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LEASE AGREEMENT

CITY OF LEMOORE AND LOOPED OUT BMX RACING

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This Lease Agreement (hereinafter "Agreement") is made on January 6, 2010 by and between CEN CAL BMX (hereinafter referred to as "Lessee"), and City of Lemoore, a municipal corporation, (hereinafter referred to as "City").

**RECITALS**

- A. City owns real property known as Lemoore BMX on 19th Avenue.
- B. Lessee wishes to lease the City Property to operate a bicycle motocross track sanctioned by the National Bicycle League.

**AGREEMENT**

NOW THEREFORE, in consideration of the foregoing recitals and in consideration of the mutual obligations agreed to by the parties listed herein, City and Lessee agree as follows:

1. **Lease of City Property.**

1.1 Lease. City owns in fee and hereby leases to Lessee, in "as is" condition the City Property known as Lemoore BMX on 19th Avenue. A map depicting the property is attached to this Agreement as Exhibit "A", and is incorporated as though fully set forth herein.

1.2 Lease Payment. Lessee shall pay and City agrees to accept One Dollar and No/100 (\$1.00) per year for lease of City Property. The lease payment shall be due on January 6, 2010.

1.3 Term of Lease. The term of the lease ("Agreement") shall be for a period of one year or until the City transfers the property to CalTrans for the 19<sup>th</sup> Avenue overpass project. The Agreement may be extended for additional one year periods, if the land has not been transferred, upon Lessee's written notice to City at least thirty days before the end of any one year period, unless sooner terminated pursuant to the terms of this Agreement. Lessee understands that notwithstanding this provision, the City has the right to give thirty days notice to terminate the Agreement at any time for the purpose of the planned construction of the 19<sup>th</sup> Avenue Interchange.

1.4 Utilities. Lessee will be responsible for the cost of water, sewage, trash, gas and electricity arising from Lessee's use of City Property.

1.5 Improvements and Use of Property. It is understood that Lessee shall construct certain improvements on City Property. The improvements consist of a bicycle

motocross sanctioned by the National Bicycle League. Lessee shall adhere to all City, State and Federal laws regarding construction of the improvements, and agrees to obtain all necessary permits to construct said improvements. All costs of the improvements will be borne by Lessee. City shall not be responsible for any costs of the improvements. Lessee will use the City Property for operation of a bicycle motocross track sanctioned by the National Bicycle League. Lessee may undertake improvements additional to above only (i) upon approval of the City, which approval shall not be unreasonably withheld, and (ii) at Lessee's sole cost, expense and risk. Lessee shall be responsible for all required permits/approvals.

Lessee agrees to comply with all applicable laws, ordinances and regulations in connection with its use of City Property. Persons engaged by Lessee to provide labor and service shall not be deemed of considered employees, agents, or independent contractors of City.

Lessee shall not commit any waste or any public or private nuisance upon City Property. Lessee shall not do anything on City Property that will cause damage to City Property.

1.6 Lessee shall at all time during the term of this Agreement and any extended terms(s) thereof, maintain insurance as follows:

- (i) Bodily injury liability insurance against any and all liability of Lessee and City with respect to the leased City Property described or arising out of the maintenance or use thereof and property damage liability insurance with a limit of not less than \$1,000,000 per occurrence. Lessee shall add City as additional insured. A certificate evidencing such insurance shall be furnished to City upon request.
- (ii) Workers Compensation: As required by the State of California.

1.7 Hold Harmless. Lessee shall hold harmless City, its Council, officers, and employees, and shall indemnify and defend such Council, officers, and employees from any and all costs, expenses (including reasonable attorney's fees and court costs), damages, claims, causes of action, losses or any other liabilities arising out of the negligent or wrongful acts, errors or omissions of Lessee, its agents, employees or contractors in the lease of City Property.

1.8 Assignment of Lease. No assignment or any interest in the lease shall be valid or operative unless City shall formally approve the assignee and assignee executes a lease agreement with City on the same terms or conditions as the assigned lease. Lessee shall not sublease without the written consent of City.

1.9 Condition of Land. Lessee specifically acknowledges that City is leasing the City Property on an "As Is" basis, and that Lessee is not relying on any representations or warranties of any kind whatsoever, express or implied, from City, its agents or brokers as to any matters concerning the City Property, including without limitation: the quality, nature, adequacy and physical condition of the Property, including the quality, nature, adequacy and physical condition of soils, geology and any groundwater; merchantability or fitness, suitability, value or adequacy of the Property for any particular purpose; the compliance of the

Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity. City's Right of Entry for Flood Protection. City and its representatives, shall have an unconditional right to enter and use City Property for water ponding capacity as may be needed by City to protect City against flooding.

**2. Non Performance and Termination.**

2.1 Any event of nonperformance by either party that is not cured within 30 days written notice thereof (or if not reasonably capable of cure within said 30 days when said cure is not commenced within the 30 day period and continued to completion of cure) shall be an event of default. Upon default, the non-defaulting party may, notwithstanding any other available right/remedy elect to terminate this Agreement.

2.2 Upon expiration or earlier termination of this Agreement, Lessee shall surrender the Property to City in as good a condition and repair as existed on the date of this Agreement, less reasonable wear and tear.

**3. Mutually Binding Terms.**

3.1 Governing Law. Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Kings County, California, or as appropriate in the U.S. District Court for the Eastern District of California, located in Fresno County. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

3.2 Attorney's Fees. Both parties agree in the event it becomes necessary for the non-breaching party to enforce any of the provisions of this Agreement, the breaching party is to pay a reasonable amount as and for attorney's fees as may be determined by the Court.

3.3 Notice. Any notice or other communications required or permitted by this Agreement or by law to be served on or given to either party to this Agreement by the other party shall be in writing, and shall be deemed duly served and given when personally delivered to the party to whom it is directed or any managing employee of that party or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed as follows:

City:

City of Lemoore  
119 Fox St.  
Lemoore, CA 93245  
Attention: City Manager

Lessee:

Joey Contente  
CEN CAL BMX  
Lemoore, CA 93245

Either party may change its address for purposes of this section by giving written notice of the change to the other party in the manner provided in this section.

3.4 Entirety - Succession. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof, superseding all prior negotiations, representations, and contracts, and constitutes the entire agreement concerning City's leasing of the Property to Lessee.

3.5 Binding on Successors. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the respective heirs, executors, administrators, successors and assigns of said parties. No rights, however, shall inure to the benefit of any assignee of Lessee unless the assignment of such assignee has been approved by City in writing as provided in Paragraph 1.8 of this Agreement.

3.6 Authority. All individuals executing this Agreement on behalf of that entity represent that they are authorized to execute and deliver this Agreement on behalf of that entity.

3.7 Sole Agreement. This Agreement constitutes the sole and only agreement between City and Lessee respecting the lease of City Property described in this Agreement. Any agreements or representations respecting the lease of said property, not expressly set forth in this Agreement are null and void.

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IN WITNESS THEREOF, the parties execute this Agreement on the date first above written:

“City”  
CITY OF LEMOORE

“Lessee”  
CEN CAL BMX

By: \_\_\_\_\_  
John F. Murray  
Mayor

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
\_\_\_\_\_

Attachment: Exhibit “A” – Description of Property