEREAS, Township has agreed to lease to Lessee, and the Lessee has agreed to lease from Township, all that certain premises owned by Township and located behind the Public Works Site, as marked and designated on a sketch by the Director of Public Works and attached hereto as Schedule "A" ("Premises"); and

WHEREAS, this lease agreement ("Lease") is strictly for the use and operation of the Premises as a flying field for Lessee.

NOW, THEREFORE, be it agreed between the Township and Lessee as follows:

ARTICLE 1

1. Premises and Term. Township does hereby demise and Lease to Lessee, and Lessee does hereby Lease from Township, that certain premises owned by Township and located behind the Public Works Site, as delineated in Schedule "A" to operate a flying field for flying remote control aircraft. The term of this Lease shall run for five years, commencing December 31, 2016, and ending December 31, 2021. The Lessee shall also the option to extend for an additional five-year period. If the Lessee wishes to exercise this renewal option, the Lessee must give written notice to the Township six (6) months prior to the expiration of the Lease Term. Failure to provide written notice, or to mutually agree upon the terms for the renewal period, shall result in termination of the Lease.

The Lessee shall have the right to use the Premises to create a sanctioned flying field for flying model remote control aircraft. All activities shall be performed by the Lessee following approval from the Township.

ARTICLE 2

2. Rent. As Lessee is a non-profit organization, Lessee shall pay to Township as rent for the Premises the sum of **ONE (\$1.00) DOLLAR** per year for the Term of this Lease, hereinafter referred to as the "Rent". Lessee is solely responsible, however, for all activities at the Premises, including maintenance.

ARTICLE 3

3. Use of Premises.

3.1 Use by Lessee. Said Premises shall be limited to use for a flying field for flying remote control aircraft and related activities. Said Premises shall not be used for any other purpose or purposes. As the Premises are currently undeveloped, Lessee shall develop same for the identified purposes herein and must obtain prior approval of the Township before any development occurs. All development shall receive appropriate approvals and permits (where necessary). If the Premises are used for events, prior written approval of the Township is required.

3.2 Use by Township. Township shall maintain access to the Premises and may use same when necessary. The Township shall provide reasonable notice to Lessee to enter and/or use the Premises.

ARTICLE 4

4. General Conditions.

4.1. Said Premises during the Term of this Lease shall always be kept in a clean and orderly condition. Lessee shall be responsible for maintenance of the Premises.

4.2. Lessee shall utilize the Premises in conformity with the Academy of Model Aeronautics ("AMA") safety rules.

4.3. Lessee shall not store or use on the Premises any material which is hazardous, dangerous, flammable or explosive, or which may increase the risk of fire or other hazard.

ARTICLE 5

5. **Conduct.** All agents, officers and invitees of the Lessee shall conduct themselves in an orderly and respectable manner in connection with the operation of the Premises during the Term of this Lease.

ARTICLE 6

6. **Termination of Lease.** Lessee shall, at the expiration of this Lease, surrender the Premises in as good condition as the same shall have been at the time possession thereof had been delivered to Lessee, except for ordinary wear and tear. It is expressly understood and agreed between the parties that the Township may, if it so elects, at any time hereafter, terminate this Lease for the causes listed below, and the term hereof, upon giving thirty (30) days' written notice to Lessee as provided for herein of its intention to do so, and upon the giving of such notice, this Lease and the Term hereof shall terminate.

6.1. If the Township requires use of the Premises for Township operations;

6.2. If Lessee loses its AMA charter;

6.3. If the Lessee defaults in the performance of any of the covenants and agreements contained in this Lease;

6.4. If Lessee's insurance of the Premises lapses;

6.5. If the use of the Premises is prohibited; or

6.6. If the Lessee shall, after ten (10) days' written notice from the Township, fail to comply with any of the applicable statutes, ordinances, rules, orders, regulations and requirements of the federal, state and municipal governments, or of any and all of their departments and bureaus applicable to said Premises, or hereafter established as herein provided.

ARTICLE 7

7. **Cancellation.** Notwithstanding the provisions of Article 6, the Township may cancel this Lease without cause upon ninety (90) days' written notice to Lessee.

ARTICLE 8

8. **Signs.** No signs are to be displayed on the Premises without the prior written approval of the Township.

ARTICLE 9

9. **Assignment.** The Lessee shall not assign this Lease without the prior written consent of the Township.

ARTICLE 10

10. **Quiet Possession.** Upon Lessee observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet, peaceful, and uninterrupted possession of the Premises for the entire term thereof, subject to all the provisions of this Lease.

ARTICLE 11

11. **Township's Consent.** When Township's consent is required, Township's consent shall not be unreasonably or arbitrarily withheld.

ARTICLE 12

12. **Mechanic's Liens Prohibited.**

12.1. Lessee shall not suffer any mechanic's notice of intention or lien claim to be filed against the Premises reason of work, labor, services, or materials performed for or furnished to Lessee or to anyone holding the Premises, or any part thereof, through or under Lessee.

12.2. If Lessee shall fail to remove or discharge any mechanic's notice of intention or lien claim as described above within ninety (90) days after notice or knowledge of the filing of same, then in addition to all other rights of Township hereunder or by law upon a default by Lessee, Township may, at its option, procure the removal or discharge of same. An amount paid by Township for such purpose, including all reasonable attorneys' fees and other expenses therefor, shall become due and payable by Lessee to Township upon demand.

ARTICLE 13

13. Notice. Any notice by either party to the other shall be in writing and shall be deemed to have been duly given only if delivered personally or sent by registered mail or certified mail in a postpaid envelope addressed, if to Lessee, at the Lessee's address as set forth above. If to Township, at Township's address as set forth above; or to either at such other address as Lessee or Township respectively, may designate in writing. Notice shall be deemed to have been duly given, if delivered personally, on delivery thereof, and if mailed, upon the 10th day after the mailing thereof. In the event that either Township or Lessee shall fail to comply with any of the covenants contained herein, either party shall give written notice of such failure by certified mail, return receipt requested, to the address for Township and for Lessee set forth above.

ARTICLE 14

14. Waiver. The failure of either party to insist on strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any subsequent breach or default in either the terms or conditions breached, or in any other term or condition hereof.

ARTICLE 15

15. Improvements. Lessee may not construct any improvements on the Premises without the written consent of the Township. If any improvements are permitted, they shall be at the sole cost of the Lessee. Lessee shall provide Township with a plan of any improvements it makes to the Premises. Upon termination, Lessee shall remove all improvements from the Premises unless Township agrees in writing that any improvement(s) shall remain. The Township may, at its sole discretion, undertake improvements to the Premises. Said improvements shall be for the benefit of the Lessee as well as the Township and shall remain the property of the Township.

ARTICLE 16

16. Insurance for Benefit of Township. The Lessee, during the Term of this Lease, shall obtain and maintain liability insurance against all claims on account of personal injury and property damage or death to person, for which the Lessee may become liable as a result of the use and occupancy of the Premises, and shall name the Township as an additional insured under the said policy. Lessee shall provide Township with a Certificate of Insurance evidencing compliance with this paragraph and providing the Township with thirty (30) days' prior written notice of cancellation or amendment of said policy.

ARTICLE 17

17. The Township hereby retains the right to enter the premises at any time with reasonable notice to the Lessee.

ARTICLE 18

18. This Lease is contingent upon the Lessee obtaining and maintaining any and all governmental approvals required for its use of the Premises. Additionally, the Lessee shall make the

Premises available for any required inspections, monitoring, or any other procedures required by any governmental agency.

ARTICLE 19

19. Modification. This Lease may not be modified unless such modification is in writing and signed by both parties.

ARTICLE 20

20. Force Majeure. The period of time during which Township is prevented from performing any act required to be performed under this Lease by reason of fire, catastrophe, acts of God, or of the public enemy, governmental prohibitions, embargoes, inability to obtain materials, or substitute materials, or labor by reason of governmental regulations or prohibitions, or other events beyond the reasonable control of the Township, shall be added to the time for performance of such act, and Township shall not be liable to Lessee or in default under this Lease as the result thereof.

ARTICLE 21

21. Effect of Partial Invalidity. If any provision of this Lease is held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

ARTICLE 22

22. Integration. This written Lease and the resolution approving the same, as well as attachments hereto, contain the entire agreement between the parties, and neither party has relied upon any prior or contemporaneous representation, either oral or written, that is not contained in this Lease or its incorporated parts.

ARTICLE 23

23. Pronouns. The use of the neuter singular pronoun in referring to Township shall, nevertheless, be deemed proper reference even though Township may be an individual, a corporation, a partnership or a group of two or more individuals or corporations.

ARTICLE 24

24. Successor and Assigns. The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto.

ARTICLE 25

25. Affirmative Action.

25.1. The parties to this contract agree to incorporate into this contract the mandatory language of subsection 3.5(a) of the Regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the contractor or subcontractor agrees to comply fully with the terms, provisions, and obligations of said subsection 3.5(a).

25.2. The parties to this contract agree to incorporate into this contract the mandatory language of section 3.7 of the Regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the contractor or subcontractor agrees to comply fully with the terms, provisions, and obligations of said section 3.7.

ARTICLE 26

26. Indemnify and Hold Harmless. The Lessee shall indemnify and hold harmless the Township, its agents, servants and employees from any and all claims, liabilities, damages, or causes of action, including reasonable attorneys' fees, which may arise out of Lessee's use of the Premises. This hold harmless provision shall apply to any and all claims of any kinds

whatsoever made against the Township by the Lessee or the Lessee's members, agents or invitees. The Lessee certifies that it has all the appropriate insurance coverage and shall keep said insurance in full force and effect during the entire term of this Lease. It is the further agreement of the parties hereto that upon request, the Lessee shall provide evidence of such insurance coverage to the Township, its authorized agents, servants or employees.

IN WITNESS WHEREOF, the parties have hereunto caused these presents to be signed by their proper corporate officers or representatives of the partnership, as the case may be, on the day and year set forth at the heading of the within Lease.

WITNESS & ATTEST:



BEVERLY M. CARLE, RMC
Township Clerk
(Seal)

By

TOWNSHIP OF BERKELEY



CARMEN F. AMATO, JR., Mayor

PINE BARRENS MODELERS RC CLUB



(Seal)

By



RICHARD BOMBARDIER, President