

AMENDED RESTRICTIONS AGREEMENT



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Tx:8512152

**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

**DOCUMENT #
5051009**

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Trans. Fee:

Exempt #:

Rec. Fee: 30.00

Pages: 9

WHEREAS, Jenni Investments, Inc., a State of Illinois registered corporation, registered as a foreign corporation doing business within the State of Wisconsin, with an address of 9401 W. 143rd Street, Orland Park, Illinois, is the equitable owner, (hereinafter referred to as "Owner") of the following described land (the "Property") in the Town of Rutland, Dane County, Wisconsin:

The Southwest One Quarter (SW 1/4) of the Southwest One Quarter (SW 1/4) of said Section 9; also the South 198 feet of the Northwest One Quarter (NW 1/4) of the Southwest One Quarter (SW 1/4) of said Section 9; also the West 200 feet of the North 874.5 feet of the Southeast One Quarter (SE 1/4) of the Southwest One Quarter (SW 1/4) of said section 9; and

WHEREAS, certain restrictions were placed on the Property pursuant to a document recorded with the Dane County Register of Deeds on September 30, 1999 at Pages 930-947, as Document Number 3160011 (the "previously recorded Restrictions"); and

WHEREAS, Owner desires to replace the previously recorded Restrictions with these Amended Restrictions; and

WHEREAS, the Town of Rutland (the "Town") is in agreement with the revisions to the previously recorded Restrictions contained herein, and will approve of any conditional use permit amendment consistent with and contingent on the Restrictions contained herein.

NOW, THEREFORE, in consideration of the mutual benefits passing to and from Owner and those who may hereafter purchase the Property, the Town, and any other parties named as beneficiaries of these Amended Restrictions, pursuant to the previously recorded Restrictions, Owner hereby declares as follows:

1. DEFINITIONS.

- (a) *Auto-cross Division*: "Auto-cross Division" means a timed racing event sponsored by an automobile dealer or car club where participants navigate the race course one at a time attempting to achieve the lowest course-completion time, in passenger vehicles meeting all requirements for operation on public highways in Wisconsin.
- (b) *Automotive Racing Show*: "Automotive Racing Show" shall mean one or more races involving Late Model Cars, Super Late Model Cars, Mid-American Stock Cars, Midwest Trucks, Limited Late Models, Area Sportsman Models, Street Stock Cars, Hobby Stock Cars, Bandit Cars, Midget Cars, Winged Sprint Cars, Bandalero Cars, Legend Cars, Allison Legacy Cars and Modified Racing Cars, ARCA and NASCAR type cars and NASCAR type trucks and includes Auto-Cross Division events.
- (c) *Fire and EMS Training*: "Fire and EMS Training" shall mean low speed vehicle maneuverability training conducted by and for the Oregon Area Fire and EMS District, the Brooklyn Fire and EMS District, the Stoughton Volunteer Fire Department, or the Stoughton Area EMS. Fire and EMS Training shall consist of the operation of ambulances and fire department vehicles as speeds of no more than 24 miles per hour on the parking lot or race track. No sirens or other audible warning devices, other than back-up indicators, may be used.

After Recording, Return to:
Dawn George, Clerk
Town of Rutland
4177 Old Stage Road
Brooklyn, WI 53522

Parcel Nos.	26-0510-093-8730-9
	26-0510-093-9000-6
	26-0510-093-9210-6
	26-0510-093-9610-2

(d) **Music Festival:** "Music Festival" shall mean a non-racing event involving the presentation of live musical performances, which may also include amusement rides and other attractions commonly associated with a carnival or festival. The term does not include any Racing Event.

(e) **Non-Racing Event:** "Non-Racing Event" shall mean a concert, automobile show, flea market or similar event, which does not involve the operation of motor vehicles as a principal attraction, and which is approved by the Town Board as part of the annual track schedule.

(f) **Non-Race Practice:** "Non-Race Practice" shall mean an automotive race practice which, except as provided in sec. 2(d)3 below, does not occur on the same day as an Automotive Racing Show, involving Late Model Cars, Super Late Model Cars, Mid-American Stock Cars, Midwest Trucks, Limited Late Models, Area Sportsman Models, Street Stock Cars, Hobby Stock Cars, Bandit Cars, Midget Cars, Winged Sprint Cars, Bandalero Cars, Legend Cars, Allison Legacy Cars or Modified Racing Cars, ARCA- and NASCAR-type cars and NASCAR-type trucks. No fee may be charged to any participant in a Non-Race Practice, and no racing competition may occur during any Non-Race Practice. Should there be costs incurred by the owner solely as a result of a Non-Race Practice, the owner may charge the practice participants so that the owner may recover those costs. Concessions may be sold in the pit area during non-race practices.

(g) **Police EVOC Training:** "Police EVOC Training" shall mean Emergency Vehicle Operator Courses conducted for the purpose of training law enforcement officers.

(h) **Racing Event:** "Racing Event" or "Event" shall mean an Automotive Racing Show or a Non-Race Practice.

(i) **Racing Season:** "Racing Season" shall mean the period beginning on the last Friday in April and ending on the fourth Sunday in September or the Sunday immediately prior to September 25, whichever is later.

(j) **Tire Test Session:** "Tire Test Session" shall mean a practice session involving no more than three (3) vehicles that are intended to participate in a race at the track during the same racing season on the track at any one time for the purpose of testing tire characteristics and performance.

(k) **Week.** "Week" shall mean a calendar week.

2. RESTRICTIONS ON USE OF THE PROPERTY:

(a) **Permitted Uses:** Except as provided in par. (b)2, the Property may be used only for Automotive Racing Shows, Non-Race Practices and Tire Test Sessions during the Racing Season, Fire and EMS Training and Police EVOC Training, along with the currently existing accessory uses associated with such events, including spectator parking and seating, concession sales, ticket sales, restrooms, and other similar, existing accessory uses. In addition, fireworks displays in conjunction with approved events and in compliance with the terms of any fireworks permit issued by the Town, shall be permitted. No other activities which would otherwise be permitted in a C-2 zoning district under the Dane County Ordinances, and no other types of racing, shall be permitted on the Property. Except as provided in sub. 2(b)3 below, each calendar day during which any part of an event continues shall be deemed a separate event.

(b) **Limited Number Of Events Per Season:**

(1) **General.** There shall be no more than 38 events in any one Racing Season, subject to the following specific restrictions:

- a. No more than 32 of the 38 events may be Automotive Racing Shows, of which no more than 3 may be Auto-cross Division events, on dates and times specified in the annual schedule approved by the Town under par. (b)(2).
 - b. No more than 28 of the Automotive Racing Shows may be held prior to the last weekend of the Racing Season.
 - c. No more than 4 of the Automotive Racing Shows may be held on the last weekend of the Racing Season.
 - d. No more than 6 of the 38 events may be Non-Race Practices.
 - e. No more than 10 of the events may be Tire Test Sessions, provided, however, that all Tire Test Sessions shall be preceded by not less than 3 days' written notice to the Town Clerk and Town Chair.
 - f. There shall be no more than five (5) racing divisions during any single event.
 - g. Flea markets may be conducted on two Saturdays per month from May through September, inclusive, notwithstanding the overall limitation on Non-Racing Events provided in sub. (b)(2).
 - h. No Auto-cross Division event shall be held unless the Owner and event sponsor have in full force and effect policies of insurance naming the Town as an additional insured, providing liability for bodily injury, death or property damage suffered by any person as a result of the acts or omissions of any person participating in or employed at the event, suffered by any person located on the Property, with limits of not less than five million dollars (\$5,000,000) single combined limit. A certificate of such coverage shall be provided to the Town by the Owner prior to the first Auto-cross Division event of each season. A certificate evidencing the sponsor's policy shall be provided to the Town at least 10, but not more than 30 days prior to the sponsored Auto-cross event. The policies represented by the certificates shall provide that they may not be canceled or modified without 30 days prior written notice to the Town, and the certificate shall contain a statement to that effect.
- (2) Non-Racing Events. Notwithstanding the provisions of pars. (a) and (b)1, the Owner may substitute not more than two Non-Racing Events per Racing Season for an equal number of Automotive Racing Shows. Of the Non-Racing Events held during a single Racing Season, not more than one (1) may be a musical concert or Music Festival. All non-racing automotive shows shall be held only on Saturdays unless otherwise approved by the Town Board. All Non-Racing Events must be approved by the Town Board as part of the annual schedule for events at the Property, and shall be conducted in accordance with all conditions imposed by the Town Board as part of such approval.
 - (3) Music Festival. A music festival may be conducted from Friday through Sunday of a single weekend during the Racing Season between the hours of 9:00 a.m. and 10:00 p.m. each day. The Owner shall assure that all persons under the age of 18 years unaccompanied by a parent or guardian are off the premises by 10:30 p.m. each night of a Music Festival.
 - (4) Fire and EMS Training. There shall be no more than 3 Fire and EMS Training sessions during a calendar year. Fire and EMS Training sessions may be held only on Saturdays between the hours of 8:00 a.m. and 4:00 p.m. and between March 1 and November 30, inclusive.

- (5) Police EVOC Training. Police EVOC Training may be conducted with Town Board approval on weekdays; generally on-track between 10:00 A.M. and 2:00 P.M. Such training sessions shall be limited to not more than 4 hours of classroom work and not more than 4 hours of track time in any given day in all cases. Sirens shall not be used unless written approval is granted by the Town Board.

(c) *Limited Number Of Events Per Week.* No later than 45 days before April 15 of each year, the Owner must designate one time for holding a regular weekly event, which time will remain the same throughout the Racing Season. This regular weekly event must be held on a Friday evening, a Saturday evening or a Sunday afternoon. The Owner may schedule and hold events in addition to the established regular weekly event in accordance with the following limitations:

- (1) There shall not be more than three events (including the one regular weekly event) in any one Week, except that up to four events may be held on the last weekend of the Racing Season;
- (2) The maximum number of Weeks during the Racing Season in which three or four events (including the one regular weekly event) may be held shall be six; and
- (3) A maximum of two events per Week (including the one regular weekly event) may be held for not more than four Weeks of the Racing Season, in addition to the six Weeks where a maximum of events per Week is either three or four.
- (4) The scheduling for all events shall be subject to the approval of the Town Board.

(d) *Limited Hours Of Use:*

- (1) All Automotive Racing Shows, including any pre-race practice runs, must be held either between 11:30 a.m. and 5:30 p.m. or between 4:45 p.m. and 10:30 p.m. If an occurrence beyond the Owner's control (such as rain delay, extraordinary accident delay, or other, similar occurrence) makes it impossible to complete an event within the time limits, a limited extension of no more than 60 minutes will not be considered a violation of this provision, provided that the Owner has made all good faith efforts to complete all events within the established time limit.

If an Automotive Racing Show (including practice runs) occurs both before 4:45 p.m. and after 5:30 p.m. on a single day (for example, on a Saturday anytime between 11:30 a.m. and 4:45 p.m., and on the same Saturday anytime between 5:30 p.m. and 10:30 p.m.), the Automotive Racing Show shall be deemed to constitute two separate events whether or not the Owner advertises or describes them as such. In addition, if an event commences and more than one-half of the event is completed, the event constitutes a full event, as that term is used in this document, whether or not the event is completed due to bad weather or any other reason.

- (2) Practice runs before an Automotive Racing Show which occurs between 11:30 a.m. and 5:30 p.m. shall begin no earlier than 11:30 a.m., or two hours before the start of the Automotive Racing Show, whichever is later. Practice before an Automotive Racing Show which occurs between 5:30 p.m. and 10:30 p.m. shall begin no earlier than 4:45 p.m., or two hours before the start of the Automotive Racing Show, whichever is later. Practice shall be deemed to begin when any vehicle is on the track with its engine running. Practices generally shall be held from 5:00 P.M. to 8:00 P.M. on the first, third and, where applicable, fifth Wednesdays of each month during the Racing Season.
- (3) Non-Race Practices shall be limited to three hours beginning when any participating vehicle is on the track with its engine running and shall occur only during the hours

approved by the Town Board as part of the annual schedule for events at the Property. Notwithstanding the foregoing, the Town Board may approve changes in the schedule of Non-Race Practices and may allow Non-Race Practices on the same day as an Automotive Racing Show as a separate Racing Event.

- (4) Non-Racing Events shall be held between the hours of 9:00 a.m. and 10:30 p.m., except that a Music Festival shall end at 10:00 p.m. each night.
- (5) The gates shall not be opened for spectator access more than 30 minutes before the Automotive Racing Show practice is scheduled to begin, or 60 minutes before the beginning of a Non-Racing Event.
- (6) All facilities shall be closed to the public as soon as possible after the event, but not more than one hour after conclusion of the event. Track personnel, drivers and their families may remain at the facilities for the time reasonably necessary to complete event-related clean-up and closing affairs. As part of its approval of the annual schedule of events, the Town Board shall establish a maximum number of camping units that may remain on the Property to be used only as lodging for such track personnel, drivers and their families. Approved camping units may remain on the Property until not later than 11:00 a.m. the day following an event. and shall be subject to any conditions imposed by the Town Board as part of its approval.

3. NOTICE TO THE TOWN AND TOWN RESIDENTS.

(a) No later than 45 days before April 15 each year, the Owner must provide the Town Clerk with a copy of the schedule of all events, including all Automotive Racing Shows, all Non-Race Practices and all Non-Racing Events, all Fire and EMS Training and all Police EVOC Training, for the upcoming Racing Season. All such events shall be conducted only on the dates and times set out in the schedule, unless a change is approved by the Town Board. The schedule may not vary from the limits set forth above without prior written approval from the Town Board. Any request for changes to the schedule shall be filed with the Town Clerk sufficiently in advance of the scheduled Town Board meeting at which approval is sought to allow for inclusion of the request in the published meeting notice.

(b) Any resident of the Town may request to be notified of activities on the Property by submitting a request to the Town. The Town shall forward all such requests to the Owner, and the Owner shall immediately provide the resident(s) with a written schedule of all events for the Racing Season, including the schedule for Automotive Racing Shows, Non-Race Practices and Non-Racing Events. The Owner shall also provide all such residents with 72 hours' advance written notice of any fireworks display.

4. SIZE OF FACILITY/OPERATION.

The racetrack and all accessory facilities associated with the racetrack (seating, concession stands, restrooms, parking, etc.) are to be limited in use, size and capacity to the description contained in the listing attached hereto and incorporated herein as Exhibit A. The location of the facilities is to be generally limited to the configuration shown on the site plan attached hereto as Attachment 1 to Exhibit A.

5. PARKING/TRAFFIC-RELATED CONCERNS.

(a) Adequate parking areas and layout must be provided to accommodate vehicles consistent with the maximum seating capacity provided at the facility, based on a calculation of three persons per car for a maximum crowd not to exceed 10,000 persons.

(b) An on-site traffic flow pattern shall be established, on-site directional signs shall be posted, and sufficient traffic control personnel shall be provided by the owner to assure safe exit from the premises of all spectators and participants within one hour of race end.

(c) The Owner, at his expense, shall prepare an on-site traffic flow and vehicular access plan subject to reasonable approval by the Town, and the approved plan shall be submitted to the County prior to and as a condition of granting the conditional use permit.

6. PUBLIC HEALTH/SAFETY CONCERNS.

(a) In order to improve security and help alleviate problems caused by unauthorized persons entering the premises after hours, permanent, secured gates shall be provided by the Owner at all points of access to prevent unauthorized vehicular access.

(b) Adequate refuse collection, emergency medical services and security/crowd control services are to be provided by the Owner for all races.

(c) Information obtained from State of Wisconsin Department of Safety and Professional Service and the Dane County Environmental Health Department shows that the current sanitary system for the subject parcel (two systems with a combined drain field area of approximately 5,600 square feet plus a 6,000 gallon overflow storage capacity holding tank installed in the summer of 1983) was intended to serve crowds of approximately 4,600 persons. No use or expansion of use of this facility which would exceed the crowd limits for which the property's sanitary system is designed to function properly shall be allowed.

(d) The Owner must designate a local agent who is authorized to act on behalf of, and in the absence of, the Owner to assure compliance with these provisions. The local agent must reside within 15 miles of the Speedway. The Owner must submit to the Town Clerk a written designation of the agent and the agent's address and telephone number during the day, on evenings and on weekends. An agent is required so that local officials have someone to contact regarding inquiries, complaints, disturbances, etc., who can report to the race premises and act on the Owner's behalf in a reasonably prompt manner. Any local agent may be replaced by another when the Owner so notifies the Town Clerk in writing.

(e) The Owner shall provide the Town, the Dane County Sheriff's Department and the local fire and EMS Chief(s) with current maps showing the location of all fuel storage facilities on the Property not later than 24 hours before each event.

7. ENFORCEMENT.

The restrictions provided for herein shall be enforceable at law or equity, including by injunction, against any party who has or acquires an interest in the land subject to the restriction by the following parties who are named as grantees, promisees and beneficiaries with enforcement rights:

(a) The County Government of Dane County, Wisconsin, provided that the lands are under the jurisdiction of a zoning ordinance of said County at the time the enforcement action is commenced; and

(b) The Town Government of the Town of Rutland, Dane County, Wisconsin, provided that the lands are within the governmental jurisdiction of said Town at the time the enforcement action is commenced.

(c) The owners of record of any lands located within 300 feet of the parcel at the time of the alleged violation of the restriction.

8. AMENDMENT AND TERMINATION.

(a) The restrictions herein may be amended in the following manner:

- (1) A written petition calling for the amendment of the restrictions may be made by the persons who are, at the time of the petition, owner(s) of the lands subject to the restriction. Such petition shall be submitted to the Dane County Clerk who shall refer the petition to the Dane County Zoning & Natural Resources Committee (or successor committee) which committee shall schedule and hold a public hearing on the petition in the same manner as public hearings for zoning amendment petitions are noticed and scheduled. Following such hearing, the Committee shall issue a written report on the petition to the County Board of Supervisors which shall, by majority vote, approve or reject the petition. If approved, the petitioner(s) shall draft the amendatory covenant instrument, have same executed by the owner(s) of the lands subject to the restrictions and record same.
- (2) Any amendment to the restrictions concerning scheduling of races or number, construction of, or placement of buildings may be approved solely by the Town Board of the Town of Rutland. If approved, the petitioner(s) shall draft the amendatory covenant instrument, have same executed by the owner(s) of the lands subject to restrictions and record same.
- (3) In the event the Town Board shall determine that the operation of flea markets or Music Festivals as authorized by these restrictions have created, or threaten to create, significant risks to the public health, safety or welfare including, but not limited to, significant traffic congestion, disorderly conduct, criminal activity or other negative impacts, the Board may, by a duly adopted resolution recorded in the Office of the Register of Deeds for Dane County, amend these restriction to limit or prohibit those specific uses.

(b) The restrictions set forth herein may be terminated in the following manner:

Termination may be accomplished through County Board approval of a petition for termination of the restrictions. The procedures for introducing and processing the petition shall be as provided in paragraph 8(a) hereof, except that the petition shall call for termination rather than amendment of the restrictions and the instrument which is recorded shall be an instrument of termination. Such termination shall also require approval of the Town Board.

If this agreement is terminated, then the Property shall be subject to the restrictions and conditions of the Zoning District by which the Property is designated at the time of termination, and the additional restrictions and requirements provided by this Agreement shall be without further effect.

9. BINDING EFFECT.

The terms and provisions hereof shall be recorded in the office of the Register of Deeds for Dane County, Wisconsin, to be construed as a covenant running with the land, and shall be binding upon all parties now owning any part of the Property, their successors, heirs and assigns, and all parties holding under them unless such restrictions are amended or terminated.

10. COST REIMBURSEMENT.

The Owner shall reimburse the Town for all costs and fees, including reasonable and actual attorney fees, incurred by the Town for the review and preparation of this Agreement at the time this Agreement is executed by the Town, and shall reimburse the Town for any further costs and fees incurred with respect to the provisions of this Agreement. Such costs and fees shall include all reasonable expenses incurred by the Town for the technical review of any and all plans contemplated by this Agreement and referred to above.

In the event of litigation, arbitration or mediation to enforce the terms of this Agreement, the Owner shall pay all Town costs, including reasonable attorney fees and expert witness fees.

11. PREVIOUSLY RECORDED RESTRICTIONS SUPERSEDED.

The previously recorded Restrictions are superseded by these Amended Restrictions, and shall have no further force or effect.

12. OWNERSHIP WARRANTY.

The Owner hereby warrants to lawful ownership and being now lawfully seized and possessed of the Property contemplated in this agreement.

IN WITNESS HEREOF, the parties below have hereunder set their hands and seals this 7th day of JANUARY, 2014

[Signature blocks appear on following page]

OWNER:

Terry Kunes (SEAL)
Jenni Investments, Inc.,
By: Terry Kunes, President

STATE OF WISCONSIN
COUNTY OF DANE

Personally came before me, this 7th day of JANUARY, 2014, the above-named Terry Kunes, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Dawn George
* DAWN GEORGE
Notary Public, State of Wisconsin
My commission expires 5/24/2015



TOWN OF RUTLAND:

By: Dale Beske
Dale Beske, Chair

Attest:

Dawn George
Dawn George, Clerk

STATE OF WISCONSIN

COUNTY OF DANE

Signatures of Dale Beske, Chair and Dawn
George, Clerk authenticated on January 27, 2014.



*Allen D. Reuter
Member State Bar of Wisconsin

This Instrument was drafted by:

Allen D. Reuter, Attorney at Law
Madison, Wisconsin

**THIS IS NOT A CONVEYANCE PURSUANT TO SECTION 77.21(1) OF THE WISCONSIN STATUTES
AND IS, THEREFORE, NOT SUBJECT TO A TRANSFER RETURN OR FEE.**