

**OPERATING AGREEMENT FOR BMX TRACK AT ED FOUNTAIN PARK
BETWEEN THE CITY OF LAS VEGAS
AND CUSTOM OPTS BMX, LLC**

This OPERATING AGREEMENT FOR BMX TRACK AT ED FOUNTAIN PARK (the "**Agreement**") is made by and between the CITY OF LAS VEGAS, a Nevada municipal corporation ("**City**") and CUSTOM OPTS BMX, LLC, a Nevada limited-liability company ("**Operator**"). The City and the Operator are sometimes individually referred to herein as Party and collectively referred to herein as the "**Parties**".

This Agreement is effective on the date of approval by the Las Vegas City Council (the "**Commencement Date**").

RECITALS

WHEREAS, the City and American Bicycle Association ("ABA"), an Arizona corporation, entered into that certain Lease Agreement ("Lease") dated July 17, 2002, for the lease of a portion of certain real property (the "Premises"), Assessor's Parcel Number ("APN") 139-30-101-006, addressed as 4367 Vegas Drive, Las Vegas, Clark County, Nevada, and generally located within the City's Ed Fountain Park (the "Property"), for ABA to construct, develop, operate and maintain a BMX Track ("Track"), as depicted on **Exhibit A**; and

WHEREAS, the City and ABA amended the Lease on May 27, 2009 to update the Premises area and allow for the installation of netting around the Track; and

WHEREAS, the City and ABA amended the Lease on October 3, 2012 to extend the term of the Lease Agreement and address other items related to rent, maintenance and programming; and

WHEREAS, the City and ABA amended the Lease on July 1, 2015 to authorize the use of a snack or gift shop; and

WHEREAS, the City and ABA amended the Lease on August 3, 2017 to extend the term and address rent; and

WHEREAS, the City and ABA amended the Lease on May 28, 2018 to address record keeping and auditing procedures; and

WHEREAS, that certain Lease expired on July 31, 2023; and

WHEREAS, the City and ABA mutually desire to not renew the Lease and instead contract directly with the Operator; and

WHEREAS, the City and Operator mutually desire to enter into this Agreement to continue operating non-motorized bicycle races and associated activities and use on the Track.

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth below, the Parties agree to the Agreement as follows:

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

SECTION 1 GENERAL INTENT

1.1 INCORPORATION OF RECITALS. The Recitals set forth above, and all defined terms set forth in the Recitals and in the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if set forth here in full.

1.2 GENERAL INTENT. The Parties agree that the overall purpose of this Agreement is to govern the Operator's management and operations of the Ed Fountain Park BMX Track and the relationship of the Parties related to the terms and conditions of this Agreement.

SECTION 2 MANAGED PREMISES

2.1 MANAGED PREMISES. The City agrees to allow the Operator to manage the Track pursuant to the terms and conditions in this Agreement. The Operator agrees to manage the Track pursuant to the terms and conditions in this Agreement.

SECTION 3 TERM and TERMINATION

3.1 PRIMARY TERM. Subject to and upon the terms and conditions set forth herein, this Agreement shall commence on the Commencement Date and continue in force for a period of five (5) years (the "**Term**"), unless sooner terminated as hereinafter provided.

3.2 OPTION TERM. In the event that the Operator is not then in default under the terms, covenants and conditions contained in this Agreement, Operator shall have the option, with the consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned, to renew this Agreement for one (1) additional term of five (5) years, commencing on the date of expiration of the initial Term provided that at least ninety (90) days prior to the expiration of such term, Operator notifies the City in writing of its election to extend this Agreement.

3.3 TERMINATION. Either party hereto may terminate this Agreement for any reason by providing ninety (90) days' written notice to the other party.

3.4 Any reference to "Term" in this Agreement shall include the Primary Term and any Option Term, as applicable.

3.5 OWNERSHIP. The Parties agree that the Track is operated and managed by the Operator, and Operator has no right, title, or interest in the Track, Property or any portion of thereof.

SECTION 4 OPERATING USE

4.1 APPROVED USE. The Operator shall use the Track to operate and manage non-motorized bicycle races and associated events, practices and similar ancillary use. Operator shall not use or permit the Track to be used for any other purpose without the prior written consent of the City in its sole discretion.

4.2 OPERATING FEE. The Operator shall pay a monthly fee of Seven Hundred Fifty Dollars and No Cents (\$750.00).

SECTION 5 COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS/ORDINANCES

5.1 Operator shall obtain any and all federal, state and local permits and licenses required to operate the Track, as described in this Section 5. Operator further agrees to abide by all applicable federal, state, and local codes, regulations, statutes, ordinances, and laws, now in force or which hereafter may be in force with respect to the Property, and the Track to be conducted thereon. The City makes no representation or commitment concerning the approval of development-related permits for the anticipated construction of the Improvements.

5.2 Operator shall not store or maintain any materials, including Hazardous Materials (as defined below) on the Property, which would be in violation of any applicable federal, state or local law, regulation, statute or code. "Hazardous Substances" means any product, byproduct, compound, substance, chemical, material or waste, including, without limitation, asbestos, solvents, degreasers, heavy metals, refrigerants, nitrates, urea formaldehyde, polychlorinated biphenyls, dioxins, petroleum and petroleum products, fuel additives, and any other material, whose presence, characteristics, nature, quantity, intensity, existence, use, manufacture, possession, handling, disposal, transportation, spill, Release, threatened Release, treatment, storage, production, discharge, emission, remediation, cleanup, abatement, removal, migration, or effect, either by itself or in combination with other materials is or is allegedly: (a) injurious, dangerous, toxic, hazardous to human or animal health, aquatic or biota life, safety or welfare or any other portion of the environment; (b) regulated, defined, listed, prohibited, controlled, studied or monitored in any manner by any governmental authority or environmental laws; or (c) a basis for liability to any governmental authority or third party under any regulatory, statutory or common law theory.

5.3 Operator assumes responsibility for dust abatement of the site, which may include the spraying of chemicals to control airborne dust and shall comply by the Clark County Health District's rules and regulations.

SECTION 6 MAINTENANCE AND UTILITIES

6.1 MAINTENANCE. Operator shall provide full maintenance and security of the Track to minimize unauthorized use of the Track. Operator shall maintain the Track and every part thereof in a clean, neat and orderly condition, free of objectionable noise, odors or nuisances and will in all respects and at all times fully comply with health, safety and police regulations, including all laws, regulations, statutes or codes concerning the use, storage or maintenance of materials on the Track. Operator shall further not suffer or permit any person to commit any waste on the Track or any portion of the Property.

6.2 UTILITIES. City shall be responsible for providing utilities to the track.

SECTION 7 ACTIVITY PROGRAMMING

- 7.1 Operator shall provide the days and times of operation to the Department of Parks, Recreation and Cultural Affairs on an as needed basis as requested by the City.
- 7.2 Operator shall provide the City with an annual report, beginning January 1, 2025 and each January 1st thereafter, detailing the number of participants that participate in the Track activities, including total number of users, collected fees and any revenues related to the use of the Track.
- 7.2 Operator shall provide the City with a schedule of any special events or tournament for the current calendar year no later than the 15th day of March of the year in which the events will occur. Any changes to the schedule provided the Operator shall provide written notice to the City at least thirty (30) days prior to the event.
- 7.3 Operator shall provide the City with a current schedule or fees for membership, races, special events and any other Track related activities not later than the 15th day of March of the year in which the events occur.
- 7.4 Operator shall provide the City with copies of any contracts it enters into with any other vendor that sells products to the participants and/or spectators of the events.

SECTION 8 ALTERATIONS, IMPROVEMENTS AND CHANGES PERMITTED

- 8.1 Operator shall have the right to make such alterations, improvements and changes to the Track that may from time to time be deemed necessary by the Operator, provided that prior to making any structural alterations, improvements or changes, the Operator shall obtain the City's written approval of the plans and specifications therefore, which approval the City shall not unreasonably withhold, delay, or condition, provided that the improvements proposed by Operator do not materially impact the City or the general public's use of the Property. In the event of disapproval, the City shall give to the Operator an itemized statement of reasons for the disapproval. If the City does not disapprove the plans and specifications provided for in this Section 9 within thirty (30) days after they have been submitted to the City, the plans and specifications shall be deemed to have been approved by the City. In addition, Operator will have to obtain the necessary approvals and permits from the various City departments as is normally necessary with any building project.
- 8.2 Any and all such improvements shall revert to the ownership of the City upon expiration of the Agreement.

SECTION 9 INDEMNIFICATION AND INSURANCE

- 9.1 **INDEMNIFICATION.** Operator will protect, defend, indemnify and save harmless the City, its elected officials, officers, employees, and agents from and against any and all liability, damages, demands, claims, suits, liens, and judgments of whatever nature including, but not limited to, claims for contribution or indemnification for injuries to or death of any person or persons or damage or loss to the Track or any part thereof caused by, in connection with, or arising out of any activities undertaken directly or indirectly by Operator. Operator's obligation to protect, defend, indemnify, and save harmless as set forth in this Section 9 shall include any and all reasonable attorneys' fees incurred by the City in the defense or handling of said suits, demands, judgments, liens and claims and all investigation expenses incurred by the City in enforcing or obtaining compliance with the provisions of this Agreement.
- 9.2 **INSURANCE.** In addition to the indemnification obligations set forth in this Agreement and not

in lieu thereof, Operator shall procure and maintain, at its own expense, during the entire term of this Agreement, the following insurance coverages:

A. Workman's Compensation Insurance and Employer's Liability Insurance if Operator has one or more employees. Aside from any state requirement as to the minimum number of employees, insurance coverage hereunder will comply with the requirements and benefits established by the State of Nevada. This paragraph does not apply to a non-profit organization using "volunteers" to provide concession services.

B. Comprehensive General Liability Insurance in minimum amount of \$1,000,000 combined single limit of coverage for bodily injury (including wrongful death), property damage or combination thereof for each accident or occurrence, and \$1,000,000 in the aggregate.

C. In the event that Operator ever provides food and/or beverage merchandise concessions service, Operator is required to obtain Product Liability Insurance in minimum amount of \$1,000,000 combining single limit of coverage for bodily injury (including wrongful death), property damages or combination thereof for each accident or occurrence, and \$1,000,000 in the aggregate.

D. Automobile Liability Insurance in the minimum amount of \$500,000.

E. Operator will procure and maintain at its own expense, during the Term all necessary and required insurance coverage on any building, vehicle or structure provided by/to City for its business operations relating to this Agreement.

F. Within ten (10) days after execution of this Agreement and as a condition to this Agreement continuing in force and effect, Operator shall submit to City a certificate of insurance, which evidences the above required insurance coverages and names the City as an additional insured. The policies with respect to such insurance coverages shall be so endorsed as to create the same liability on the part of the insurer as though separate policies had been written for the City and Operator. The insurance coverages shall be with an insurance carrier which is licensed to do business with the State of Nevada and which is acceptable to the City.

G. Each such policy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days written notice thereof to the City. Any renewal policy shall be delivered to the City at least fifteen (15) days prior to a policy's expiration date except for any policy expiring on the expiration date of this Agreement or thereafter.

E. In the event that the Operator fails to obtain or maintain the insurance coverage required herein, the City shall have the right to terminate this Agreement.

SECTION 10 DEFAULT

10.1 EVENTS OF DEFAULT. The following shall constitute an event of default by Operator:

A. Operator's failure to perform any term, condition, or covenant to be performed by Operator pursuant to this Agreement within thirty (30) days after written notice of such failure; provided however, that if such failure is not capable of being cured within said thirty (30) day period, Operator must commence said cure and continue same as due diligence until the cure is affected.

B. Operator being adjudicated a bankruptcy under any federal or state insolvency statute.

SECTION 11
ACCESS TO PROPERTY

11.1 Operator shall allow duly authorized representatives of the City to conduct such occasional reviews and inspections of the Track and improvements thereon as the City reasonably deems to be appropriate in order to determine whether the uses contemplated in this Agreement are being achieved.

11.2 Visits by the City can be unannounced to Operator, but shall only occur during normal operating hours. The representatives of the City may request and, if such a request is made, shall be granted access to all of the records of Operator, which relate to the use of the Track in Ed Fountain Park.

SECTION 12
MISCELLANEOUS

12.1 PROMOTIONAL RECOGNITION. The Parties may not use the other's logo for promotional or other purposes without the written approval of the other Party.

12.2 LIENS. Operator shall cause all activities that occur on Ed Fountain Park to occur lien-free and in compliance with all applicable laws and ordinances. If any lien is filed against Operator as a result of acts or omissions of the Operator or its employees, contractors, representatives, volunteers or agents, the Operator shall discharge the lien or bond the lien off in a manner reasonably satisfactory to the City within thirty (30) days after the Operator receives written notice that the lien has been filed.

12.3 TAXES. The City shall not be responsible for any personal property taxes, possessory interest taxes and assessments attributable to the Operator's management of the Track levied by any legal authority as a result of this Agreement.

12.4 FORCE MAJEURE. Should performance of this Agreement be prevented due to fire, flood, explosion, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond the parties' control, no party will be or be deemed to be in default or otherwise liable for any delay of its performance under this Agreement.

12.5 ASSIGNMENT AND SUBLETTING. The Operator shall not assign, sublet or otherwise transfer all or any part of their interest in this Agreement without the prior written consent of the City, which may be withheld for any or no reason.

12.6 PRIOR AGREEMENTS AND AMENDMENTS. This Agreement contains all of the agreements and understanding of the Parties with respect to any matter covered or mentioned in this Agreement, and no other agreements or understandings shall be effective for any purpose. No provision of this Agreement may be amended or added except by a written amendment signed by both Parties.

12.7 NOTICE. Any notice, demand, request, or other instrument which may be or is required to be given under this Agreement shall be delivered in person or sent by United States certified or registered mail, postage prepaid, at the following addresses:

To City: Attn: Real Estate Manager
 City of Las Vegas
 Public Works, Real Estate
 495 S. Main Street, 5th Floor

Las Vegas, Nevada 89101
(702) 229-1022

and: Attn: City Attorney
City of Las Vegas
City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
(702) 229-6629

To Operator: Attn: Turnell Henry
Custom Opts BMX, LLC
1645 W. Sunrise Blvd.
Gilbert, AZ 85233
(480) 961-1903

12.8 NO WAIVER. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

12.9 HEADINGS AND INTERPRETATION. Headings used in this Agreement are for convenience or reference only and are not intended to govern, limit or aid in the construction of any term or provision hereof. Any reference to a Section in this Agreement shall include all sections and subsections related thereto.

12.10 CHOICE OF LAW/VENUE/WAIVER OF JURY TRIAL. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Agreement, without giving effect to its conflict of law provisions. Each party hereto consents to, and waives any objection to, Clark County, Nevada as the proper and exclusive venue for any disputes arising out of or relating to this Agreement or any alleged breach thereof. The City and the Operator hereby waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of the City and the Operator, the Operator's use or occupancy of the Track, and/or any claim of injury or damage.

12.11 SEVERABILITY. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction, or rendered by the adoption of a statute invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

12.12 RELATIONSHIP OF THE PARTIES. Nothing contained herein shall constitute either party as being the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form or business organization between the Parties hereto, nor is either party granted the right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall either party be in any way liable for any debt of the other.

12.13 NO THIRD-PARTY BENEFICIARIES. Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any person or entity not a party to this

Agreement any third-party beneficiary rights, interests, or remedies under or by reason of any term, provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.

12.14 ATTORNEY'S FEES. In the event that any party hereto institutes an action or proceeding relating to or arising out of this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the prevailing party shall be entitled to its reasonable attorneys' fees and to all court costs incurred, in addition to any other damages or relief forwarded.

12.15 RIGHT TO REVIEW AND AUDIT. The Corporation agrees to maintain financial records pertaining to all matters relative to this Agreement in accordance with generally accepted accounting standards and to retain all records and supporting documentation applicable to this Agreement.

The Corporation agrees to permit the City or the City's designated representatives to inspect and audit its records and books relative to this Agreement at any time during normal business hours and under reasonable circumstances and to copy therefrom any information that the City desires concerning the Corporation's operation hereunder. The Corporation further agrees to permit the City or the City's designated representatives to inspect and audit, as deemed necessary, all records relating to finances, as well as other records including performance records that may be required by relevant directives of funding sources of the City.

12.16 GOVERNING LAW AND DISPUTE RESOLUTION. This Agreement is entered into in Nevada and is to be governed by the laws of the State of Nevada. Any dispute arising out of or relating to this Agreement shall be resolved through good faith negotiations between the Parties. If the Parties are unable to reach a resolution, the dispute shall be submitted to binding arbitration.

12.17 COUNTERPARTS; ELECTRONIC DELIVERY. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all Parties hereto. Executed copies hereof may be delivered by facsimile or e-mail, pursuant to NRS 719.240, and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter.

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Signature Page

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Commencement Date as defined herein.

CITY OF LAS VEGAS
"CITY"

By: _____
Carolyn G. Goodman, Mayor

Date of Execution by City: _____

Attest:

By: _____
Dr. LuAnn D. Holmes, MMC, City Clerk

Approved as to Form:

By:  8/20/24
Deputy City Attorney Date

Crislove A. Igeleke
Deputy City Attorney

[SIGNATURES CONTINUED ON NEXT PAGE]

**OPERATING AGREEMENT FOR ED FOUNTAIN PARK BMX TRACK
BETWEEN THE CITY OF LAS VEGAS AND CUSTOM OPTS BMX**

Signature Page (continued)

**CUSTOM OPTS BMX, LLC
"OPERATOR"**

By: 

Printed Name: TURNELL HENRY

Title: OWNER

Date: 8/7/2024

EXHIBIT A

THE PROPERTY AND TRACK

