

## LAND LEASE AGREEMENT

THIS LAND LEASE (this "Lease") is made and entered into as of January 22, 2008, by and between Landlord and Tenant, as described in the following basic lease information. Landlord and Tenant hereby agree as follows:

### ARTICLE 1--BASIC LEASE INFORMATION

1.1 Defined Terms. In addition to the terms, which are defined elsewhere in this Lease, the following terms shall have the following meaning:

- (a) **LANDLORD: Atascadero Mutual Water Company**, a mutual water company formed pursuant to the laws of the State of California.
- (b) **LANDLORD'S ADDRESS:** 5005 El Camino Real  
P.O. Box 6075  
Atascadero, CA 93422
- (c) **TENANT: City of Atascadero**, a general law city formed pursuant to the laws of the State of California.
- (d) **TENANT'S ADDRESS:** 6907 El Camino Real  
Atascadero, CA 93422
- (e) **LAND:** Approximately 3.06 acres of land which is described and depicted in Exhibit A attached hereto and incorporated herein by this reference, and which is a part of the parcel of real property owned by Landlord and located at 6575 Sycamore Road, Atascadero, California ("Landlord's Property").
- (f) **PERMITTED USE:** The Land may be used for the purpose of constructing a bicycle motor-cross sports track and related facilities and the management, supervision, and scheduling of events on same. Tenant agrees to comply with all policies, rules, and regulations of Landlord as they now or may hereinafter exist with respect to the use of the Land.
- (g) **LICENSE AGREEMENT:** An agreement to be entered into between Tenant and Atascadero BMX Association to use the Land for the Permitted Use.
- (h) **IMPROVEMENTS:** Improvements shall mean the construction and maintenance a bicycle motor-cross sports track and related facilities in accordance with plans submitted to and approved by the City pursuant to the License Agreement between the City of Atascadero and the Atascadero BMX Association.

- (i) TERM: The term of the lease shall be three (3) years with an additional one (1) year automatic extension provided; however, in the event that Tenant ceases using the Property for the permitted use as described in this Agreement the lease shall expire within ninety (90) days of written notice from Landlord to Tenant and, after the expiration of the initial three (3) year term, Landlord may, in its sole discretion, unilaterally terminate this lease by giving Tenant six (6) months' written notice of termination.

The lease shall expire within ninety (90) days of written notice from Landlord to Tenant, if Landlord determines that the property is not being used according to the permitted uses by Tenant or Tenant's agents or assigns. Landlord reserves the right to unilaterally terminate this Agreement upon the expiration of the initial three (3) year term, by giving Tenant six (6) months written notice of termination.

- (j) COMMENCEMENT DATE: January 22, 2008.
- (k) ANNUAL RENT: One Dollar (\$1) annually payable on or before July 1 of each year.
- (l) SECURITY DEPOSIT: None

1.2 Exhibits. The following exhibits are attached to this Lease and are made part of this Lease:

- Exhibit A: Description and Depiction of the Land.
- Exhibit B: Improvements for Permitted Use.

## ARTICLE 2--AGREEMENT AND USE

2.1 Lease. Landlord hereby demises and leases to Tenant the Land, and Tenant shall lease the Land from Landlord, according to the terms and conditions of this Lease Agreement. The duration of this Lease will be for the Term described in section 1.1.(i).

2.2 Use. Tenant shall use the Land only for the Permitted Use. Tenant shall not allow the Land to be used for any unlawful purposes. Tenant will not commit waste and will not create any nuisance or interfere with, annoy or disturb any other tenant of Landlord's Property. Tenant shall not erect signs or other improvements on the Land without the approval of Landlord, which approval may be withheld in the sole discretion of Landlord, unless such signs are required by state or federal law, in which case such approval shall not be unreasonably withheld or delayed. Tenant will keep and maintain the Improvements in good condition and repair. Tenant will keep the Land free from all trash, debris, and waste. Landlord will provide Tenant with access to the Land twenty-four (24) hours per day, seven (7) days a week, three hundred sixty-five (365) days a year, subject to limitations set forth in Section 2.5 of this agreement. Notwithstanding anything to the contrary contained in this Lease Agreement, if, in the exercise of any rights hereunder, Tenant, its licensee, or agents shall cause damage to the Landlord's Property or any equipment located on Landlord's Property, Tenant shall, within ten

(10) days after receipt of a statement from Landlord evidencing the amount of such damage, pay Landlord the costs to repair such damage. The cost of repair shall include a reasonable sum to compensate Landlord for its direct and indirect staff time in obtaining quotes for the repair work and preparing the statement to Tenant.

2.3 License Agreement with Atascadero BMX Association. Tenant intends to enter into a License Agreement with Atascadero BMX Association for the Permitted Use. The License Agreement with Atascadero BMX Association shall provide the terms and conditions for the use of the Land, and require that Atascadero BMX Association comply with all terms of this Lease Agreement. Prior to Tenant entering into the License Agreement, Landlord shall be provided with a copy of the License Agreement for review and comment. If there are any conflicts between the terms of this Lease Agreement and the terms of the License Agreement, the terms of the Lease Agreement shall prevail.

2.4 Delivery of Possession. Landlord will deliver possession of the Land to Tenant on the Commencement Date, "AS-IS" in its present condition. Tenant acknowledges neither Landlord nor its agents or employees have made any representations or warranties as to the suitability or fitness of the Land for the conduct of Tenant's business or as to the physical condition of the Land, nor has Landlord or its agents or employees agreed to undertake any alterations or construct any improvements to the Land.

2.5 Governmental Approvals. Tenant shall, at its sole cost and expense before the Commencement Date, apply for and obtain all licenses, permits, approvals, required by any local, state or federal governmental authorities for its use of the Land, including without limitation, all applications for zoning variances, zoning ordinances, building code variances, amendments, special use permits, and construction permits and other licenses and approvals necessary for the operation of Tenant's business from the Land (collectively, the "Governmental Approvals"). Landlord shall cooperate with Tenant to obtain all necessary Governmental Approvals, provided; however, Landlord shall not be required to expend any money in such cooperation. Tenant understands and agrees that Tenant's right to use the Land is contingent upon Tenant obtaining and continually maintaining in full force and effect all Governmental Approvals. In the event any Governmental Approvals issued to Tenant are canceled, expire, lapse, or are otherwise withdrawn or terminated by any governmental authority so that Tenant will be unable to use the Land for its intended purposes, this Lease shall automatically terminate.

2.5 Access. Tenant shall be provided access to the Land, across Landlord's Property as more particularly depicted in Exhibit A (the "Access Drive"). In accessing the Land, Tenant shall not interfere with Landlord's operations and Tenant shall not in any manner block access to the gate or to any other facilities on Landlord's Property. Landlord shall have the right upon ten (10) days prior written notice to Tenant, to relocate the Access Drive to another location on Landlord's Property, as long as Tenant's access to and use of the Land is not materially affected. Landlord may from time to time, with twenty-four (24) hour prior notice to Tenant, impose such reasonable restrictions on the time and means of access to the Land as Landlord deems necessary for security precautions. Tenant agrees that it will not change locks on any gates to Landlord's Property or the Land, or install additional locks on such gates. Tenant further agrees that it will not duplicate any keys of Landlord.

### ARTICLE 3--RENT AND TAXES

3.1 Rent. Annual Rent shall be in the sum of One Dollar (\$1) per year, paid annually on or before July 1 each year, with the first years' rent being paid by Tenant to Landlord concurrently with the signing of this lease. Annual Rent will be paid to Landlord, 5005 El Camino Real, Atascadero, California 93423, or to such other person, firm or place as Landlord may, from time to time, designated in writing.

3.2 Utilities. Tenant shall, at its sole cost and expense, arrange for electricity, water, gas, and other utilities necessary for Tenant's operations to be provided to the Land directly from such providers. Tenant shall be billed directly for the use of such services, and shall promptly pay the same when due.

3.3 Taxes. In addition to Rent, Tenant shall pay additional taxes or assessments, if any, which may be levied or charged to Landlord as a result of Tenant's use or occupancy of the Land, including but not limited to, assessments upon or measured by Rent, including without limitation, any gross revenue tax, excise tax, or value added tax levied by the federal government or any other governmental body with respect to the receipt of Rent; and upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Land. Tenant shall promptly pay all personal property taxes on Tenant's Improvements and personal property and any other taxes payable by Tenant as due

3.4 Limitation on Liability. Landlord will not be in default under this Lease or be liable to Tenant or any other person, for direct or consequential damages, or otherwise, for any failure to supply any electricity, water, gas, security or other utilities, or for surges or interruptions of electricity, or other such services or utilities.

### ARTICLE 4--INSURANCE

4.1 Tenant's Insurance. At all times during the Term, Tenant will carry and maintain, at Tenant's expense, the following insurance in the amounts specified below or such other amounts as Landlord may from time to time reasonably request.

(a) bodily injury and property damage liability insurance, with a combined single occurrence limit of not less than \$2,000,000. All such insurance will be equivalent to coverage offered by a Commercial General Liability form including, without limitation, personal injury, death of persons or damage to property occurring in, on, or about the Land, and contractual liability coverage for the performance by Tenant of the indemnity agreements set forth in this Lease;

(b) insurance covering the Improvements, and any other personal property owned by Tenant or any Licensee located on or about the Land, and any leasehold improvements

to the Land, in an amount not less than the full replacement cost. Property forms will provide coverage on a broad form basis insuring against "all risks of direct physical loss."

(c) worker's compensation insurance insuring against and satisfying Tenant's and any Licensee's obligations and liabilities under the worker's compensation laws of the state where the Land is located, including employer's liability insurance in the limits required by the laws of the state where the Land is located;

(d) additional insurance reasonably requested by Landlord.

4.2 Forms of the Policies. All such insurance shall be placed with insurers having an A.M. Best's rating of B+XIII and under such form of policies acceptable to Landlord. Certificates of Insurance, together with copies of endorsements, when applicable, listing Landlord and any others specified by Landlord as additional insureds, will be delivered to Landlord prior to Tenant's occupancy of the Land and from time to time at least 10 days prior to the expiration of the term of each such policy. All Commercial General Liability or comparable policies maintained by Tenant will list Landlord and such other persons or entities as Landlord specifies from time to time as additional insured parties, entitling them to recover under such policies for any loss sustained by them, their agents and employees. All such policies maintained by Tenant will provide that they may not be terminated nor may coverage be reduced except after 30 days' prior written notice to Landlord. All Commercial General Liability and property policies maintained by Tenant will be written as primary policies, not contributing with and not supplemental to the coverage that Landlord may carry.

4.3 Self Insurance. Notwithstanding the provisions of Article 4 of this Agreement, Tenant shall be permitted to assume and self-insure the risks covered as set forth Section 4.1 of this Agreement with deductible amounts as agreed to by the Landlord and shall not be required to purchase or maintain any insurance policy of any kind with respect to this Lease.

4.4 Waiver of Subrogation. Landlord and Tenant each waive any and all rights to recover against the other or against the officers, directors, shareholders, partners, joint ventures, employees, agents, customers, invitees or business visitors of such other party, for any loss or damage to such waiving party arising from any cause covered by any property insurance required to be carried by such party pursuant to this Article or any other property insurance actually carried by such party to the extent of the limits of such policy. Landlord and Tenant, from time to time, will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with the Land or the contents of the Land.

## ARTICLE 5--INDEMNIFICATION, WAIVER, AND RELEASE

5.1 Tenant's Indemnification. From and after execution of this Lease, Tenant assumes all risks of its own operations, and those of its agents, independent contractors, and any licensees, including the Atascadero BMX Association. Tenant and its agents, independent contractors, and any licensees, including the Atascadero BMX Association, shall indemnify,

defend and hold Landlord, its employees, directors, officers and agents harmless from and against, any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees and expert witness fees) which arise out of or relate to: (1) the use or occupancy or manner of use or occupancy of the Land by Tenant or any person claiming under Tenant; (2) any activity, work, or thing done or permitted by Tenant in or about the Land; (3) any breach by Tenant or its employees, agents, contractors or invitees of this Lease; and (4) any injury, loss or damage to the person, property or business of Tenant, its employees, agents, or contractors or any invitees entering upon the Land under the express or implied invitation of Tenant. If any action or proceeding is brought against Landlord or its employees, directors, officers or agents by reason of any such claim for which Tenant has indemnified Landlord, Tenant, upon written notice from Landlord, will defend the same at Tenant's expense with counsel reasonably satisfactory to Landlord. Tenant's obligations under this Section shall survive the expiration or other termination of this Lease. The Tenant shall have each of its agents, independent contractors, and any licensees, including the Atascadero BMX Association sign an agreement in favor of Landlord that obligates each of Tenant's agents, independent contractors, and any licensees, including the Atascadero BMX Association, to indemnify Landowner in accordance with the terms of this Lease Agreement and promptly provide Landlord with copies of such agreements.

5.2 Waiver and Release. Tenant, as a material part of the consideration to Landlord for this Lease, by this section waives and releases all claims against Landlord, its directors, officers, employees and agents with respect to all matters for which Landlord has disclaimed liability pursuant to the provisions of this Lease.

#### ARTICLE 6--END OF TERM

6.1 Surrender. Upon expiration or earlier termination of this Lease Agreement, Tenant shall surrender the Land to Landlord. Within sixty (60) days following the expiration or termination of this Lease, Tenant shall remove all of its equipment or trade fixtures constructed or installed pursuant to this Lease. Tenant will also restore the Land to its original condition as of the Commencement Date, reasonable wear and tear excepted. Tenant shall also restore the surface of the Land to its original contour as nearly as practicable. If within sixty (60) days after the expiration or termination of this Lease Tenant has not removed its Improvements or property and not restored the Land as required herein, Landlord may do so and Tenant shall reimburse Landlord for all expenses or costs for removal and restoration. Tenant's obligations under this Section shall survive the expiration or other termination of this Lease Agreement.

#### ARTICLE 5--MAINTENANCE; REQUIREMENTS OF LAW

7.1 Maintenance. Tenant shall at all times throughout the Term, at its sole cost and expense, maintain and repair the Land, the Improvements, and all trade fixtures and personal property of Tenant located thereon.

7.2 Compliance with Laws. For the purposes of this Section 7.2, "Applicable Laws" means all laws, statutes, ordinances and governmental rules, regulations, or requirements now in force or in force after the Commencement Date, the requirements of any board of fire

underwriters or other similar body constituted now or after the Commencement Date, and any direction or permanent occupancy certificate issued pursuant to any law by any public officer or officers, as well as the provisions of all recorded documents affecting the Land. At its sole cost and expense, Tenant will promptly comply with Applicable Laws insofar as they relate to (a) Tenant's use, occupancy, or alteration of the Land; (b) the condition of the Land resulting from Tenant's use, occupancy, or alteration of the Land; or (c) alterations to the Land required as a result of Tenant's status under Applicable Laws.

#### ARTICLE 8--DEFAULT

8.1 Events of Default. The following events are referred to, collectively, as "Events of Default" or, individually, as an "Event of Default":

(a) Tenant defaults in the due and punctual payment of Rent, and such default continues for five (5) days after written notice from Landlord; however, Tenant will not be entitled to more than one written notice for monetary defaults during any twelve (12)-month period, and if after such written notice any Rent is not paid when due, an Event of Default will be considered to have occurred without further notice;

(b) Tenant vacates or abandons the Premises;

(c) This Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subject to any attachment by any creditor of Tenant or claimant against Tenant, and said attachment is not discharged or disposed of within fifteen (15) days after its levy;

(d) Voluntary or involuntary proceedings under any bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or insolvency act of any state or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of the property of Tenant, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment;

(e) Tenant purports to assign this Lease, or sublet all or a portion of the Premises, in violation of the terms hereof;

(f) Any recordation in violation of Section 10.13 below; or,

(g) Tenant breaches any of the other agreements, terms, covenants or conditions which this Lease requires Tenant to perform, and such breach continues for a period of ten (10) days after written notice from Landlord to Tenant or, if such breach cannot be cured reasonably within such ten (10)-day period, if Tenant fails to diligently commence to cure such breach within ten (10) days after written notice from Landlord and to complete such cure within a reasonable time thereafter.

8.2 Replacement of Statutory Notice Requirements. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory

notice, including any notices required by California Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Section 10.6 shall replace and satisfy the statutory service of notice procedures, including those required by California Code of Civil Procedure Section 1162 or any similar or successor statute.

8.3 **Landlord's Remedies.** If any one or more Events of Default set forth in Section 8.1 occurs then Landlord has the right, at its election:

(a) To terminate this Lease, in which case Tenant's right to possession of the Premises will cease and this Lease will be terminated as if the expiration of the Term fixed in such notice were the end of the Term. If this Lease is terminated, Landlord will be entitled to recover from Tenant: (i) the unpaid rent that had been earned at the time of termination; (ii) the unpaid rent that had been earned at the date of the judgment awarding damages to Landlord (the "Date of Judgment"); (iii) the unpaid rent for the balance of the Term of this Lease after the Date of Judgment; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result from that failure. The amount referred to in clauses (i) and (ii) is computed by allowing interest at the highest rate permitted by law. The amount referred to in clause (iii) is computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award.

(b) To reenter and take possession of the Premises, expel Tenant and remove the effects of Tenant, using such force for such purposes as may be necessary, without being liable for prosecution, and without prejudice to any remedies for arrears of Annual Rent or other amounts payable under this Lease. Landlord shall have the remedy described in California Civil Code Section 1951.4, which provides that, when a Tenant has the right to sublet or assign (subject only to reasonable limitations), the Landlord may continue the Lease in effect after the Tenant's breach and abandonment, and recover rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease Agreement on account of any default by Tenant, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all rent as it becomes due.

(c) To cure any event of default and to charge Tenant for the cost of effecting such cure, including without limitation reasonable attorneys' fees and interest provided that Landlord will have no obligation to cure any such event of default of Tenant.

8.4 **Remedies Cumulative.** Landlord's rights hereunder shall be in addition to, and not in lieu of, every other right or remedy provided for herein or now or hereafter existing at law or in equity by statute or otherwise, including, but not limited to injunctive relief, specific performance and damages. The exercise or beginning of exercise by Landlord of any one or more rights or remedies, provided herein or now or hereafter existing at law or in equity by statute or otherwise, shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. All such rights and remedies shall be considered cumulative and nonexclusive.



## ARTICLE 9—RESERVED

## ARTICLE 10—GENERAL

10.1 Quiet Enjoyment. As long as Tenant performs all covenants and obligations contained in this Lease, Landlord warrants quiet enjoyment of the Land by Tenant; provided that Landlord, its agents or representatives, and any other person authorized by Landlord, may enter upon the Land for the purpose of inspecting the Land and to exhibit the Land to prospective purchasers or lenders. Any entry onto or inspection of the Land shall not constitute eviction of Tenant in whole or in part.

10.2 Condemnation. In the event of a condemnation or other taking by any governmental agency of all or a portion of the Land necessary for Tenant's operation of its business thereon, this Lease will terminate when the condemning authority takes possession of the Land. Any such condemnation award shall be paid to Landlord, except that Tenant will have the right to assert a separate claim for moving expenses, business interruption, and leasehold improvements paid for by Tenant.

10.3 Liens. Tenant will keep the Land free and clear of all mechanics' liens and other liens on account of work done for Tenant or persons claiming under Tenant.

10.4 Assignment and Subletting. Tenant may grant a license to Atascadero BMX Association or a successor in interest for the purpose of constructing a bicycle motocross sports track and related facilities and the management, supervision, and scheduling of events on Land. Except as stated above, Tenant shall not assign or sublet its interest in this Lease or the Land without the prior written approval of Landlord, which approval may be withheld in Landlord's sole and absolute discretion. This Lease shall otherwise inure to the benefit of and be binding upon the successors and assigns of the parties.

10.5 Limitation on Liability. Tenant specifically agrees to look solely to Landlord's interest in the Land for the recovery of any judgments from Landlord. It is agreed that Landlord (and its officers, directors and employees) will not be personally liable for any such judgments. The provisions contained in the preceding sentences are not intended to, and will not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord.

10.6 Notices. All notices and other communications required or permitted under this Lease shall be in writing and shall be given (a) by United States first class mail, postage prepaid, registered or certified, return receipt requested; (b) by hand delivery (including by means of a professional messenger service); or (c) by delivery from a nationally recognized overnight delivery service that routinely issues receipts, which notice shall be addressed to the party to whom such notice is being given, at their address set forth in Section 1.1 above. Any such notice or other communication shall be deemed to be effective when actually received or rejected. Either party may by similar notice given change the address to which future notices or other communications shall be sent.

10.7 Inspection. Landlord reserves the right to enter, at any time, the Land to inspect

the same.

10.9 No Waiver. The waiver by either Landlord or Tenant of any agreement, condition, or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Lease.

10.10 Authority. Tenant and the party executing this Lease on behalf of Tenant represent to Landlord that such party is authorized to do so by requisite action of the board of directors, or City Council, as the case may be, and agree, upon request, to deliver to Landlord a resolution or similar document to that effect.

10.11 Governing Law. This Lease shall be governed by and construed pursuant to the laws of the State of California.

10.12 Captions. The captions of the various Articles and Sections of this Lease are for convenience only and do not necessarily define, limit, describe or construe the contents of such Articles or Sections.

10.13 Recordation. Tenant shall not record this Lease in the public records without the prior written consent of Landlord.

10.14 Severability. If any provision of this Lease proves to be illegal, invalid or unenforceable, the remainder of this Lease shall not be affected by such finding, and in lieu of each provision of this Lease that is illegal, invalid or unenforceable, a provision will be added as a part of this Lease as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.15 Entire Agreement; Amendment. This Lease contains the entire agreement between Landlord and Tenant. No amendment, alteration, modification of, or addition to the Lease will be valid or binding unless expressed in writing and signed by Landlord and Tenant.

10.16 Attorney's Fees - If any action is instituted by either party to this Lease Agreement to enforce any of the terms of this Lease or the License Agreement, the prevailing party shall be entitled to receive from Tenant its reasonable attorneys' fees, expert witness fees, costs, and expenses.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

Executed on \_\_\_\_\_, 2008, at Atascadero,

LANDLORD:

TENANT:

**Atascadero Mutual Water Company,**  
a mutual water company

**City of Atascadero,**  
a general law city

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

ATTEST:

CITY OF ATASCADERO

\_\_\_\_\_  
Marcia McClure Torgerson, C.M.C.,  
City Clerk

By: \_\_\_\_\_  
Wade G. McKinney  
City Manager

By: \_\_\_\_\_  
Atascadero Mutual Water Company

APPROVED AS TO FORM:

\_\_\_\_\_  
Brian Pierik  
City Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
Rachelle Rickard  
Administrative Services Director