

**OPERATING LEASE AGREEMENT BETWEEN  
SANTA CLARA BMX, INC  
AND THE CITY OF SANTA CLARA, UTAH**

AGREEMENT between the CITY OF SANTA CLARA, UTAH (herein referred to as CITY) and SANTA CLARA BMX (herein referred to as SCBMX) a nonprofit corporation of St. George, Utah. In consideration of the following mutual covenants and agreements, city of Santa Clara agrees to allow SCBMX in conjunction with USA BMX to operate Santa Clara BMX track, a bicycle moto-cross track (herein referred to as BMX Track) on the hillside property located between the power station and lower baseball fields in Santa Clara, Utah.

1. **Term.** The term of this agreement shall commence on the date of its execution and shall be in effect for ten years from the date of this agreement. The agreement may be renewed at that time if both parties agree. If SCBMX shall cease operation for any reason, the land will at the City's option and with written notice from the City, be returned to its original state (videotaped and photographed in Aug of 2018) at the expense of the SCBMX, within a 90 day period (weather permitting) or any other mutually agreeable time period.

2. **Lease Payment.** SCBMX agrees to pay the CITY an annual lease payment equal to \$1,200.00 per fiscal year (July 1 to June 30). The first lease payment shall be due once the track is complete and before the first event is held, and shall be pro-rated based on that portion of the 2018-2019 fiscal year is remaining. The first full annual payment shall be due on the 1<sup>st</sup> day of July, 2019, and each successive annual payment on the same day of each year thereafter. The lease payment shall be evaluated during each fiscal year and if any mutually agreed upon adjustments are needed, they shall take effect at beginning of each new fiscal year. Adjustments can be considered based on the following: maintenance, janitorial services and supplies for the restrooms at the Little League fields and/or Canyon View Park, increased costs in utilities, and/or any other considerations to which both parties agree.

3. **Construction.** SCBMX will be responsible for the design and construction of the track. The CITY will be given plans or drawings for all construction projects for their approval. The approved design and location of the track and facilities will define the boundaries of the lease premises. No cuts into existing hillside will be permitted. The CITY will require that SCBMX construct a fence around the track. The CITY will allow a mutually agreeable water system to be constructed on the property and provide and pay for the necessary utilities to operate the track,

namely water and power. No landscape planting will be required and no irrigation will be permitted. A small building will be erected for the purpose of registration, vending, and storage, as agreed to and approved by the City's Parks Department. An announcing tower will also be constructed. All alterations and improvements shall be approved by the CITY prior to construction, including with respect to design, materials, and colors. SCBMX shall be required to obtain a conditional use permit, grading permit and building permit prior to construction and pay such permit fees as are required by CITY ordinances.

4. **Lease Contingent on Construction.** This agreement presumes that, following the date of this agreement, the SCBMX shall obtain all required permits and proceed with construction within a reasonable time hereafter. The parties hereto agree that, in the event that the facility is not permitted as required and construction completed within six (6) months of the date of this agreement, then the CITY may unilaterally terminate this agreement with written notice to SCBMX at the address set forth herein, and retake possession of the premises, subject to SCBMX's obligation to return the land to its original state (videotaped and photographed in Aug of 2018) at its expense, within a 90 day period (weather permitting) or any other mutually agreeable time period.

5. **Facility Usage.** Because of the nature of the insurance provided by the USA BMX, American Bicycle Association, the BMX Track is for use by USA BMX licensed members only on scheduled practice days, competitive events, and workshops. Since the track is located on city property, violators may be asked to leave by track officials and Santa Clara Police who may patrol the area at any time. SCBMX will have exclusive and sole rights to use the track subject to terms of this agreement. The CITY Parks department and/or the Santa Clara-Ivins Police Department shall have the right to enter the premises at any time, and SCBMX will ensure that keys, access codes, or the like are provided to the CITY for such purposes. SCBMX is responsible for collection and removal and disposal of all litter and trash from the premises.

6. **Operations.** The day to day operations of the BMX Track will be exclusively facilitated by SCBMX.

7. **Hours of Operation.** SCBMX will operate the track during regular park hours during the bicycle-racing season. SCBMX will determine the hours of operation and publicize such hours in advertisements and signs, and shall submit race and event schedules to the CITY at the beginning of each season. These hours will be no earlier than 8 a.m. and no later than 10:00 p.m. The BMX Track may operate any day of the week except Sundays. In the case of a national

event where Sunday races are necessary, SCBMX will request approval from the CITY at least 30 days prior. If any complaints are intercepted by the Police Department, regarding the sound system, SCBMX will take full responsibility to remedy the situation.

8. **Maintenance.** SCBMX will be responsible for maintenance of the track and for keeping the site free of stray debris. The buildings and structures shall be kept structurally sound and neatly painted or stained in a color agreed to by the City's Parks Department. The CITY will be responsible of removing full trash containers from its standard dumpsters nearby. The BMX Track will be allowed to use existing restrooms that are already in place, at the lower baseball fields and the upper park, which the CITY agrees to maintain.

9. **Utilities.** The CITY agrees to pay all public utilities charges assessed against the leased premises, including charges for water, electric lights and power, except in the event of waste which is the result of negligence, gross negligence, or intentional acts on the part of SCBMX.

10. **Usage Fee.** SCBMX may charge participants a nominal fee to cover the cost of expenditures incurred in sponsoring practice sessions, competitive meets and training workshops. Such charges will be for insurance cost, maintenance cost, operational costs, and prizes.

11. **Sales and Use Tax.** SCBMX agrees to pay any and all sales, use or other taxes which may be legally due and owing to any governmental agency.

12. **Vending.** SCBMX will have exclusive rights to all vending to benefit the track. SCBMX will comply with applicable laws and regulations with respect to foodservice, and will collect and remit sales and any other required taxes on all revenue. SCBMX will secure a point of sale license with the CITY so that sales tax benefits CITY.

13. **Signs.** SCBMX will have the right to erect signs provided it adheres to all local and state laws, rules, regulations and codes.

14. **Use of Alcohol and Tobacco.** The use of alcoholic beverages, illegal drugs and all tobacco (including e-cigarettes) is prohibited on the premises. Signs will be posted and maintained by SCBMX. Persons who refuse to cooperate may be removed by track officials and/or city Police.

15. **Insurance.** Since this is a closed track for rider-members and potential rider-members only, SCBMX agrees to pay the cost and expense of umbrella form insurance, which is provided by USA BMX, the American Bicycle Association. It is agreed and understood that SCBMX will hold harmless and indemnify the CITY for claims arising out of the maintenance or use of premises arising out of an operational BMX track.

16. **Subletting and Assignment:** SCBMX shall not lease the track to any other party or allow the track to be used or occupied by any other party for any business or other purpose without written consent of the CITY.

17. **Surrender of the Premises.** If SCBMX is in default in the performance of any of the terms or provisions of the agreement, which has continued more than 30 days after receiving written notice thereof from the CITY, except in the event the default is monetary, in which event only 10 days written notice shall be required, the CITY shall have the right to terminate this agreement. SCBMX covenants and agrees that it will, at termination of this lease, in whatever manner such termination may be brought about, surrender and deliver the leased premises, as improved, to Lessor in as good condition as at the inception of this lease, ordinary wear and damage by fire excepted. Any improvements and fixtures capable of removal without damage to the premises, which are installed, SCBMX may remove. The CITY shall have the right to enter upon the leased premises and take immediate possession thereof, upon default of any of the terms and conditions contained in this lease. The premises will at the City's option, and upon written notice from the City within 30 days of the end of this agreement, be returned to its original state (videotaped and photographed in Aug of 2018) at the expense of the SCBMX, within a 90 day period (weather permitting) or any other mutually agreeable time period.

18. **Damage.** Should the premises be totally or substantially destroyed by flood, fire or other casualty or act of God, so that the premises shall be wholly untenable and unfit for the conduct of BMX racing, then SCBMX shall have the right, by giving notice to the CITY, to terminate this lease and all rents and other charges shall be adjusted to the date of destruction. If, however, damage is only partial and shall be such that the track's business is only temporarily closed or inconvenienced, then SCBMX shall promptly be allowed to repair such damage and restore the premises to substantially the same condition as before such damage.

19. **Equal Opportunity.** SCBMX agrees that during the use of park and recreational facilities, it will not exclude anyone from participation in, deny anyone the benefits of, or otherwise subject anyone to discrimination because of the person's race, religion, sex, age, color, national origin, or physical or mental handicap. However, all riders must be a member of the USA BMX and sign a USA BMX waiver that states that the rider is mentally capable of and physically fit to participate in BMX racing.

20. **Miscellaneous.** This agreement shall be constructed under and in accordance with the laws of the State of Utah and all obligations of the parties created hereunder are performable

in Washington County, State of Utah. SCBMX agrees to abide by all of the rules and regulations of the CITY and all other state and local laws applicable to the Site.

21. This agreement constitutes the sole and only agreement of the parties and supersedes any prior understanding or written or oral agreement between the parties respecting the within subject matter.

22. No amendment, modification or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties.

23. No waiver by the parties of any default or breach of any term, condition or covenant of this agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant hereof.

DATED at Santa Clara, Utah this \_\_\_\_\_ day of October, 2018.

Santa Clara BMX

City of Santa Clara

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Mayor

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone number: \_\_\_\_\_

Email address: \_\_\_\_\_