

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 1 June 2009

SUBJECT: Renewal of lease -- National Bicycle League, Inc.

ATTACHMENT(S): Draft lease extension

SUMMARY OF REQUEST:

This lease would continue in effect the standing lease with the National Bicycle League, Inc. ("NBL"), for the operation of the "BMX" track located at Jackson Park. Several years ago, NBL constructed and has since maintained the track, and has operated and supervised "BMX" events there. The current lease expires 30 June 2009. This lease would extend until 30 June 2012.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the new lease.

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the lease for the "BMX" track at Jackson Park with National Bicycle League, Inc., and authorize the Chairman and staff to take such actions as are necessary to execute the same for the County.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made this the _____ day of April, 2009, by and between Henderson County, a body politic and corporate having its principal office located at 100 North King Street, Hendersonville, NC 28792 (the "Lessor") and the National Bicycle League, Inc. a non-profit Ohio corporation located at 3958 Brown Park Drive, Suite D, Hilliard, OH 43026 (the "Lessee");

WITNESSETH:

WHEREAS, Lessor is the owner of that parcel of land consisting of 244 acres, more or less known as Jackson Park, located in Hendersonville, North Carolina; and

WHEREAS, Lessor, by and through its Parks and Recreation Department, is desirous of pursuing alternative forms of recreation for its citizens, in particular its children and youth; and

WHEREAS, the Lessee is desirous of continuing to operate a non-motorized bicycle dirt track in Henderson County, specifically within Jackson Park and has requested to lease property within Jackson Park for such a purpose; and

WHEREAS, the Lessee has operated such a dirt track within Jackson Park pursuant to a lease with substantially identical terms as contained herein since at least 2004; and,

WHEREAS, N.C.G.S. 160A-272 and 153A-176 authorize the Lessor to lease any property for such terms and upon such conditions as Lessor may determine if the Lessor determines that the property will not be needed for the term of the lease, by adopting a resolution authorizing the execution of the lease upon 10 days public notice describing the property to be leased, stating the annual rental or lease payments and announcing Lessor's intent to authorize the lease at its next regular meeting; and

WHEREAS, that portion of Jackson Park formerly known as Field 8, consisting of approximately 2.2 acres is the current location for a non-motorized bicycle dirt tract; and,

WHEREAS, the parties wish to extend their current lease for a period up to and including 30 June, 2012.

NOW THEREFORE THIS LEASE, that for and in consideration of the annual rental sum of \$1.00 and the mutual promises as contained herein below, Lessor hereby leases to Lessee the Leased Premises as defined hereinbelow.

IT IS FURTHER STIPULATED AND AGREED AS FOLLOWS:

1. The term of this Lease shall be for the period commencing the date of its execution, and ending on 30 June, 2012.
2. The Leased Premises shall consist of that portion of the Jackson Park Property formerly known as Field 8 as shown on the map attached hereto as Exhibit A, and incorporated by reference as if fully set forth herein, consisting of approximately +/- 2.2 acres, more or less (the

"Leased Premises"). It is hereby understood and agreed to by Lessee that this Lease shall not, now or in the future, entitle Lessee to expand the Leased Premises in any manner.

3. Lessee's use of the Leased Premises shall be limited to the construction and operation of a non-motorized bicycle dirt track and for no other purpose. To this end, at no expense to Lessor, Lessee shall cause to be constructed a non-motorized bicycle dirt track on the Leased Premises (the "BMX Track"), designed in accordance with the generally applicable standards of Lessee. Lessor shall be required to operate the BMX Track and conduct practice events and racing events during the BMX season in accordance with the frequency and duration generally conducted for BMX racing facilities, but not less than two evenings per week for practice events, and one evening per week for racing events during the BMX season. If Lessee is unable to conduct a practice event or racing event during a particular week, Lessee can request that the requirements of this Paragraph 3 be waived for that particular week. Lessee shall notify Lessor of cancellations if more than one event is cancelled in succession. The Parks and Recreation Director shall have the authority to consent to such a waiver in writing, said consent to not be unreasonably withheld. Additionally, if Lessee's inability to comply with the requirements of this Paragraph 3 is due to weather conditions, said consent shall be presumed. The failure of Lessee to conduct the operations of the BMX Track with the specified duration and frequency during the BMX season shall be grounds for immediate termination of the Lease by the Lessor if not corrected by Lessee within thirty (30) days of being notified by Lessor of Lessee's non-compliance with this Paragraph 3.

4. Lessee shall be solely responsible for the operation, supervision, and maintenance of the BMX Track, and all facilities associated therewith. The operation of the BMX shall be in accordance with the following limitations and privileges:

- a. Absolutely no motorized vehicles, motorcycles, dirt bikes, or other motorized equipment shall be used in any racing event, practice event or other use of the BMX Track. However, the Lessee shall be permitted use of a motorized four-wheeled quad cycle when deemed necessary by Lessee for the sole purpose of track maintenance.
- b. Lessee shall surround the BMX Track and the Leased Premises with a secured, gated, and locked fence, the location and height to be determined and agreed upon by Lessor by and through its Parks and Recreation Director and Lessee. The existing fencing was removed by the Parks Department; fencing will be replaced when feasible by either the Lessor or by the Lessee.
- c. Lessee, and Lessee's guests and invitees, shall be entitled to use the existing parking areas adjacent to the Leased Premises; however such use must be coordinated with the Lessor by and through its Parks and Recreation Director, or his/her designee. Lessee will notify Lessor when a large event is being held at said premises to coordinate additional parking. Attendees for local events shall have the right to use said adjacent parking on an as needed basis by submission of a race/practice schedule to Lessor
- d. Lessee shall operate and maintain the Leased Premises and the BMX Track in a safe manner, in accordance with the generally applicable standards of Lessee. Additionally, Lessee shall be required to keep the Leased Premises clean and neat, mowed, and free from debris, trash and litter. Lessee shall be required to remove all debris, trash and litter from the areas surrounding the Leased Premises, including but not limited to the parking areas, resulting in the operation of the BMX Track.

- e. Lessor will be responsible for mowing the parking areas and other areas adjacent to the Leased Premises.
- f. Lessee shall be responsible for adopting rules and regulations governing the use of the BMX Track, including the hours of operation. However, Lessee shall coordinate the operation of the BMX Track, including racing events, practice events, and public programs with the Henderson County Parks and Recreation Director so as not to unreasonably interfere with other programs or events being held within Jackson Park.
- g. Lessee shall appoint local personnel as its agent for the supervision, operation and maintenance of the BMX Track. Lessee shall notify Lessor in writing of the name of Lessee's authorized agent.
- h. Lessee shall annually conduct a minimum of four public programs for the Citizens of Henderson County, at least two of which shall consist of open event days. Lessee shall coordinate these public programs with the Henderson County Parks and Recreation Director or his/her designee. Lessee may charge a nominal fee to the participants of these public programs to cover the expenses associated therewith, including, but not limited to, insurance costs, maintenance and cleanup costs, operational costs, trophies, ribbons and prizes. During open events the public is invited to use the BMX facility upon signing a completed waiver in a form and executed in a manner acceptable to Lessor as a one day trial basis without receiving NBL BMX points, awards or prizes unless fees are collected to cover costs of such awards and prizes.
- i. Except for the public programs to be offered by Lessee, use of the Track shall be limited to NBL licensed members on scheduled practice days, competitive events, and workshops.
- j. Lessee shall be responsible for all costs and expenses associated with the operation of the BMX Track, including but not limited to insurance costs, personnel costs, racing officials, public relations, advertising, public utilities (including water, sewer, and electricity), and any other sales, use or other taxes or fees that may be legally due and owing to any governmental agency for the operation of the BMX Track. Lessee may charge a nominal fee to the participants of these public programs to cover the expenses associated therewith, including, but not limited to, insurance costs, maintenance and cleanup costs, operational costs, trophies, ribbons and prizes.
- k. Lessee shall have the sole right to provide concessions and vending on the Leased Premises to benefit the BMX Track. In addition, Lessee may hang advertising banners on the fencing surrounding the Leased Premises, or within the Leased Premises, as allowed by local laws.
- l. Since the track is an athletic facility for use by children and young adults, the use of alcoholic beverages is prohibited. Lessee shall be required to post and maintain signs stating this prohibition. Lessee shall remove persons refusing to cooperate.
- m. Lessee shall not discriminate among participants in the operation of the BMX Track on the basis of race, religion, creed, national origin, sex, or physical or mental handicap unless such physical or mental handicap shall be deemed by Lessee to potentially cause injury to the participant or other participants.

- n. Lessee shall operate the lease in conformance with all applicable Federal, State, and Local laws, rules, regulations and/or ordinances.
5. It is understood by Lessee that the Leased Premise is located directly on top of an old solid waste dump, and Lessee hereby assumes all risk resulting therefrom, except further pollution liability associated with the operation of the BMX Track on the Leased Premises.
6. It is understood and agreed that the operation of a BMX racing facility is a public purpose which could be conducted by Lessor pursuant to N.C.G.S. 153A-444 and N.C.G.S. 160A Article 18. Therefore the operation of the BMX Track by Lessee in accordance with the requirements and limitations of this Lease for the entire Term of this Lease shall be good, valuable and sufficient consideration for this Lease. Lessee shall therefore operate the BMX Track to provide alternative recreation programs for the citizens of Henderson County. It is understood; however, that use of the track shall not be limited solely to citizens of Henderson County, conduct racing events on the BMX Track which are sanctioned by Lessee, on a local, regional, statewide, and/or national basis.
7. Lessor, upon the construction of the BMX Track in accordance with the terms of the Lease and performing all of the stipulations, agreements, and covenants, shall and may peaceably and quietly have, hold, and enjoy said premises during the Term, free from adverse claims of any person, firm or corporation, except that noise associated with the programs and activities being held within Jackson Park shall not be a breach of this Lease by Lessor.
8. Lessee shall not have any authority to sublease the Leased Premises in whole or in part, nor to assign this Lease for any purpose without the express written consent of Lessor.
9. Lessee shall make an annual report to the Hendersonville County Parks and Recreation Advisory Board during the month of January of, 2009, 2010, 2011 and 2012 concerning the operation of the BMX Track. This report shall include, but not limited to, the programs offered, races conducted, number of participants, fees charges, and other related accomplishments or matters connected with the BMX Track.
10. Lessee shall procure and maintain throughout the term of this Lease and any extensions or renewals thereof at its own expense such public liability and other insurance as will protect the Lessee, the Lessor, its officers and employees from any claims for damages to property and for bodily injuries, including death, which may arise from the operation of the BMX Track by Lessee. A Certificate of Insurance shall be delivered to the Lessor before proceeding under this Lease (and annually thereafter) and shall be subject to the approval of the Lessor for adequacy and for form of protection. Said Certificate shall name the Lessor, its officers and employees as additional insureds. Insurance requirements under this license shall be Two Million Dollars (\$2,000,000.00) combined single limit for bodily injury and property damage and shall include the following types of coverage:
 - a. Comprehensive General Liability
 - b. Premises Operations
 - c. Products/Completed Operations
 - d. Contractual
 - e. Independent Contractors
 - f. Broad Form Property Damage
 - g. Personal Injury
 - h. Participant Injury Liability

i. Participant Accident Coverage

Participant Accident Coverage with a deductible of not more than One Thousand Dollars (\$1,000.00), and providing accidental death benefits and medical excess, each in the sum of Three Thousand Dollars (\$3,000.00)

Certificates of Insurance shall include a thirty (30) day notice of cancellation to the Lessor, Attn: Parks and Recreation Director, 801 Glover Street, Hendersonville, NC 28792.

11. It is understood and agreed that Lessee is neither an agency nor an agent of Lessor and Lessee is not responsible for any operations of Lessee, nor for the operation of the BMX Track.
12. Lessee agrees to indemnify, defend and hold harmless Lessor, its officers, agents and employees for any acts or omissions of Lessee, its officers, agents, employees and volunteers, and from any loss, damage and liability arising out of the construction, reconstruction, configuration, and/or operation of the BMX Track by Lessee, its officers, agents, employees, and volunteers.
13. This lease shall continue until its expiration on 30 June, 2012 unless sooner terminated as provided for below. If at any time, Lessee breaches any provision contained herein, Lessor shall have the right to terminate this Lease upon seven (7) days written notice to Lessee's authorized agent. Additionally, Lessee shall have the right to terminate this Lease upon thirty (30) days written notice to Lessor. At the expiration or termination of this Lease, Lessee shall be responsible for returning the Leased Premises to its original condition, immediately preceding the commencement of this Lease, and shall surrender the Leased Premises to the Lessor.
14. This Lease shall be construed in accordance with the Laws of the State of North Carolina.
15. A memorandum of this Lease may be recorded in the Register of Deeds Office in Henderson County, North Carolina.
16. 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.
17. No modification, amendment or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly approved and executed by the parties.
18. 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 breach of the same or an other term, condition or covenant.
19. It is further understood and agreed that the stipulations, agreements, and covenants herein contained are binding upon the parties hereto and their respective successors and assigns.

Both parties have caused this Lease Agreement to be duly approved and executed in duplicate, each to constitute an original, the last party having executed this Lease Agreement on this the date stated above.

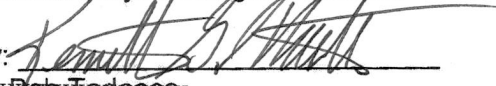
HENDERSON COUNTY, Lessor

Attest: (County Seal)

By: _____
William L. Moyer, Chairman

Terry L. Wilson, Clerk

National Bicycle League, Lessee

By: 

~~Bob Tedesco~~
~~Managing Director~~

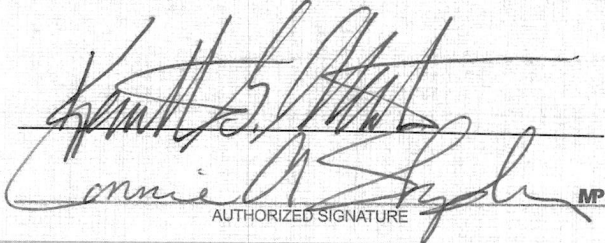
KEN MASTERS
PRESIDENT

NATIONAL BICYCLE LEAGUE, INC.

018036

REFERENCE NO.	DESCRIPTION	INVOICE DATE	INVOICE AMOUNT	DISCOUNT TAKEN	AMOUNT PAID
1276LEASE		5/14/09	4.00		4.00

CHECK DATE	CHECK NO.	PAYEE	DISCOUNTS TAKEN	CHECK AMOUNT
5/14/09	18036	HENDERSON COUNTY		\$4.00

NATIONAL BICYCLE LEAGUE, INC. 3958 BROWN PARK DR. STE. D HILLIARD, OH 43026		NATIONAL CITY BANK 25-1/440 842		018036
Four and 00/100 Dollars				
PAY TO THE ORDER OF:		CHECK NO.	DATE	AMOUNT
HENDERSON COUNTY 801 GLOVER STREET HENDERSONVILLE, NC 28793		18036	May 14, 2009	\$4.00
			 AUTHORIZED SIGNATURE MP	

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MICROPRINTING IN THE SIGNATURE LINE