

USE AGREEMENT

THIS AGREEMENT is made and entered into this ____ of March, 2018, by and between the City of Pocatello, a municipal corporation of Idaho, hereinafter referred to as the City, and Pocatello Running Club, hereinafter referred to as the USER.

WHEREAS, the City owns and manages a portion of the City Creek recreation area; and

WHEREAS, the USER desires to conduct the Over the Top trail race within the City Creek recreation area, and wishes to use a portion of the City Creek recreation area and existing trail system for the purpose of conducting the Over the Top trail race which will be open to participation by citizens of the City; and

WHEREAS, the City supports citizen participation in outdoor recreation activities and the promotion of the outdoor recreational opportunities in the community; and

WHEREAS, it is the parties' desire to enter into an agreement which sets forth their respective rights and responsibilities.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Purpose. The City shall allow the USER to use that portion of the City Creek recreation area and existing trails as identified in the diagram attached hereto, marked Exhibit 1, incorporated herein, and hereinafter described as "the premises".

2. Term. The initial term of this Agreement shall be from May 11, 2018 through May 12, 2018, from 6:00 a.m. until 8:00 p.m. each day. The Over the Top trail race shall occur on May 12, 2018. This Agreement may be renewed on an annual basis for an additional four (4) one year terms, unless sooner terminated by either Party. USER shall have access to the premises on the day before each annual race solely for the purpose of setting up and removing the race course.

3. Compensation to City. The USER agrees to pay the City one hundred dollars (\$100.00), or an amount determined by City's fee resolution, for the use of the premises during each term established in Section 2 above which shall initially be paid on or before May 1, 2018 and then on the 1st day of June for each additional year under this Agreement.

4. Care of the Premises. The USER will be responsible for the care and maintenance of the premises during its scheduled date and time of use.

A. The USER agrees that upon completion of the event sponsored by the USER, the USER shall arrange to have the premises restored to the condition which existed prior to its use, including the removal of any trash and/or garbage and proper disposition of any recyclable material, ordinary wear and tear excepted.

B. The USER will be responsible for any damages to the premises related to the race which occur during its use and will be responsible for all costs associated with the repair of those damages.

C. The USER will be responsible, at their cost, to provide additional portable toilets and garbage dumpsters, if deemed necessary by the City.

D. If the USER wishes to sell or provide beer at the event, they will be responsible for obtaining a beer permit through the City Parks and Recreation and follow all City and State ordinances regarding sale and consumption of alcohol. In addition, if there will be vendor sales, the USER will be required to follow City ordinances regarding concession sales in parks or public places.

E. If the USER desires to use Centennial Park as the staging area for the event, the USER would be responsible to reserve the park and pay the applicable fee.

5. Compliance with Laws. The USER shall strictly comply with all federal, state, and local laws, rules, regulations, and ordinances. Further, the USER and all participants in its event agree to abide by the rules and regulations regarding use of the premises, and failure to comply with said rules and regulations may result in suspension or termination of privileges to use the premises.

6. Indemnification and Hold Harmless. The USER agrees to fully indemnify and hold harmless, and agrees to protect and defend at their own cost and expense, the City, its officers, employees, agents, and successors from and against any and all risks, suits, judgments, expenses, claims, settlements, or liabilities which the City, its officers, employees, agents, and successors may incur or become liable for as a result of injury or death of any person or persons, or loss or damage of any property, arising out of or in connection with activities of the USER granted herein, or by any of the USER's employees, agents, invitees, or any other person acting on behalf of the USER. The City hereby agrees to fully indemnify and hold harmless, and agrees to protect and defend at their own cost and expense, the USER from and against any and all risks, suits, damages, judgments, expenses, claims, settlements or liabilities

which the USER may incur or become liable for as a result of injury or death of any person or persons, or loss or damage of any property, arising out of or in connection with the City's operation.

7. Insurance. In order to effectuate the foregoing indemnification provisions, USER shall maintain insurance coverage as follows:

A. USER shall purchase a comprehensive liability insurance policy in the amount of \$1,000,000 combined single limit to indemnify the City from any and all public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace the demised premises. The City shall be named as an additional insured or be acknowledged by USER's insurance carrier as a covered entity under the terms of said policy. Moreover, USER is required to put its surety on notice, that said surety may not change or cancel the existing insurance policy with USER without first giving the City of Pocatello, at least thirty (30) days written notice.

B. USER shall purchase personal property insurance in an amount sufficient to insure any and all USER's personal property which might be used in USER's operation of the business or which might be present on the premises.

C. If applicable, USER shall purchase Worker's Compensation insurance or the equivalent as required by Idaho Code.

D. An Accord Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Clerk of City of Pocatello prior to or at the time of execution of this Use Agreement. The above described insurance shall contain

contractual coverage sufficiently broad to insure the provisions of Section 6 “Indemnification and Hold Harmless.” USER’s failure to maintain insurance shall be a basis for immediate termination of this Use Agreement.

8. Assignment. No right or obligation of this Agreement, nor right in the premises described herein, may be assigned, mortgaged, or subleased by the USER without written consent of the City.

9. Termination. If, in the judgment of the Parks & Recreation Director, the USER breaches or is in default of any terms of this Agreement, the City shall give the USER written notice specifying with reasonable particularity the unsatisfactory performance or default. If such breach or default is capable of being remedied and the USER fails or refuses to remedy such unsatisfactory performance or default immediately, the City may terminate this Agreement. The parties agree that the Parks and Recreation Director has the full authority to act on such matters on behalf of the City.

10. Cost of Litigation. If suit or legal action is instituted by any party hereto to establish or enforce any right under this Agreement, to recover any amount due hereunder, to correct a breach of covenant, term, or condition hereto, or to litigate any other matter arising from the execution of the Agreement, the prevailing party in the trial court and the prevailing party on any appeal shall recover reasonable attorney’s fees awarded by the trial and appellate courts, in addition to costs and disbursements. The parties agree that a reasonable rate for attorney’s fees will be \$150.00 per hour. This provision shall survive any termination of this Agreement.

11. Merger Clause. This writing represents the entire Agreement between the parties. No promises, representations or agreements, written or oral, shall amend, change or add to any of the express provisions herein.

12. Construction. This Agreement shall be construed pursuant to the laws of the State of Idaho. The parties agree that no construction of the Agreement shall be made in a court of competent jurisdiction against the interest of any party to this Agreement on the basis that the party had primary responsibility for drafting the Agreement.

13. Captions for Convenience Only. The captions herein are for convenience only, and do not limit or amplify the language of the sections following.

14. Severability. If any provision or portion of any provision of this Agreement shall be deemed illegal or unenforceable by a court of competent jurisdiction, the unaffected provisions or portions hereof shall remain in full force and effect.

15. Jurisdiction and Venue. Any action or proceeding relative to this Use Agreement shall be maintained in the Sixth District Court, County of Bannock, State of Idaho.

16. Notice. That all notices under this Agreement shall be deemed to be properly served if sent by first class mail, postage prepaid, to the last known address furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:

TO THE CITY:

Director of Parks and Recreation
City of Pocatello
P.O. Box 4169
Pocatello, ID 83205-4169

USER:

Pocatello Running Club
914 D McKinley Avenue
Pocatello, ID 83201

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their authorized representative the day and year first above written.

APPROVED BY CITY
Date 2/23/18 City Blad
Clerk _____

CITY OF POCATELLO, a
municipal corporation of Idaho

BRIAN C. BLAD, Mayor

ATTEST:

RUTH E. WHITWORTH, City Clerk

USER:

ANDREA HENDERSON, President
Pocatello Running Club

STATE OF IDAHO)
 ss:
County of Bannock)

On this _____ day of March, 2018, before me, the undersigned, a Notary Public in and for the State, personally appeared Andrea Henderson, President, Pocatello Running Club, or proved to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

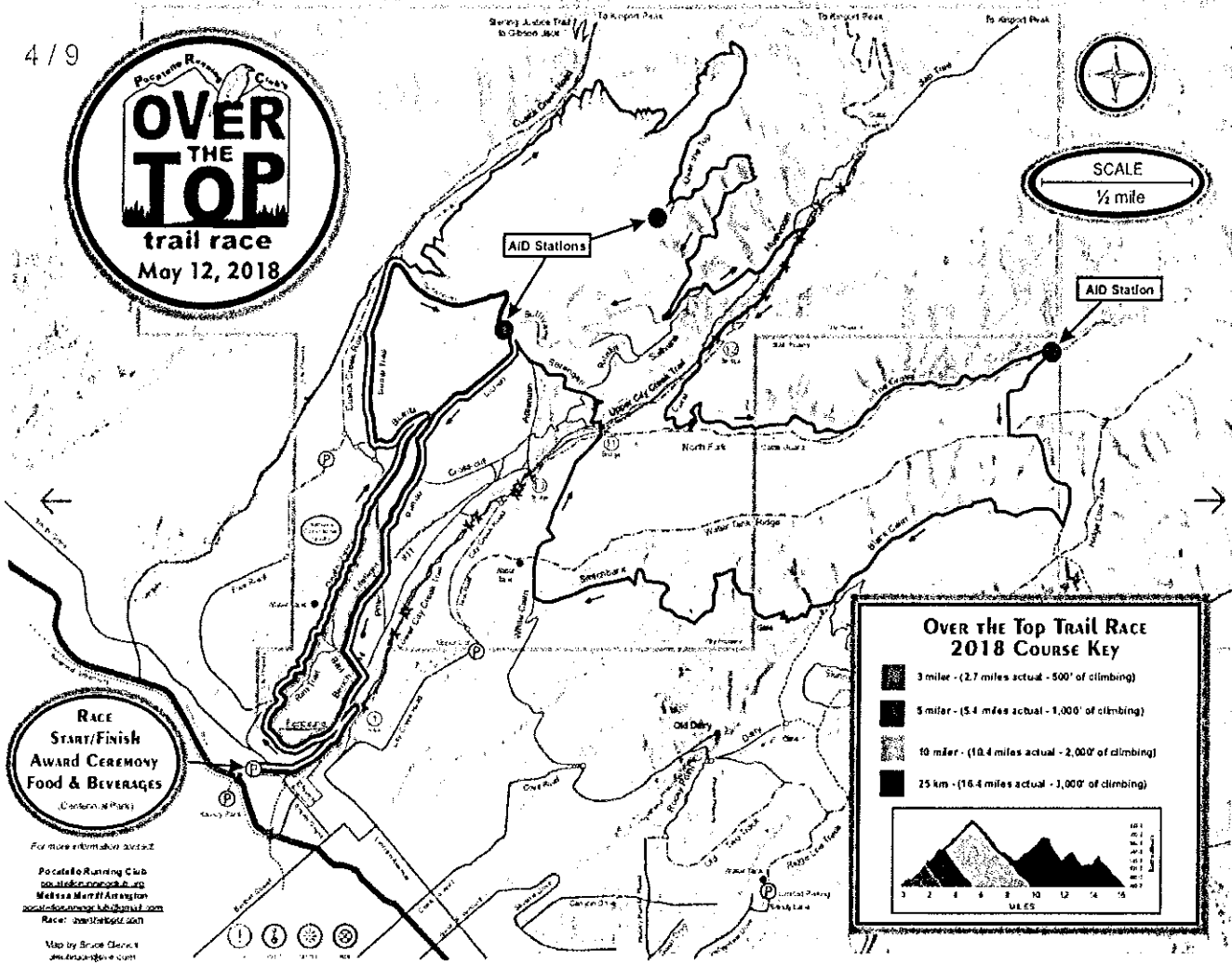
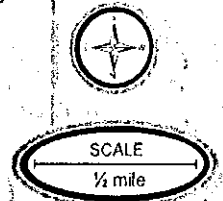
NOTARY PUBLIC FOR IDAHO
Residing in _____
My commission expires: _____



Email: contact us

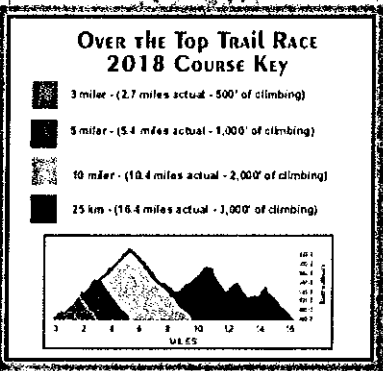


4 / 9



RACE START/FINISH AWARD CEREMONY FOOD & BEVERAGES (Carnegie Park)

For more information contact:
Pocatello Running Club
pocatello@pocatello.org
Melissa Merritt-Arnsperger
melissam@pocatello.org
Race: 2018ottrkpc.com
Map by Bruce Clarke
www.arsa-ns.com
Race Edition: 2.2.11.3/18





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/8/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER STAR Insurance - Fort Wayne Office 2130 East Dupont Road Fort Wayne IN 46825	CONTACT NAME: Margaret Mayers PHONE (A/C, No, Ext): (260) 467-5689 FAX (A/C, No): (260) 467-5691 E-MAIL ADDRESS: margaret.mayers@starfinancial.com																				
	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A:</td> <td>National Casualty Company</td> <td>11991</td> </tr> <tr> <td>INSURER B:</td> <td>Nationwide Life Insurance Co.</td> <td>66869</td> </tr> <tr> <td>INSURER C:</td> <td></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	National Casualty Company	11991	INSURER B:	Nationwide Life Insurance Co.	66869	INSURER C:			INSURER D:			INSURER E:			INSURER F:	
INSURER(S) AFFORDING COVERAGE		NAIC #																			
INSURER A:	National Casualty Company	11991																			
INSURER B:	Nationwide Life Insurance Co.	66869																			
INSURER C:																					
INSURER D:																					
INSURER E:																					
INSURER F:																					
INSURED Road Runners Club of America/2018 and Its Member Clubs 1501 Lee Highway, Suite 140 Arlington VA 22209																					

COVERAGES **CERTIFICATE NUMBER: 2018 \$1M A.I.** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Legal Liability to Participant \$1,000,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			KRO000007170900	12/31/2017 12:01 AM	12/31/2018 12:01 AM	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ Unlimited PRODUCTS - COMP/OP AGG \$ 1,000,000 Abuse and Molestation \$ 500,000
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS			KRO000007170900	12/31/2017 12:01 AM	12/31/2018 12:01 AM	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Excess Medical & Accident (\$250 Deductible/Claim)			SPX0000028554500	12/31/2017 12:01 AM	12/31/2018 12:01 AM	Excess Medical \$10,000 AD & Specific Loss \$2,500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED AS RESPECTS TO THEIR INTEREST IN THE OPERATIONS OF THE NAMED INSURED. DATE OF EVENT(S): 05/12/18 Over the Top Trail Race INSURED RRCA CLUB/EVENT MEMBER: Pocatello Running Club, Att'n: Heather Ann Larsen, 914 D McKinley Avenue, Pocatello, ID 83201

CERTIFICATE HOLDER 05/12/18 City of Pocatello 911 N. 7th Avenue Pocatello, ID 83205	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Terry Diller/LKR <i>Terry R. Diller, CPCU</i>

© 1988-2014 ACORD CORPORATION. All rights reserved.