

LEASE AGREEMENT

This Lease is made and entered into upon this ____ day of _____, 2024, by and between Charlotte County, a political subdivision of the State of Florida, (the "Lessor"), and Charlotte BMX, Inc., a Florida not for profit corporation, (the "Lessee").

RECITALS

A. Lessor owns real property in Charlotte County, Florida, which Lessor does not require for a public purpose; and

B. Lessee, a Florida not for profit corporation organized for the purposes of promoting community interest and welfare, desires to use the real property owned by Lessor for the purpose of benefiting community interest and welfare through the operation of a BMX motocross bicycle facility; and

C. Section 125.38, Florida Statutes, provides for the Lease of County property to a not for profit organization, provided such property is not required for County purposes and such organization desires such Lease of property for public or community interest; and

D. Lessor adopted a resolution pursuant to the provisions of Section 125.38, Florida Statutes; and

E. The parties desire to enter into this Lease Agreement to provide for the benefit of the public and community interest.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, the parties hereto mutually agree as follows:

1. Recitals Incorporated. The Recitals above are incorporated into this Lease.

2. Leased Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the real property located in Charlotte County, Florida, more particularly described in the attached Exhibit "A," which is incorporated into this Lease by this reference, (the "Premises").

3. Termination of Prior Lease. The prior lease of the Premises, entered into between the County and Charlotte BMX, Inc., dated November 17, 1998, and the First Amendment to the prior lease are hereby terminated and shall have no further force and effect from the date of this Lease.

4. Term. The term of this Lease shall begin on the day and year first above written and shall continue for five (5) years. At the expiration of the initial term of this Lease and any renewal term, this Lease shall automatically renew for successive two

(2) year terms, unless either party provides written notice to the other of its intent not to renew at least sixty (60) days prior to the expiration of the initial term, or unless otherwise terminated in accordance with the provisions of this Lease. Upon the termination of this Lease, Lessor shall have the right to reenter and resume possession of the premises.

5. Rental. For the initial term of this Lease, Lessee shall pay to Lessor rental of fifty dollars (\$50.00), payable in equal annual installments of ten dollars (\$10.00) each, due on the first day and each annual anniversary date of the initial term of this Lease. For any renewal term of this Lease, Lessee shall pay Lessor annual rental of ten dollars (\$10.00), payable on the first day of the applicable renewal term of this Lease. All rental payments hereunder shall be made to the Board of County Commissioners of Lessor, at 18500 Murdock Circle, Port Charlotte, FL 33948.

6. Use. Lessee will use and occupy the Premises solely for the purpose of benefitting community interest and welfare, through the operation of a BMX bicycling facility and incidental uses (the "BMX bicycling facility"). Lessee will not use or occupy the Premises for any unlawful, disorderly or hazardous purpose. Any change in the expressed use of the Premises without the written consent of Lessor will be cause for termination of the Lease.

7. County Use. The Premises are not needed for County purposes; however, the County reserves the right to terminate this Lease pursuant to its terms and to utilize the Premises for a public purpose upon a vote of the Board of County Commissioners.

8. Lessee's Not For Profit Status. Lessee warrants that it is a not for profit corporation in good standing in the State of Florida organized for the purposes of promoting community interest and welfare. Lessee also warrants that it will maintain its not for profit status throughout the term of this Lease and any renewals. All income received by Lessee through the use of the Premises shall be used for promotion and for the maintenance, repair, overhead, operation or improvement of the Premises as a BMX bicycling facility.

9. Improvements. Lessee shall obtain and keep in force all permits necessary for the construction or continuance of any currently ongoing construction of any improvements to the Premises as required by any federal, state or local law, statute, ordinance, rule or regulation. Lessee shall furnish all equipment, machinery, tools, and labor at Lessee's own cost required to construct or complete construction of all improvements to the Premises. Lessee shall construct or continue construction of any currently ongoing construction of any improvements to the Premises using only properly licensed or certified contractors. Such contractors shall also be required to have insurance coverage at limits required by Risk Manager of Lessor. Improvements must also be constructed, maintained and repaired in accordance with any applicable federal, state or local law, statute, ordinance, code, rule or regulation, and in accordance with standards set by the American Bicycle Association, d/b/a USA BMX.

10. Design, Construction, Maintenance and Repair of BMX Bicycling Facility Improvements. In addition to the requirements set out in this Lease, Lessee shall comply with the following in the design, construction, maintenance and repair of any improvements which are or will be used for BMX bicycling:

(i) Lessee shall maintain a BMX bicycling facility in accordance with the other applicable provisions of this Lease and any standards set by the American Bicycle Association, d/b/a USA BMX and any then current industry standards applicable to the maintenance and repair of BMX bicycling facilities.

(ii) Lessee shall design, maintain, repair and install adequate lighting should night bicycling be conducted.

(iii) Lessee shall design, construct, maintain and repair permanent sanitary facilities in accordance with federal, state and local laws, statutes, ordinances, rules, regulations or requirements as required to adequately serve the attendees at the BMX bicycling facility.

(iv) Lessee shall erect, maintain and repair a minimum four (4) foot high chain link fence around any bicycling area.

11. Maintenance and Repair of the Premises and Buildings and Structures Located on the Premises. Lessee shall be responsible during the initial term and any renewal term of this Lease for the maintenance and repair of the Premises and of all improvements or structures that are located at or shall be erected upon the Premises and shall maintain and repair the Premises and any such improvements or structures in good and safe condition during the initial and any renewal term of this Lease. In addition, Lessee shall maintain and repair any BMX bicycling related facility, improvement, or structure in good and safe condition and in accordance with American Bicycle Association, d/b/a USA BMX Standards. Lessee shall maintain and repair all other facilities (non-bicycling-related) in accordance with any generally accepted engineering standards, manufacturer's standards, or then current industry standards. The parties recognize that American Bicycle Association, d/b/a USA BMX industry standards for BMX bicycling facilities are subject to revision and upgrading over the term of this Lease. Therefore, the requirement to maintain and repair such facilities to American Bicycle Association, d/b/a USA BMX industry standards shall include the standards that are revised or upgraded during the pendency of the Lease. Lessee shall provide to Lessor upon demand copies of maintenance and repair records and shall cooperate with Lessor's staff when such requests are made. Failure to comply with Lessor's request under this subsection shall constitute grounds for immediate termination of this Lease notwithstanding any provision to the contrary herein.

All injury or damage to the Premises or any improvements or structures caused by Lessee, or its agents, employees, contractors or invitees shall be repaired by Lessee at Lessee's sole expense. All injury or damage to the Premises caused solely by the willful or negligent act of Lessor or its agents or employees shall be the responsibility of

Lessor and shall be repaired with due diligence and as soon as practical, at Lessor's sole expense, and in no event shall Lessee be liable for any such injury or damage caused solely by the willful or negligent act of the Lessor.

12. Possession of Improvements. At the expiration or termination of this Lease, Lessor may elect that any improvements shall remain upon and be surrendered with the Premises as part thereof; provided, however, that Lessee shall have the right to remove, at Lessee's sole expense, and prior to the expiration or termination of this Lease, all movable furniture, furnishing, or equipment, which shall not include any bicycling ramp installed at the Premises by Lessee. Lessor may also elect that any improvements to the Premises made by Lessee be removed at Lessee's expense upon the expiration or termination of this Lease. Lessor shall give Lessee thirty (30) days' written notice of any election for improvements to be removed by Lessee and Lessee shall remove the same at Lessee's sole cost and expense. If Lessee fails to remove such improvements, Lessor may remove same at Lessee's expense together with any and all damages which Lessor may sustain by reason of such failure by Lessee.

13. Construction or Mechanic's Liens. If any construction or mechanic's lien is filed against the Premises and improvements or its structures, or the land, for work or materials done for or furnished to Lessee such construction or mechanic's lien shall be discharged by Lessee within ten (10) days after such filing, at Lessee's sole cost and expense, by payment of the lien or by the filing of any bond required by law. If Lessee shall fail to discharge any such construction or mechanic's lien, Lessor may, at its option, discharge the same and treat the cost as additional rent payable with the annual installment of rent next becoming due; and such discharge by Lessor shall not be deemed to waive the default of Lessee in not discharging the same.

14. Debris. Lessee shall maintain the Premises in a sanitary manner ensuring that the Premises are kept free of any trash and debris at all times. It is the responsibility of Lessee to contract with a garbage disposal service for the removal of trash and garbage.

15. Safety Protection. Lessee shall provide adequate safety protection for Lessee's participants, invitees, attendees, and staff to prevent injury. This shall include, but not be limited to, adequate maintenance and repair of the Premises, its improvements and structures, and providing adequate first aid treatment and ensuring that transportation to the nearest hospital emergency room is available. Lessor does not take any responsibility for provisions for safety, and Lessee shall be solely responsible for such provisions.

16. Utilities. Lessee shall be responsible for and pay all utilities in connection with its use of the Premises, including all electrical, sewer, water, telephone, internet or garbage disposal deposits, connection, or monthly or periodic service fees.

17. Liability for Damage to Personal Property of Persons. All personal property of Lessee, its employees, agents, contractors, volunteers, or invitees, on the Premises

shall be and remain on the Premises at their sole risk. Lessor shall not be liable for any damage to or loss of such personal property arising from any act of negligence of any person, or from any cause other than any damage or loss resulting solely from the negligence of Lessor, its employees or agents. Lessor shall not be liable for any interruption or loss to Lessee's business from any cause whatsoever. Lessor shall not be liable for any personal injury to Lessee, its employees, agents, volunteers, or invitees arising from the use, occupancy and condition of the Premises other than liability for those personal injuries resulting solely from the negligence of Lessor, its employees or agents.

18. Sales, Use and Other Taxes. Lessee hereby covenants and agrees to pay monthly any sales, use or other tax, excluding state and/or federal income tax, now or hereafter imposed upon the rents by the United States of America, the State of Florida, or any of its political subdivisions, to Lessor, notwithstanding the fact that such statute, ordinance, or enactment imposing the same may endeavor to impose the tax upon Lessor.

19. Non-compliance with Terms of the Lease. If Lessor finds Lessee is not in compliance with the terms of this Lease, Lessee shall have ten (10) days after notice from Lessor to correct any deficiencies noted by Lessor. In the event Lessee does not correct such deficiencies within such ten (10) day period, Lessor may immediately terminate this Lease and take possession of the Premises, or, at Lessor's option, Lessor may suspend Lessee's use of the Premises until deficiencies are corrected.

20. Indemnity and Insurance.

(i) To the maximum extent permitted by Florida law, the Lessee shall indemnify and hold harmless Charlotte County, its officers and employees from and against all claims, suits, actions, damages, liabilities, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, including as such fees and costs may be incurred at the trial and appellate levels, as applicable; caused or contributed to by the negligence, recklessness, or intentionally wrongful conduct of the Lessee or anyone employed or utilized by the Lessee in Lessee's performance, duties, or obligations under this Lease, or from the design, construction, maintenance or repair of any improvements to the Premises, or the operation of the BMX bicycling facility located on Carmalita Athletic Park. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph or deemed to affect the rights, privileges and immunities of the Lessor as set forth in Florida Statutes, Section 768.28. The Lessee, and/or its insurance carrier, shall provide thirty (30) days written notice to the Lessor of policy cancellation or nonrenewal on the part of the insurance carrier or the Lessee. The Lessee also must notify the Lessor, in a like manner, within twenty-four (24) hours after receipt of any notices of expiration, cancellation, nonrenewal or material change in coverage or limits received by the Lessee from its insurer, and nothing contained herein relieves the Lessee of this requirement to provide notice. In the event of a reduction in the aggregate limit of any

policy to be provided by the Lessee hereunder, Lessee must take steps immediately to have the aggregate limit reinstated to the full extent permitted under such policy. Should at any time the Lessee not maintain the insurance coverage(s) required herein, the Lessor may terminate the Lease, or, at its sole discretion, may purchase such coverage(s) and charge the Lessee for such coverage(s) purchased. The Lessor is under no obligation to purchase such insurance, nor is it responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the Lessor to purchase such insurance coverage(s) may not be construed to be a waiver of any of its rights under this Lease. At any time requested by the Lessor, the Lessee must provide copies of the actual insurance policy(s) and all accompanying endorsements for review. Lessee shall provide a certificate of insurance to the Lessor as evidence of the insurance requirements contained herein. Certificate Holder should read: Charlotte County, a Political Subdivision of the State of Florida, or Charlotte County Board of County Commissioners. Charlotte County must be listed as additional insured on the Commercial General Liability Policy. Lessee shall provide the following coverages: Workers Compensation: Statutory Limits of Florida Statutes, and all Federal Government Statutory Limits and Requirements; Employer's Liability: \$1,000,000 single limit per occurrence; Commercial General Liability (CGL): \$1,000,000 per occurrence, \$2,000,000 aggregate for Bodily Injury Liability and Property Damage Liability. Neither the issuance of the insurance policy required under this Lease, nor the minimum limits specified herein with respect to Lessee's insurance coverage limit or restrict in any way Lessee's liability arising under or from this Lease. Lessor may, at its sole discretion, purchase or otherwise secure, property insurance for all or a portion of the Premises based on available budgetary resources and upon a determination by the Board of County Commissioners. Lessee may, at its sole discretion, purchase property insurance in an amount sufficient to pay for catastrophic and other damage to Lessee's property located on the Premises. Lessor shall not purchase or otherwise provide property insurance for any physical structure inside the outer fence line. Lessor and Lessee agree that any and all damages to Lessee's property shall be Lessee's sole responsibility and Lessor shall not be liable for any damages to Lessee's property on the Premises unless specifically authorized under this Lease.

(ii) Lessor and Lessee shall meet no later than January 31 of any calendar year during the pendency of this Lease to review Lessee's compliance with the requirements of this paragraph and its subparts.

21. Inspection. Lessor may enter the Premises for provision of any emergency services routinely provided by Lessor to persons in Charlotte County, for inspection of the Premises, and to determine compliance with the terms of this Lease at any reasonable time. Lessee shall provide Lessor with a method of access whereby Lessor may enter the Premises without the necessity of gaining entry through Lessee or Lessee's agent or employee, to exercise its rights under this paragraph.

22. Assignment and Subletting. Lessee shall not have the right to sublet the Premises or any part thereof, nor shall it have the right to assign this Lease, except on a

temporary basis, from time to time, to the Sunshine State BMX Association or to the American Bicycle Association, d/b/a USA BMX for the purpose of conducting state or national BMX events.

23. Bankruptcy or Insolvency. If a petition shall be filed either by or against Lessee in any court or pursuant to any federal, state, or municipal statute, whether in bankruptcy, insolvency, for the appointment of a receiver of Lessee's property, or because of any general assignment made by Lessee of Lessee's property for the benefit of Lessee's creditors, then after the happening of any such event (or in the case of any involuntary petition, then if such petition is not discharged within ninety (90) days from the filing thereof), Lessor shall have the right, at its option, to terminate this Lease by sending written notice to Lessee, in which event Lessor shall be entitled to immediate possession of the Premises and to recover damages from the Lessee.

24. No Partnership. Nothing contained in this Lease shall be deemed or construed to create a partnership or a joint venture of or between Lessor and Lessee or to create any other relationship between the parties other than that of lessor and lessee.

25. Notices. All notices or other communications under this Lease shall be in writing and shall be deemed duly given if hand delivered or if sent by certified mail or registered mail, return receipt requested, postage prepaid or hand-delivered to the following:

To Lessor:
Charlotte County Administrator
18500 Murdock Circle
Port Charlotte, Florida 33948-1094

Lessor's Contract Manager:
Mike Norton, Recreation Superintendent or successor
Email: mike.norton@charlottecountyfl.gov

With a copy to:
County Attorney
18500 Murdock Circle
Port Charlotte, Florida 33948-1094

To Lessee:
Amanda Carr
6330 Riverside Drive
Punta Gorda, FL 33982
Email: amandamcarr@me.com

Either party may provide notice of change of address if duly given pursuant to this paragraph.

26. Applicable Law. This Lease shall be construed and enforced in accordance with the laws of Florida. Venue shall lie in Charlotte County, Florida.

27. Force Majeure. No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Agreement if such failure is caused by hurricane, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform. However, a party must notify the other party that it intends to invoke this paragraph and such notice must be delivered and received no later than thirty (30) days after the cause of the failure or delay of performance is known to the claiming party. For ongoing disruptions, a party shall be deemed to have knowledge of the Force Majeure when a reasonable person would reasonably know of the existence of the Force Majeure. Failure to provide notice under this paragraph shall be deemed a waiver of a claim under this paragraph. Neither party may invoke the provisions of this paragraph to avoid liability for Force Majeure events that occurred before the Effective Date.

--SIGNATURES ON FOLLOWING PAGE--

IN WITNESS WHEREOF, on the day and year first hereinabove written, the parties hereto have executed this Lease and all exhibits hereto in a manner and form sufficient to bind them.

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

ATTEST:

Roger D. Eaton, Clerk of
Circuit Court and Ex-officio
Clerk of the Board of County
Commissioners

By: _____
William G. Truex, Chairman

By: _____
Deputy Clerk

CHARLOTTE BMX, INC., a Florida not for
profit corporation

By: *Amanda Carr*
Amanda Carr
Print Name

Its: President
Print Title

Date: January 17, 2024

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
Janette S. Knowlton, County Attorney
LR23-0399 _____

Exhibit A

A parcel of real property located in Section 9, Township 41 South, Range 23 East, Charlotte County, Florida, more particularly described as: a parcel 450' x 450' commencing at the intersection of Carmalita Street, and the westerly section line of Section 9, Township 41 South, Range 23 East, for P.O.B. Extending 450 feet south of the southern boundary of Carmalita Street right of way along the westerly line of Section 9; thence 450 feet east; thence 450 feet north to the southern boundary of Carmalita Street right of way; thence 450 feet west along the southerly right of way of Carmalita Street, to the P.O.B., containing 4.65 acres, more or less.