COUNCIL ITEM 13C
DATE 11/14/11

# MEMORANDUM

TO: JERRY A. BENTROTT, CITY MANAGER

THRU: ROGER G. ORR, CITY ATTORNEY

FROM: PAM E. BOOKER HAKIM, SENIOR ASSISTANT CITY ATTORNEY

DATE: OCTOBER 26, 2011

SUBJECT: SKI CLUB LICENSE AGREEMENT

Attached please find an ordinance and License Agreement for the Ski Club. The Ski Club initially entered into a License Agreement with the City in August of 2000. The License Agreement has been amended several times to grant additional time to utilize Ski Lake. The last license agreement between the parties expired in May of 2011. The Ski Club would like to continue using the facility. Therefore, there is a new license agreement which provides for a five year term, with three additional five year renewal terms. The License Agreement is attached for your reference.

Should you have any questions or need any additional information, please do not hesitate to contact me at 871-5165

PEH/liw
Attach.

RECEIVED
OCT 26 2011
City Manager's Office

ORDINANCE 11-

AN ORDINANCE AUTHORIZING THE CITY MANAGER OF THE CITY OF PORT ST. LUCIE TO ENTER INTO A LICENSE AGREEMENT BETWEEN THE CITY OF PORT ST. LUCIE AND THE PORT ST. LUCIE SKI CLUB; PROVIDING AN EFFECTIVE DATE

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THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. The City Manager of the City of Port St. Lucie is hereby authorized and directed to enter into the License Agreement between the City of Port St. Lucie and the Port St. Lucie Ski Club, said leased premises more particularly described in the License Agreement attached hereto as Exhibit "A" and by reference incorporated herein.

Section 2. This Ordinance shall become effective immediately upon its final adoption.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this _____ day of _____, 2011.

CITY COUNCIL
CITY OF PORT ST. LUCIE

BY:_____
JoAnn M. Faiella, Mayor

ATTEST:

_____
Karen A. Phillips, City Clerk

APPROVED AS TO FORM:

_____
Roger G. Orr, City Attorney

H:\denise\ordinances\ordinances - 2011\Ski Club

# LICENSE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2011, by and between the **CITY OF PORT ST. LUCIE,** a Florida municipal corporation, hereinafter referred to as **"City"**, and the **PORT ST. LUCIE SKI CLUB**, a Florida non-profit cooperation, hereinafter referred to as **"Ski Club"**. In consideration of the mutual covenants contained herein, the parties agree as follows:

**Whereas,** City is the owner of that certain property referred to as Ski Lake and more particularly described as Pond B-4 North; Section 35, as described in Exhibit "A" attached hereto and by reference incorporated herein. The City hereby licenses to the Ski Club the right to use of the premises described in Exhibit "A" together with the abutting area necessary for the use and access of the premises for the conduct of its water skiing; and

**Whereas,** Ski Club is an organization established to promote and participate in water skiing activities; and

**Whereas**, Ski Club has, pursuant to agreement with the previous owner of Ski Lake, utilized Ski Lake for their activities since August, 2000; and

**Whereas,** it is the desire of Ski Club to continue to utilize those facilities as they have used them in the past; and

**Whereas,** City is willing to permit utilization of Ski Lake by Ski Club for its activities subject to the terms and conditions herein.

**Now Therefore,** in order to carry out their intent as expressed above and in consideration of the mutual covenants contained herein the parties agree as follows:

1. **Effective Date:** This Agreement shall become effective on the date first entered herein.

2. **Rent:** Ski Club shall pay to the City an annual fee for the use of Ski Lake. Said fee shall be Two Hundred Twenty-Five Dollars and 00/100 ($225.00) annually and to be paid by September 1st every year. Upon execution of this Agreement Ski Club shall pay to the City an administrative processing fee of One Hundred Dollars and 00/100 ($100.00) for the renewal of this Agreement.

3. **Term:** The term of this Agreement is for a period of five years beginning on the _____ day of October, 2011, and terminating on the _____ day of October, 2016, at 12:01 a.m. Ski Club may renew this Agreement upon receipt of written notice to City six (6) months prior to the expiration of this Agreement. This agreement may be renewed for two additional five (5) year terms. Renewal is at the discretion of the City.

4. **Notices:** All notices shall be directed to the following address:

City of Port St. Lucie
Parks and Recreation Department
121 SW Port St. Lucie Boulevard
Port St. Lucie, Florida 34984-5099
Attn: Director

Port St. Lucie Ski Club
John Turner, President
2366 SE Alminar Street
Port St. Lucie, FL 34953

5. **Purpose:** The purpose of this Agreement shall be limited strictly to permitting Ski Club to use Ski Lake for the conduct of its water-skiing and related activities and subject to the terms and conditions of this Agreement.

6. **Relationship of Parties:** No provision of this Agreement shall be construed to create a co-partnership between City and Ski Club or in any way make either

responsible for any debts, losses or liabilities of the other.

7. **Insurance:** Ski Club shall procure and maintain in force at its own expense, during the term of this Agreement and any extension thereof, public liability insurance with insurers and through brokers approved by City said insurance coverage shall name and include the City of Port St. Lucie as an additional insured. Such coverage shall be adequate to protect against liability for damage claims through public use of or arising out of accidents occurring within the lease premises in the minimum amount of One Million Dollars ($1,000,000.00) for any one accident and One Million Dollars ($1,000,000.00) for property damage. Ski Club shall be responsible for any deductible amount pursuant to their general liability insurance policy. The policy shall be delivered to City for keeping. The City shall obtain a written obligation from the insurers to notify the City in writing at least thirty (30) days prior to the cancellation or refusal to renew any policy.

8. **Ski Club Operations:** The Agreement granted hereunder is subject to the following conditions:

a. That water-skiing activity shall be restricted to the hours between 9:00 a.m. and sunset.

b. Ski Club shall members shall conduct all water skiing activities in a safe manner and shall use all reasonable precautions to prevent injury to persons or damage to property resulting from their activities on the premises.

c. Swimming is restricted to Ski Club members only, and only as an ancillary activity of water skiing.

d. No water skiing activity shall take place on the first weekend of every

month, with the exception of Labor Day, Memorial Day and two weeks per year when Ski Club members prepare for regional and national tournaments.

e. Ski Club shall provide a list of all members including the name, address and telephone numbers on a yearly basis. Ski Club members shall carry proper identification while on the property.

9. **Mooring of Vessels:** The City recognizes that certain members of Ski Club own property contiguous to and abutting the premises. It is the intention of the parties that this Agreement shall further permit Ski Club, or its members, to moor water ski vessels on the premises in the area immediately adjacent to property owned by the members of Ski Club, provided that the vessels do not discharge any substances into the water of the premises such as to cause pollution within those waters. Any mooring of water ski vessels will be on a temporary basis while water skiing activity is taking place. The construction of any type of "dock" is prohibited.

10. **Maintenance of Property:** Ski Club shall maintain the area used for launching ski boats and for related water skiing activities in a clean and safe condition free of debris and hazardous conditions. Ski Club shall repair existing holes in the access area and improve the ramp area to the City's specifications within sixty (60) days of the License renewal. Ski Club shall install a sign on the property identifying the Ski Club and its use of the facility. The contents of the sign shall be reviewed and approved by the Parks and Recreation Director prior to installation.

11. **Condition of Premises:** Ski Club will exercise this Agreement at its own risk and assume full responsibility for the condition of the premises. City makes no assurances

that the premises are free of obstruction and otherwise safe for water skiing activities. City has not inspected the facility nor has any knowledge of the conditions existing on the premises.

12. **Liability:** City shall not be liable for liability or damage claims from injury to persons or property from any cause relating to the use, improvement, maintenance or operation of the premises by Ski Club during the term of this Agreement or any extension thereof. Ski Club shall indemnify the City from all liability, loss or other damage, claims or obligations resulting from any injuries or losses of this nature and, further, from any claims that may arise as a result of Ski Club's use of the premises.

13. **Assignment:** Ski Club shall not assign this Agreement to another party without the express written approval of City. This Agreement is not exclusive.

14. **Default:** The failure of the Ski Club to comply with each and every term and condition of this Agreement shall constitute a breach of this Agreement. Ski Club shall have thirty (30) days after the date of written notice of any breach to correct a condition specified in the notice or, if the corrections cannot be made within the thirty (30) day period, the Ski Club shall have a reasonable time to correct the default if action is commenced by the Ski Club within fifteen (15) days after receipt of the notice. Provided, however, should the condition or activity constitute a safety hazard, the City may notify Ski Club that the dangerous condition must be immediately resolved and failure to take immediate action to resolve a dangerous condition shall constitute a breach of this Agreement.

15. **Termination:** In the event Ski Club breaches this Agreement, City shall have the right to terminate this Agreement, and upon termination Ski Club shall have no right to

the access to or use of the premises. Ski Club, in the exercise of the Agreement granted hereunder, shall comply with and abide by all reasonable rules and regulations imposed, from time to time, by the City pertaining to the use of the premises. Ski Club acknowledges that this Agreement grants to it an Agreement only and it acquires no property interest in the premises. City has the right upon ninety (90) days written notice prior to any anniversary date of this Agreement to terminate this Agreement, with or without cause, and upon such anniversary date re-take possession of the leased premises.

16. **Remedies:** Any and all remedies provided to City for the enforcement of the provisions of this Agreement are accumulative and non- exclusive, and City shall be entitled to pursue either the rights enumerated in this Agreement or remedies authorized by law, or both. Ski Club shall be liable for any costs or expenses incurred by City enforcing any terms of this Agreement or in pursuing any legal action for the enforcement of City's rights.

17. **Venue:** The laws of the State of Florida shall govern this Agreement and venue of any proceedings hereunder shall be in a court of proper jurisdiction in St. Lucie County, Florida.

[Remainder of page intentionally left blank; next page is signature page]

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to the Port St. Lucie Ski Club License Agreement to be executed by their appropriate officials on this ____ day of _____, 2011.

_____
Witness
Print Name:_____

By: _____
Jerry A. Bentrott
City Manager

_____
Witness
Print Name:_____

STATE OF FLORIDA )
COUNTY OF ST. LUCIE )

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Jerry A. Bentrott, City Manager of the City of Port St. Lucie, a Florida municipality. He is personally known to me.

_____
Notary Public

_____
Typed, printed or stamped name of Notary Public

APPROVED AS TO FORM AND CORRECTNESS

_____
Pam E. Booker Hakim
Senior Assistant City Attorney

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_____
Witness
Print Name:_____

_____
John Turner, President
Port St. Lucie Ski Club

_____
Witness
Print Name:_____

STATE OF FLORIDA )
COUNTY OF ST. LUCIE )

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by John Turner, President of Port St. Lucie Ski Club, who is personally known to me [ ] or has produced _____ as Identification.

_____
Notary Public

_____
Typed, printed or stamped name of Notary Public

_____
Witness
Print Name:_____

_____
Robert Baker, Co-President
Port St. Lucie Ski Club

_____
Witness
Print Name:_____

STATE OF FLORIDA )
COUNTY OF ST. LUCIE )

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Robert Baker, Co-President of Port St. Lucie Ski Club, who is personally known to me [ ] or has produced _____ as Identification.

_____
Notary Public

_____
Typed, printed or stamped name of Notary Public

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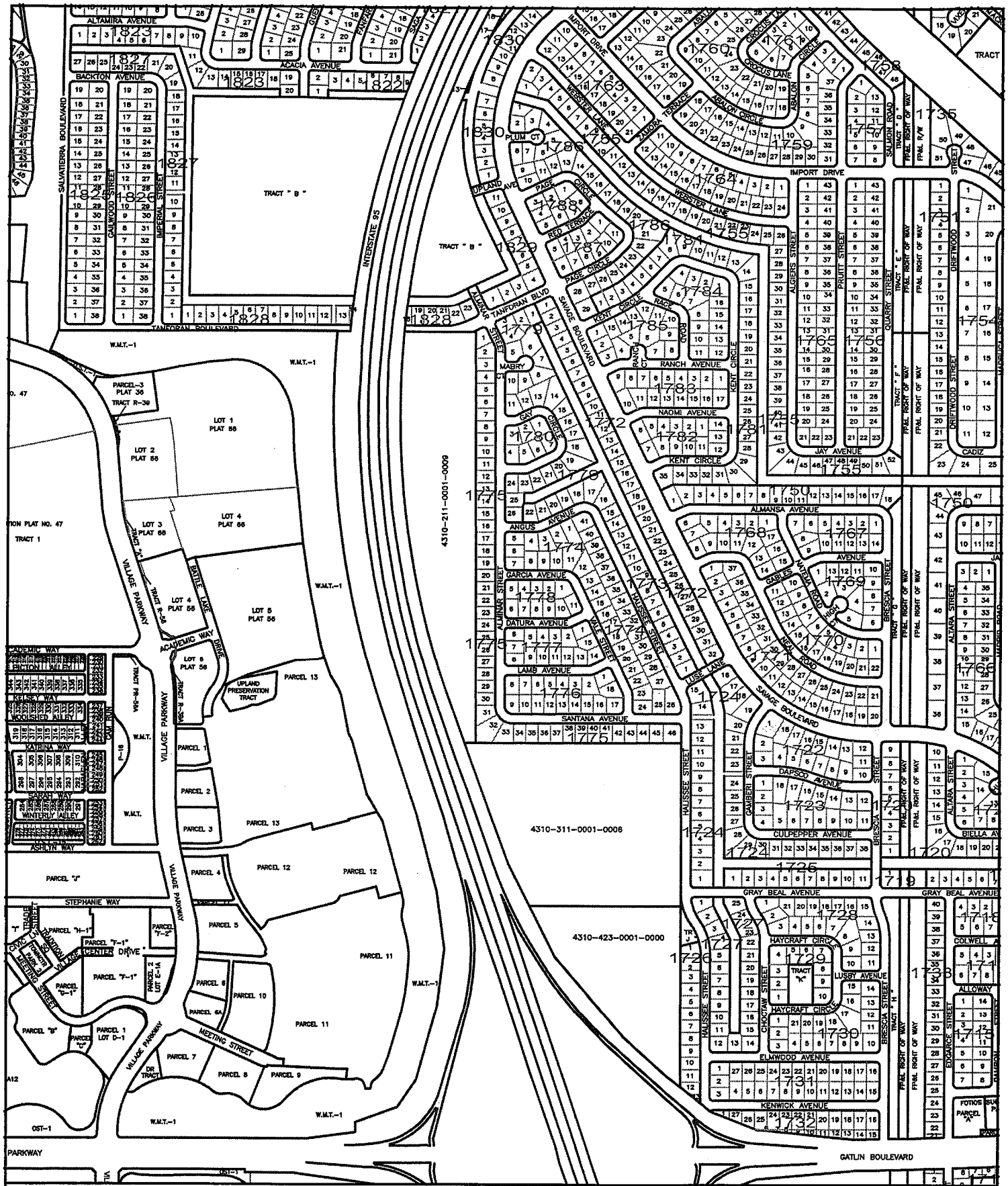


CITY OF PORT ST. LUCIE

Prepared by:
M.I.S. DEPARTMENT

**EXHIBIT**

**A**

DATE: 7/5/2011

BRAD KEEN.DWG
SCALE:1"=800'