

## ENVIRONMENTAL ASSESSMENT LICENSE

This Environmental Assessment License ("License") is entered Into between Speedway LLC (Speedway), with an address of 500 Speedway Drive, Enon, Ohio 45323, and Lexington Fayette County Urban Government ("Landowner"), with a mailing address of 200 East Main Street, Lexington, Kentucky 40507.

- 1.0 **ACCESS.** Landowner hereby grants Speedway and its employees, agents, contractors and other representatives the right to enter upon Landowner's property (Johnson Heights Park) located at the following address: 846 Johnsdale Drive, Lexington, Kentucky (the Property), in order to perform the following activities ("Activities"):
  - 1.1 Assess soil, surface water and groundwater contamination, if any;
  - 1.2 Determine locations for the installation of soil borings, geoprobes, groundwater monitoring wells, and other assessment equipment/facilities;
  - 1.3 Install, operate, maintain, close and/or remove all soil borings, geoprobes, groundwater monitoring wells, and other assessment equipment/facilities;
  - 1.4 Take samples from the soil, surface water and groundwater; and
  - 1.5 Perform other related site assessment activities
- 2.1 **NOTICE AND DATA.**
  - 2.2 Speedway shall give at least 72 hours' notice to Landowner prior to entering upon the Property to conduct Activities.
  - 2.3 Upon written request, Speedway shall provide Landowner with the following:
    - 1) Copies of all environmental data obtained by Speedway at the Property pursuant to this License;
    - 2) Speedway will identify which of the data obtained pursuant to this License that Speedway furnishes to the state agency having jurisdiction over Speedway's Activities ("the State");
    - 3) Copies of all correspondence between Speedway and the State related to the Property;
    - 4) Copies of all plans and reports submitted to the State related to the Property including, but not limited to, any corrective action plan, mitigation plan, and site characterization plan.
- 3.0 **SITE CONDITION.** Speedway shall conduct its Activities in a manner that will not

unreasonably interfere with the normal and usual business operations or recreational activities being conducted on the Property. Prior to performing any of its Activities on the Property, Speedway shall locate all utilities on the Property and will conduct its Activities at all times in a manner which will protect all utilities on the Property.

Speedway shall also conduct its Activities in a manner reasonably calculated to minimize disturbance to existing site conditions. After performing Activities, Speedway agrees to restore the areas of the Property that were disturbed by Speedway's Activities to, as nearly as reasonably possible, the same condition as existed on the date that such areas were disturbed by Speedway to the satisfaction of Landowner. Following completion of Speedway's Activities at the Property and approval from the governmental agency with jurisdiction, Speedway will properly close, remove and/or abandon all groundwater monitoring wells and other assessment equipment/facilities that were installed at the Property under this License or prior Licenses between the parties in accordance with state law. If Speedway should stop groundwater sampling at this site for an extended period of time (defined as in excess of one year), Speedway shall then properly remove/abandon the groundwater monitoring wells unless the Landowner grants express written consent for these facilities to remain for a longer time.

#### **4.1 MATERIALS REMOVED FROM THE SITE.**

4.2 Any samples, waste materials, soil cuttings, and liquids which result from Speedway's Activities under this License shall be handled, stored, treated, transported, and disposed of by Speedway in accordance with all applicable local, state and federal laws, regulations and ordinances.

4.3 Upon written request, Landowner may collect its own samples at its cost from soft borings, geoprobes, groundwater monitoring wells, and other assessment equipment/facilities installed by Speedway on the Property pursuant to this License or, at Landowner's option, Speedway will provide to Landowner a "split" of samples obtained by Speedway pursuant to this License.

5.0 **TOOLS AND EQUIPMENT.** All tools, equipment, or other property placed upon the Property by Speedway or its employees, agents, contractors, and other representatives shall remain the property of Speedway and its employees, agents, contractors, and other representatives, and may be removed by the owner of such property at any time within a reasonable time after expiration of this License.

#### **6.0 INDEMNIFICATION AND INSURANCE**

6.1 Speedway or any of its agents or subcontractors agrees to defend, indemnify and save harmless Landowner, its employees, volunteers and elected officials, from and against all liabilities, claims, actions, expenses, obligations, losses, fines, and assessments resulting from or arising out of any error or omission, negligence or intentional misconduct or any other action relating to its Activities at the Property. Indemnification will include, in addition to the above, reasonable attorney's fees and defense costs, documented costs related to investigation and any other expenses related

to any such claim, action or proceeding involving the Activities at the Property. Speedway will not be liable for such liabilities, claims, actions, obligations, losses, fines, penalties, and assessments resulting from or arising out of any error or omission, negligence or intentional misconduct of Landowner, its agents, and employees.

6.2 Speedway will provide and maintain, and require its consultant to provide and maintain, in force at all times during the term of the license Commercial General Liability Insurance and Errors and Omissions Coverage against claims which may arise from or in connection with the Activities performed in the principal amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, per policy year, for any claim, act or omission in performing those Activities. Said policy shall name "The Lexington-Fayette Urban County Government, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers, and successors in interest," as "additional insureds." Speedway will also require its consultant to maintain Professional Liability Insurance against claims which may arise from or in connection with the Activities performed in the principal amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, per policy year. Speedway is permitted to use self-insurance to comply with its obligations under this paragraph. All policies of insurance shall be placed with an insurer authorized to do business in the Commonwealth of Kentucky with a rating classification of no less than VIII, as defined by the most current Best's Key Rating Guide. The policies will provide that such insurance will not be cancelled, modified or permitted to lapse without thirty (30) days prior written notice to Landowner.

7.0 **LANDOWNER'S WARRANTY AND RESPONSIBILITIES.** Landowner represents and warrants that Landowner is the owner of the Property and/or otherwise has full authority to enter into this License, and to make it binding on any person or entity having a valid claim of interest in the Property, including any tenants. Landowner agrees not to interfere with, disturb, move, or enter any equipment, facilities, buildings, or any other Activities of Speedway or its employees, agents, contractors, and other representatives except in the case of emergency or as may be reasonably necessary to allow Landowner to collect samples as provided in subsection 4.2.

8.0 **EFFECTIVE DATE AND TERM.** This License shall be effective as of the date of the last signature hereto, and shall continue in effect until Speedway determines that it has completed its Activities under this License. Either Landowner or Speedway may terminate this License prior to its expiration if the other party violates any material condition or term of this License. Any such termination shall be effective thirty (30) days after written notification of such termination is received by the non-terminating party.

9.0 **MISCELLANEOUS PROVISIONS.**

9.1 **Agreement.** This License sets forth the entire Agreement between the parties and shall not be amended except by writing executed by both parties.

9.2 **Assignability.** This License is binding upon the parties, their successors in title or

interest, assignees and heirs. If, at any time, the Property may be transferred to another owner, Speedway must be notified pursuant to the Notice requirements of this License. Speedway will then prepare a Memorandum of License Agreement and Landowner will execute. Speedway will then record the Memorandum of License Agreement in the applicable county recorder's office. Notification must be made prior to the transfer of the Property and within reasonable time to allow Speedway to record the Memorandum of License Agreement

- 9.3 Governing Law. The law of the Commonwealth of Kentucky shall apply to the interpretation of this License and to the resolution of any disputes arising out of the matter set forth in this License.
- 9.4 Notices. Unless amended by either party by written notice to the other party, communications shall be directed to:

For Landowner:

Monica Conrad, Director  
LFUCG, Division of Parks and Recreation  
469 Parkway Drive  
Lexington, Kentucky 40504  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_

For Speedway:

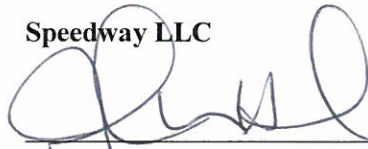
Nick Biddinger  
Environmental Representative Speedway LLC  
500 Speedway Drive  
Enon, Ohio 45323  
Fax: 937-863-6078  
Phone: 937-863-7224

The parties agree to the above terms.

**Landowner**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Mayor  
Date: \_\_\_\_\_

**Speedway LLC**

  
\_\_\_\_\_  
John M. Helms  
Corporate Manager, Environmental  
Date: 12/22/15

