

**LEASE AGREEMENT
BMX Track at Kennedy Park**

City Agreement No. _____

City Budget Code: _____

THIS LEASE AGREEMENT ("Lease") dated as of the Effective Date identified on the signature page, is by and between the CITY OF NAPA, a California charter city ("City" or "Landlord"), and NORTH BAY BMX, a California non-profit organization ("Tenant").

RECITALS

A. City owns certain real property commonly known as Kennedy Park located in the City of Napa, County of Napa, State of California, which includes Assessor's Parcel Number 046-450-018 ("Property").

B. Pursuant to a License Agreement ("License Agreement") by and between the City and Tenant dated April 18, 2006, Tenant constructed a non-motorized bicycle motorcross racing track ("BMX Track") on a portion of the Property depicted in Exhibit "A" attached hereto and incorporated herein ("Premises") and is currently operating the BMX Track on the Premises.

C. Tenant desires to make capital improvements to the Premises, including the BMX Track, and would like to have a lease with the City rather than a license in order to protect its investment in the Premises.

D. In consideration of Tenant's commitment to making capital improvements to the Premises, the City is willing to lease the Premises, including the improvements thereon, to Tenant subject to the terms and conditions set forth herein.

NOW, THEREFORE, the City and the Tenant, for the mutual consideration described herein, agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 For purposes of this Lease, the following capitalized terms shall have the meanings ascribed to them in this Section:

(a) "Addition" means an extension or increase in floor area or height of a building or structure, Improvement or part of the Premises.

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(b) "Additional Charges" means any and all real and personal property taxes, possessory interest taxes and other costs, impositions and expenses described in Article 4 hereof or otherwise payable by Tenant under this Lease.

(c) "Agents" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

(d) "Alterations" means any construction or renovation to an existing structure or Improvement or to the Premises other than an Addition, Repair or Maintenance.

(e) "Assignment" is defined in Section 12.1 hereof.

(f) Intentionally omitted.

(g) "City" is defined in the preamble of this Lease.

(h) "City Manager" means the City Manager of the City of Napa, or a designee of the City Manager.

(i) "Commencement Date" is defined in Section 3.1.

(j) "Effective Date" means the date identified on the signature page of this Lease.

(k) "Encumber" means to create any Encumbrance; "Encumbrance" means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

(l) "Encumbrancer" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

(m) "Environmental Laws" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) including, without limitation, soil, air and groundwater conditions.

(n) "Event of Default" means any one of the events of default described in Section 13.1 hereof.

(o) "Expiration Date" is defined in Section 3.1.

(p) "Fixture" means any movable or tangible object that is attached to the Premises (or a building or structure on the Premises) and that is an irremovable part of the Premises.

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(q) “Hazardous Material” means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”, also commonly known as the “Superfund” law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

(r) “Hazardous Material Claims” means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Liability made or threatened by any third party against City, its Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Liability based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys’ fees and consultants’ fees and experts’ fees and costs.

(s) “Improvements” means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises, including, without limitation, the BMX Track any signs, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping. Improvements do not include personal property that is placed on the Premises, including storage containers, starting gates, and other movable bike related items.

(t) “Indemnified Parties” is defined in Section 14.2.

(u) “Investigation” when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

(v) “Invitees” when used with respect to Tenant means the clients, customers, invitees, guests, members and licensees, assignees and subtenants of Tenant.

(w) “Landlord” is defined in the preamble of this Lease.

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(x) "Law" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

(y) "Liability" is defined in Section 14.2.

(z) "Maintenance" means maintenance of the Premises, including mowing of the turf areas, weed abatement and trash and debris removal in accordance with the provisions of Exhibit B.

(aa) "Party" means City or Tenant; "Parties" means both City and Tenant.

(bb) "Premises" is defined in Recital B.

(cc) "Property" is defined in Recital A.

(dd) "Release" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant, or in, on, under or about the Premises.

(ee) "Repair" means the reconstruction or renewal of any part of an existing building, Improvement or part of the Premises for the purpose of its maintenance.

(ff) "Remediation" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

(gg) "Security Deposit" is defined in Section 20.1.

(hh) "Term" is defined in Section 3.1.

ARTICLE 2 LEASE OF PREMISES AND PERSONAL PROPERTY

2.1 Lease. City hereby leases to Tenant and Tenant hereby leases from City, the Premises and the improvements located thereon, subject to all of the terms, covenants and conditions set forth in this Lease.

2.2 Condition of Premises.

(a) City Disclosure. City represents to Tenant that City has provided Tenant with all documents and information in the possession or control of the City concerning the physical condition of the Premises including the presence of any Hazardous Material. To the best knowledge of the City, no Hazardous Material is present on or has been Released from the Premises in amounts or under circumstances which violate Environmental Laws and there are no Hazardous Material Claims pending or threatened in respect of the Premises.

(b) Premises As-Is. Except as expressly provided in subparagraph (a) above or elsewhere in this Lease, Tenant acknowledges and agrees that the Premises are being leased and accepted in their present condition, "AS-IS" "WHERE-IS" AND "WITH ALL FAULTS" without any warranties, representations or guarantees, either express or implied, of any kind, nature or type whatsoever from the City as to the condition, quality or usability of the Premises for Tenant's purposes, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises.

**ARTICLE 3
TERM; OPTIONS TO EXTEND**

3.1 Term of Lease. Subject to Section 3.3, the term of this Lease ("Term") shall commence on the Effective Date ("Commencement Date") and shall terminate on the fifth anniversary of the Commencement Date ("Expiration Date") unless it is extended in accordance with Section 3.2 below.

3.2 Option to Extend Lease Term. Subject to Section 3.3, Tenant shall have the option to renew and extend the Term of this Lease for a period of five (5) years (the "Renewal Term") upon and subject to the following terms and conditions:

(a) Conditions to Exercise of Option. Tenant's right to exercise each option to extend the term of this Lease is subject to the following conditions:

(i) No earlier than 360 days before, and no later than one hundred eighty (180) days before the last day of the then expiring Term, Tenant shall give Landlord written notice exercising the option to extend the Lease; and

(ii) At the time notice of exercise is given the Lease shall be in effect and there shall be no material uncured Event of Default which is the subject of written notice from Landlord to Tenant.

(b) Terms of Renewal Term. In the event the Lease is renewed and extended for the Renewal Term as herein provided, all of the terms and conditions of this Lease shall remain in effect during the Renewal Term and shall continue to determine the rights and obligations of Landlord and Tenant.

3.3 Early Termination by City. Notwithstanding anything to the contrary set forth herein, City shall have the right to terminate this Lease prior to the Expiration Date in the

event the City requires the use the Premises for any legitimate public purpose. City may exercise its termination right by delivering written notice of termination to Tenant one hundred and eighty (180) days prior to the effective date of termination.

3.4 Rent.

(a) Commencing on the first day of the month following the Effective Date (“Rent Commencement Date”), and on each anniversary of the Rent Commencement Date thereafter during the Term, Tenant shall pay to Landlord as base rent the lump sum amount of Five Thousand and 00/100 Dollars (\$5,000.00) per year (“Rent”). Rent shall be payable to City at P.O. Box 660, Napa, California 94559-0660, Attention: Finance Department, Accounts Receivable.

(b) The amount of the Rent payable hereunder shall be increased annually on each anniversary of the Rent Commencement Date during the Term by an amount equal to the percentage increase in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region for the prior 12-month period.

**ARTICLE 4
TAXES, ASSESSMENTS AND OTHER EXPENSES**

4.1 Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) Possessory Interest Tax. Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and Tenant shall be obligated to pay possessory interest property taxes. In addition, Tenant shall pay any and all Tenant’s personal property taxes, assessments, licenses and permit fees levied on personal property. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Tenant’s right to contest the validity of such charge pursuant to subsection (b) below.

(b) No Liens. Tenant shall not allow or suffer a lien payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity and or amount of any such taxes. Tenant shall indemnify City, the other Indemnified Parties, and the Premises from and against any Liability arising out of any proceeding or contest provided for hereunder.

4.2 Other Expenses. Except for costs for water and electricity, which shall be paid by City, Tenant shall be responsible for any and all other costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon. If at any time, Tenant’s water and/or electricity costs exceed 25% of the average water and/or electricity costs for the prior six months, City, in its sole discretion, may require Tenant to pay for all or a portion of the water and/or electricity costs for the remainder of the Term, including any Renewal Terms.

4.3 Evidence of Payment. Tenant shall, upon City’s request, furnish to City within ten (10) days after the date when any taxes are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

ARTICLE 5
USE; COVENANTS TO PROTECT PREMISES AND CITY FACILITIES

5.1 Tenant's Permitted Use. Tenant may use the Premises and any Improvements allowed hereunder solely for the purposes of BMX bike riding and the operation of the BMX Track, and for no other purpose. Tenant may provide services customarily associated with the operation of a BMX Track on the Premises, including, the sale of food and beverages provided that Tenant obtains all required licenses and approvals for such operations, including a permit from the Napa County Environmental Health Division.

Tenant shall not authorize camping on the Premises, nor allow more than 250 people on the Premises at one time, without the prior written consent of the City and the issuance of a special event permit in accordance with Napa Municipal Code Chapter 12.48.

5.2 Covenants Regarding Use. As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

(a) No Unlawful Uses or Nuisances. Tenant shall not use or occupy any of the Premises or any Improvements, or authorize the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or authorize to be carried on any use in violation of the conditions of any use or occupancy permit. Tenant shall take all reasonable precautions to eliminate promptly any nuisances or hazards caused by its activities on or about the Premises or any Improvements permitted hereunder.

(b) Covenant Against Waste. Tenant shall not cause or permit any waste, damage or injury to the Premises.

(c) Covenant Against Dumping; Waste Disposal. Tenant shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to human health or safety, native vegetation or wildlife, or the environment.

(d) BMX Track Operation. Tenant shall at all times operate the Premises and conduct all operations on the Premises in a good businesslike manner and in accordance with all Laws.

5.3 Monthly Reporting. Tenant shall prepare and provide a report to the City by January 15th, April 15th, July 15th, and September 15th for the preceding 90 days regarding all operations and management of the Premises, including but not limited to the following:

1. Monthly ridership and league participants information for each month;
2. Record of inspections and maintenance performed on the Premises;
3. Condition of the Premises;
4. Any safety and security issues existing on the Premises;
5. Any improvements installed or effected on the Premises;
6. Any complaints or issues reported by users of the Premises; and

7. Any necessary major repairs or substantial maintenance required at the Premises.

**ARTICLE 6
IMPROVEMENTS**

6.1 Construction of Improvements. Except as otherwise expressly provided in this Lease, Tenant shall not construct or install any Improvements nor make or permit any Alterations or Additions in, to or about the Premises, without City's prior written consent in each instance; provided, however, such requirement to obtain the City's prior written consent shall not apply to any work that costs \$5,000 or less. Subject to City's consent as provided above, any permitted Improvements, Additions or Alterations shall be done at Tenant's sole expense (i) in strict accordance with plans and specifications approved in advance by City in writing, (ii) by Tenant or duly licensed contractors, (iii) in a good and professional manner, and (iv) in compliance with all Laws and any and all required permits, which Tenant shall be responsible for obtaining at its sole expense. In addition, any parking improvements made by Tenant pursuant to this Article 6 shall be made available for use by all users of Kennedy Park and shall be consistent with the City's Kennedy Park Master Plan. Tenant acknowledges that the City's role as landlord hereunder is separate and distinct from its role as the issuer of building permits, grading permits, etc., and that the terms and conditions of this Lease pertaining to the review and reasonable approval by City of plans for Improvements and construction involve the City as landlord hereunder. At least seven (7) days before construction of Improvements begins on the Premises, Tenant shall notify Landlord in writing of Tenant's intention to perform such work for the purpose of enabling Landlord to post notices of non-responsibility (Civil Code section 3094). Tenant agrees to keep the Premises free from mechanic's or other liens. At least seven (7) days before construction of Improvements begins, Tenant shall provide Landlord with reasonable evidence that damage or destruction of Tenant's Improvements during construction will be covered either by Tenant's present insurance or builders all-risk in an amount approved by Landlord. Tenant shall ensure that each contractor and subcontractor comply with the insurance requirements in Article 15 of this Lease. Tenant shall provide satisfactory evidence of insurance to Landlord at least seven (7) days before construction begins.

6.2 Intentionally omitted.

6.3 Ownership of Improvements. Unless otherwise provided for in this Lease, all Improvements installed or placed in or about the Premises shall become the sole property of Landlord upon expiration or earlier termination of this Lease and included as part of Premises hereunder. By written notice to Tenant either upon expiration of the Lease or within a reasonable time after any earlier termination of this Lease, Landlord may require Tenant, at Tenant's sole expense, to remove any Improvements and restore the Premises to its condition before the Improvements were made. If Tenant fails to complete that restoration by the expiration of this Lease or, in the case of earlier termination, within fifteen (15) days after written notice from Landlord requesting the restoration, Landlord may do so and charge the cost of the restoration to Tenant.

**ARTICLE 7
REPAIRS AND MAINTENANCE**

7.1 Tenant's Responsibility for Maintenance and Repair. City shall not be obligated to perform any Repairs, changes or Alterations to the Premises, nor shall City be liable for the cost thereof. Tenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises and any permitted Improvements, Additions or Alterations, from and after the Commencement Date. In addition, if any portion of the Premises or the Property is damaged by any of the activities conducted by Tenant or its Agents or Invitees hereunder, Tenant shall repair any and all such damage and restore the Premises or Property to its previous condition. At Landlord's option, if Tenant fails to maintain the Premises or to make all needed repairs and replacements, Landlord may perform and make such repairs and replacements and charge Tenant for the same. Tenant waives and releases its right to make repairs at Landlord's expense under California Civil Code §1941-42 or other similar law, ordinance, or regulation now or hereinafter in effect.

7.2 Maintenance Standards; Maintenance and Operations Inspections. Tenant shall perform the Maintenance of the Premises in accordance with the standards for Maintenance described in **Exhibit B**. Tenant shall at all times maintain, repair, and keep the Premises and the Improvements in a safe operating condition, and in a neat and sanitary order, repair and condition. Tenant shall be responsible for removal of all trash and debris accumulated on the Premises and Tenant shall complete a major cleanup of the Premises and the surrounding area at least two times per year.

**ARTICLE 8
LIENS**

Tenant shall keep the Premises and the Property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the recordation of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and the Property, from mechanics' and materialmen's liens. Tenant shall give City at least fifteen (15) days' prior written notice of the commencement of any Repair, Alteration or construction on any portion of the Premises. Notwithstanding the foregoing, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to the City Manager, to contest any such lien, and in such case, City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity thereof. Tenant shall indemnify City, the Indemnified Parties and the Premises against any and all Liability arising out of any such contest.

**ARTICLE 9
COMPLIANCE WITH LAWS**

9.1 Compliance with Laws. Tenant shall promptly, at its sole expense, maintain the Premises and Tenant's use and operations thereon in compliance with all Laws, including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, and all Environmental Laws.

9.2 Regulatory Approvals. Tenant understands and agrees that Tenant's use and operation of the Premises and construction of the Improvements and Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be responsible for obtaining any and all such regulatory approvals and City shall use its best efforts to cooperate with Tenant and expedite the processing of such regulatory approvals.

**ARTICLE 10
FINANCING; ENCUMBRANCES; SUBORDINATION**

10.1 Encumbrance of Landlord's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) Encumbrance by City. To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Tenant to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance.

(b) Encumbrance By Tenant. Tenant shall not under any circumstances whatsoever Encumber in any manner the Landlord's interest in the Premises or the Property, City's interest under this Lease, or any portion thereof.

10.2 Leasehold Encumbrances. Tenant shall not, without the prior written consent of the City, which City may withhold in City's sole and absolute discretion, Encumber Tenant's interest in this Lease or assign or pledge assignment of the same as security for any debt.

**ARTICLE 11
DAMAGE OR DESTRUCTION; EMINENT DOMAIN**

11.1 Damage or Destruction to the Premises or Improvements. In the case of insured damage to, or destruction of, the Premises or Improvements by fire or any other casualty, Tenant shall, with reasonable promptness and diligence, restore, repair, replace or rebuild the Premises as nearly as possible to the same condition, quality and class the Premises and Improvements were in immediately before such damage or destruction.

11.2 Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of any damage or destruction of the Premises or Improvements, and City and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under

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Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

11.3 Eminent Domain. Should all or any portion of the Premises be taken by any public or quasi-public agency or entity, other than Landlord, under the power of eminent domain during the Term of this Lease such that, in the reasonable opinion of Tenant, the Premises are no longer usable for the Lease purposes:

(a) Either Landlord or Tenant may terminate this Lease by giving the other thirty (30) days written notice of termination.

(b) Any and all damages and compensation awarded or paid because of the taking shall belong to and are hereby assigned to Landlord, except for amounts paid Tenant by said public or quasi-public agency for acquisition of Tenant's personal property, moving expenses or for damage to any personal property or trade fixtures owned by Tenant, and the value of the unexpired term of this Lease.

ARTICLE 12 ASSIGNMENT AND SUBLETTING

12.1 Assignment. Tenant shall not assign its interest in this Lease or sublet any portion of the Premises (each, an "Assignment"), without the Landlord's prior written consent, which may be withheld in City's sole and absolute discretion. Tenant shall promptly provide Landlord with any information reasonably requested by Landlord relating to the identity of any proposed assignee, the nature of such assignee's business and the proposed assignee's financial responsibility.

12.2 Notice of Proposed Transfer. If Tenant desires to enter into an Assignment, then it shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so. The Notice of Proposed Transfer shall identify the assignee and state the terms and conditions under which Tenant is willing to enter into such proposed Assignment, including a copy of the proposed assignment or sublease agreement. Tenant shall provide City with financial statements for the proposed assignee and such additional information regarding the proposed Assignment as City may reasonably request. In connection with any Assignment, to be effective, the assignee shall be obligated to assume all of the obligations of Tenant hereunder accruing from and after the effective date of such Assignment.

ARTICLE 13 DEFAULT; REMEDIES

13.1 Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Tenant hereunder:

(a) Payments. Any failure to pay any sums due hereunder as and when due, provided Tenant shall have a period of three (3) business days from the date of written notice of such failure from City within which to cure any default in the payment of such sums;

(b) Covenants, Conditions and Representations. Any failure to perform or comply with any other covenant, condition or representation made under this Lease ,

provided Tenant shall have a period of thirty (30) days from the date of written notice of such failure from City within which to cure such default under this Lease, or, if such default is not capable of cure within such 30-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 30-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City;

(c) Vacation or Abandonment. Any vacation or abandonment of the Premises for more than thirty (30) consecutive days excluding the period between December 1st through January 31st when access to the Premises limited due to inclement weather; and

(d) Bankruptcy. The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

13.2 Remedies. Upon the occurrence of an Event of Default by Tenant, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) Terminate Lease and Recover Damages. The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover damages as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) Continue Lease and Enforce Rights. The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment, or terminating an Assignment, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make Alterations and Repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of the cost of such subletting and such Alterations and Repairs incurred by City. No action taken by City pursuant to this subsection shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without

termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) Self Help. After final adjudication of Tenant's default in respect of any obligation hereunder, City may (but shall not be obligated to) perform the obligation that Tenant failed to perform in respect of such adjudication and charge Tenant for the reasonable cost and expenses incurred by City in connection therewith.

**ARTICLE 14
WAIVER OF CLAIMS; INDEMNIFICATION**

14.1 Waiver of Claims. Tenant has inspected the Premises and agrees to use and occupy it in its present state and condition. Tenant acknowledges that Landlord has made no representations or warranties either express or implied as to the condition of the Premises. As a material part of the consideration for this Lease, Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises and Improvements from any cause whatsoever. Tenant covenants and agrees that City shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by law, Tenant hereby waives all rights against City and releases City from, any and all Liability, including, but not limited to incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises from any cause whatsoever except for (i) a breach of this Lease by City or (ii) the sole negligence, active negligence or willful misconduct of City or its employees, Agents or contractors.

14.2 Tenant's Indemnity. To the full extent permitted by law, Tenant will indemnify, hold harmless, release, and defend the City (including its officers, elected or appointed officials, employees, volunteers, and Agents) (collectively, "Indemnified Parties") from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "Liability") of any nature, arising out of, pertaining to, or relating to this Lease, the Premises, the Improvements, the use of the Premises, any action or omission done, suffered or permitted by Tenant, its Agents or Invitees or Tenant's failure to comply with all applicable Laws and permit requirements.. Consistent with Civil Code Section 2782, Tenant will not be obligated to indemnify City for the proportionate share of the Liability caused by the City's active negligence, sole negligence, or willful misconduct. Tenant's indemnification obligations under this Lease are not limited by any limitations of any insurance held by Tenant, including, but not limited to, workers' compensation insurance.

**ARTICLE 15
INSURANCE**

15.1 Tenant's Insurance. Without limiting Tenant's indemnification obligations in Section 14.2, Tenant will procure and maintain throughout the period of this Lease the following policies of insurance and endorsements from insurers (if other than the State Compensation Fund) with a current A.M. Best rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of Tenant, its Agents, Invitees, employees or subcontractors:

(a) General Liability Policy. Comprehensive or Commercial General Liability Insurance ("CGL") at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$5,000,000 per occurrence. If the activities on the Premises involve explosive, underground or collapse risks, XCU will be included. If a general aggregate limit is used, either the general aggregate limit will apply separately to this Lease or the general aggregate will be twice the required occurrence limit.

(b) Automobile Liability Policy. Automobile liability insurance with coverage at least as broad as ISO Form numbers CA 0001 06 92, Code 1 (any auto), for vehicles used in the performance of this Lease with minimum coverage of not less than \$1,000,000 per accident, combined single limit.

(c) Workers' Compensation. Workers' Compensation insurance meeting statutory limits of the Labor Code. The workers' compensation policy will contain or be endorsed to contain a waiver of subrogation against the City, its officials, officers, agents, and employees.

15.2. Endorsements. The CGL and automotive liability policies will contain or be endorsed with the following provisions:

(a) The City, its officers, elected or appointed officials, employees, volunteers, and agents, are covered as additional insureds for liability arising out of the operations performed by or on behalf of Tenant. The coverage will contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, volunteers, and agents.

(b) The Tenant's insurance is primary and no insurance held by the City will be called upon to contribute to a loss.

(c) The inclusion of more than one insured will not operate to impair or limit the rights of one insured against another, and the coverage will apply as though separate policies have been issued to each insured.

15.3. All Policies.

(a) For all insurance policies required under this Lease, prior to City's execution of this Lease, Tenant will furnish the City with certificates and original endorsements effecting the required coverage. Each certificate of insurance will state that

the coverage afforded by the policy or policies will not be reduced, cancelled, or allowed to expire without at least 30 days written notice to City, unless due to non-payment of premiums, in which case at least 10 days written notice is required. Notice required under this subsection will be sent by certified mail. Each required policy will include an endorsement providing that the insurer agrees to waive any right of subrogation it may have against the City. The endorsements will be on forms provided by City or as approved by City's Risk Manager.

(b) Any deductible or self-insured retention of \$100,000 or more will be disclosed to the City prior to City's execution of this Lease and is subject to approval by the City.

(c) If Tenant does not keep all required insurance policies in full force and effect, the City may, in addition to other remedies under this Lease, terminate or suspend this Lease.

15.4 Tenant's Personal Property. Tenant shall be responsible, at its expense, for separately insuring its personal property.

15.5 City's Self Insurance. Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

ARTICLE 16 ACCESS BY CITY

16.1 Access to Premises by City.

(a) General and Emergency Access. City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Tenant (except in the event of an emergency, in which event no notice shall be required) for any of the following purposes:

(i) To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

(ii) To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of Section 13.2 hereof;

(iii) To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

(iv) To do any Maintenance or Repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and

(v) To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants, bidders, proposers, operators or other occupants, and to post any “for sale” or “for lease” signs in connection therewith.

(b) Minimize Disruption. City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant’s use hereunder.

16.2 Parking. Tenant is hereby granted the non-exclusive privilege to use the public parking spaces depicted on Exhibit “C” attached hereto and incorporated herein (“Parking Area”) for use by Tenants, its agents, guests and invitees on a “first come, first served” basis. Tenant shall abide by all rules and regulations concerning the Parking Area as may now exist or as may hereinafter be promulgated by the City. The City is responsible for maintaining the parking areas outside of the Premises at John F. Kennedy Park.

**ARTICLE 17
ESTOPPEL CERTIFICATES**

17.1 Estoppel Certificates. Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days’ prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), and (d) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The City Manager shall be authorized to execute, acknowledge and deliver any such certificate on behalf of City.

**ARTICLE 18
SURRENDER**

18.1 Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Tenant shall surrender to City the Premises, in good condition, order and repair (normal obsolescence, wear and tear excepted), free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Tenant. On or before the Expiration Date or any earlier termination hereof, Tenant shall, at its sole cost, remove any and all of Tenant’s personal property from the Premises. In addition, Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations which are removed, normal obsolescence, wear and tear excepted. In connection therewith, Tenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder.

Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's personal property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

**ARTICLE 19
HAZARDOUS MATERIALS**

19.1 No Hazardous Materials. Tenant covenants and agrees that, except as provided below, neither Tenant nor any of its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements. Notwithstanding the foregoing, Tenant may keep, store and use such substances in and on the Premises and Improvements in such limited amounts as are customarily used for general office purposes (such as, but not limited to, copy toner and cleaning supplies), or for maintenance, repair and operation of equipment customarily used in connection with the BMX Track (such as, but not limited to, lubricants and fuels), or for the care and maintenance of the BMX Track and Premises (such as, but not limited to, paints, pesticides, herbicides and fertilizers) customarily used in connection with the operation and maintenance of BMX tracks and food and beverage facilities, so long as such storage and use is at all times in compliance with all applicable Environmental Laws. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

19.2 Tenant's Environmental Indemnity. If Tenant breaches any of its obligations contained in Section 19.1 above, and such breach results in any Release of Hazardous Material in, on, under or about the Premises, without limiting Tenant's general indemnity contained in Section 14.2 above, Tenant, on behalf of itself and its successors and assigns, shall to the maximum extent permitted by law indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and re-vegetation of the Premises or Property.

**ARTICLE 20
SECURITY DEPOSIT**

20.1 Security Deposit. Upon execution of this Lease Tenant shall deposit with City a security deposit in the amount of \$2,500 ("Security Deposit") as security for the faithful performance of all terms, covenants and conditions of this Lease. Should City use any portion of the Security Deposit to cure any Event of Default by Tenant hereunder, Tenant shall immediately replenish the Security Deposit to the original amount, and Tenant's failure to do so within ten (10) days of City's notice shall constitute an Event of Default under this Lease. City's obligations with respect to the Security Deposit are solely that of debtor and not trustee. City shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on such Security Deposit. The amount of the Security Deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease. If Tenant is not in default at the expiration or termination of this Lease, Landlord shall return the Security Deposit to Tenant.

**ARTICLE 21
GENERAL PROVISIONS**

21.1 Notices. All notices or requests required or contemplated by this Lease will be in writing and delivered to the other Party by personal delivery, U.S. Mail, nationwide overnight delivery service, email, or as otherwise specified herein. Delivery is deemed effective upon the first to occur of: (a) actual receipt by a Party, (b) actual receipt at the address identified below, or (c) three business days following deposit in the U.S. Mail of registered or certified mail sent to the address identified below. A Party's contact information, below, may be changed by providing written notice of any change to the other Party.

TO CITY: John Coates
Parks & Recreation Director
CITY OF NAPA
P.O. Box 660
NAPA, CA 94559-0660
jcoates@cityofnapa.org

TO TENANT: North Bay BMX
Donny Robinson, President
PO Box 5732
Napa, CA 94581
raynapa@aol.com

21.2 Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

21.3 Headings. The heading titles for each section of this Lease are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of this Lease.

21.4 Successors and Assigns. Subject to the provisions of Article 12 and Section 21.8, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns.

21.5 Brokers. Neither Party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with this Lease. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the Party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other Party from any and all Liability incurred by the indemnified Party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

21.6 Severability. If any term of this Lease (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, this Lease will be construed as not containing that term, and the remainder of this Lease will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the Parties' intent under this Lease.

21.7 Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Lease will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Lease will be filed and heard in a court of competent jurisdiction in the County of Napa.

21.8 Assignment and Delegation. This Lease will not be assigned or transferred in whole or in part, nor will any of the Tenant's obligations be delegated without the City's prior written consent. Any attempt to assign, transfer, or delegate this Lease, in whole or any part, without the City's prior written consent will be void and of no force or effect. Any consent by the City to one assignment, transfer, or delegation will not be deemed to be consent to any subsequent assignment, transfer, or delegation.

21.9 Modifications. This Lease may not be amended or modified orally. No amendment or modification of this Lease is binding unless it is in a writing signed by both parties.

21.10 Waivers. No waiver of a breach, default, or duty under this Lease will be effective unless it is in writing and signed by the Party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Lease will not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this Lease.

21.11 Entire Agreement. This Lease, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Premises. This Lease supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral, including the License Agreement. The documents incorporated by reference into this Lease are complementary; what is called for in one is binding as if called for in all. If any provision in any document

attached or incorporated into this Lease conflicts or is inconsistent with a provision in the body of this Lease, the provisions in the body of this Lease will control over any such conflicting or inconsistent provisions.

21.12 Interpretation. Each Party to this Lease has had an opportunity to review this Lease, and to consult with its respective legal counsel regarding the meaning of this Lease. Accordingly, Civil Code Section 1654 will not apply to interpret any uncertainty in the meaning of this Lease.

21.13 Attorneys' Fees. If any litigation is commenced to enforce or interpret this Lease, the prevailing Party is entitled to reasonable attorney's fees, costs, and expenses incurred.

21.14 Holding Over. Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein.

21.15 Cumulative Remedies. All rights and remedies of either Party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

21.16 Survival. Sections 14.1, 14.2, 18.1, 19.2, and 21.5 will survive expiration or termination of this Lease.

21.17 Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither Party shall act as the agent of the other Party in any respect hereunder, and neither Party shall have any authority to commit or bind the other Party without such Party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Tenant on, in or relating to the Premises.

21.18 Transfer by City. If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Tenant shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of the Premises, or any portion thereof.

21.19 Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Lease.

ATTACHMENT 1

21.20 Consents, Approvals, Elections and Options. Any consent or approval required by the City, or any election or option exercisable by the City, may be given or exercised by the City Manager of the City.

21.21 Time. Time is of the essence in carrying out the duties hereunder.

21.22 Counterparts. This Lease may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

21.23 Signatures. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Tenant and the City.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Lease to be effective on the Effective Date set forth below.

CITY:
CITY OF NAPA, a California charter city

TENANT:
NORTH BAY BMX, a California non-profit corporation

By: _____
John Coates, Parks and Recreation Director

By: _____
Donny Robinson, President

ATTEST:

By: _____
Stephanie Forrest, Vice President

Tiffany Carranza, City Clerk

Date: _____
("Effective Date")

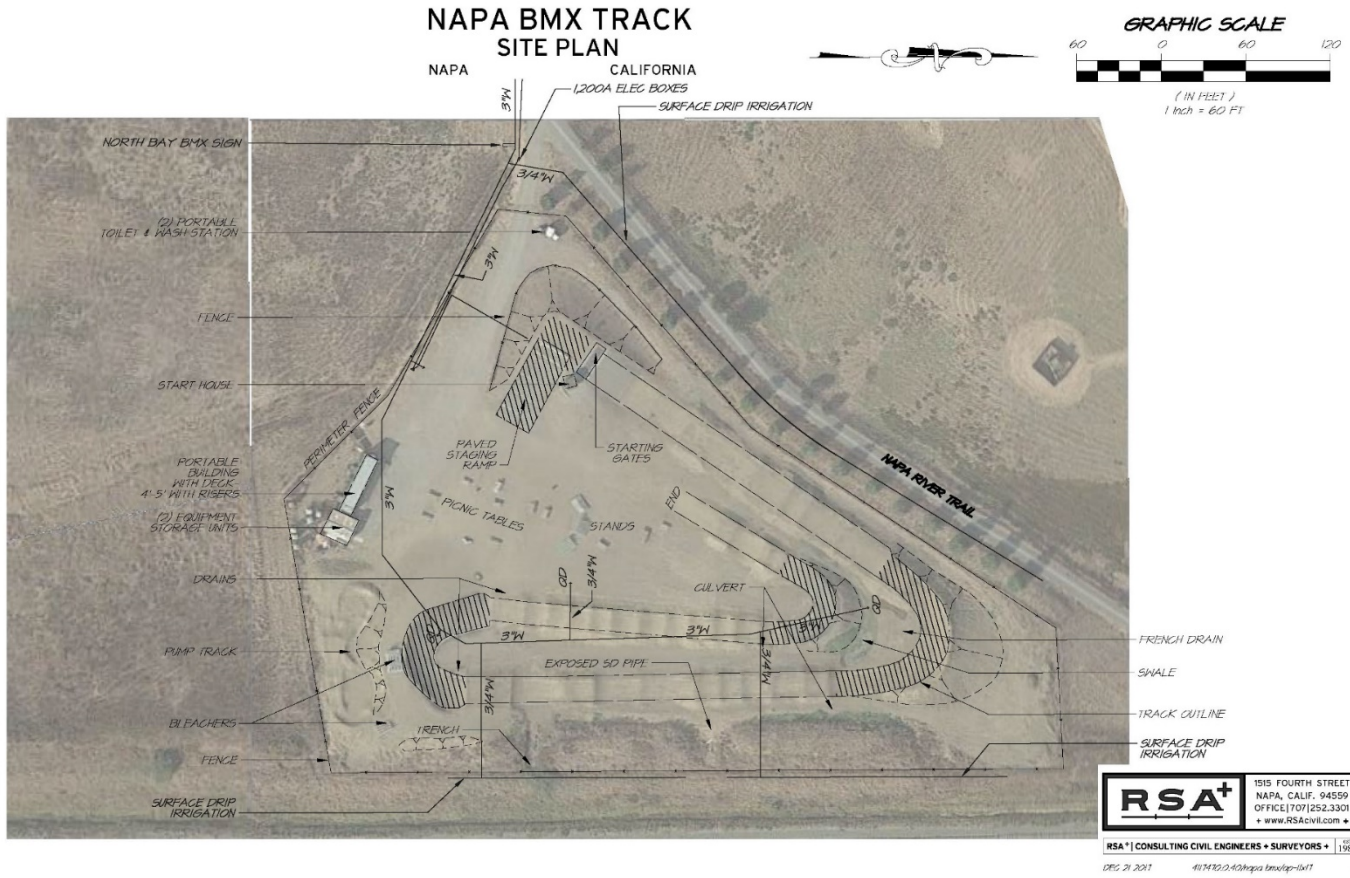
COUNTERSIGNED:

Desiree Brun, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

Exhibit A
Description of Premises



**Exhibit B
Maintenance Standards**

BMX shall comply with the following maintenance standards:

1. Pick up trash, debris and recycling on a daily basis on the Premises, including in and around the track and area surrounding the course and secure in containers onsite or haul off site for disposal.
2. Trash and recycling collected in toppers or other containers will need to be placed outside of facility by the street entrance for waste company collection just prior to scheduled pick up and stored after they have been emptied.
3. Inspect and repair signage as needed and assure that it is clear and legible.
4. Repair any damage to perimeter fencing and gates to assure facility can be secured.
5. Remove any graffiti on the Premises, including on fences, gates, structures and surface areas within 24 hours of graffiti being noticed.
6. Fill in any holes and address any trip hazards within the perimeter fenced area for the track, walkways, drive areas as needed.
7. Assure that all non-irrigated grasses within the fenced BMX facility are kept under 12" in height during off season (Nov – April)
8. Assure that all non-irrigated grasses within fenced BMX facility are mowed to a height of 3" or lower prior to weed abatement deadline of June 1 of every year.
9. Use of chemical herbicides will be prohibited within the facility. If herbicidal control for weeds is necessary representatives of BMX will need to contact City of Napa for City application or treatment if City deems such treatment necessary.
10. Application of water or dust control material will be required on an as needed basis to reduce dust from becoming airborne and leaving the facility.

Exhibit C
Parking Area



General Public Parking Overflow Parking by City Approval
North Bay MX Staff Only Parking