

FORSYTH COUNTY
BOARD OF COMMISSIONERS

**BRIEFING
DRAFT**

MEETING DATE: MAY 8, 2017

AGENDA ITEM NUMBER: 12

SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT BETWEEN FORSYTH COUNTY AND WINSTON-SALEM/FORSYTH COUNTY BMX PARENTS' ASSOCIATION, INC., A NON-PROFIT CORPORATION, FOR LEASE OF COUNTY OWNED PROPERTY LOCATED ON A PORTION OF TANGLEWOOD PARK

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

ATTACHMENTS: YES NO

SIGNATURE: _____ DATE: _____
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT
BETWEEN FORSYTH COUNTY AND WINSTON-SALEM/FORSYTH COUNTY
BMX PARENTS' ASSOCIATION, INC., A NON-PROFIT CORPORATION,
FOR LEASE OF COUNTY OWNED PROPERTY LOCATED ON
A PORTION OF TANGLEWOOD PARK**

WHEREAS, Winston-Salem/Forsyth County BMX Parents' Association, Inc., a non-profit corporation, desires to lease from Forsyth County property located on the southwestern corner of Tanglewood Park, consisting of 3.40 acres for a three-year term at an annual rent of \$2,800 for use as a BMX track; and

WHEREAS, the County staff reports that the County does not have a need for the property for County purposes during the term of the proposed lease and recommends that the Forsyth County Board of Commissioners authorize execution of the lease; and

WHEREAS, a public notice of this proposed lease has been published at least thirty (30) days prior to this meeting date pursuant to the provisions of N.C.G.S. 160A-272.

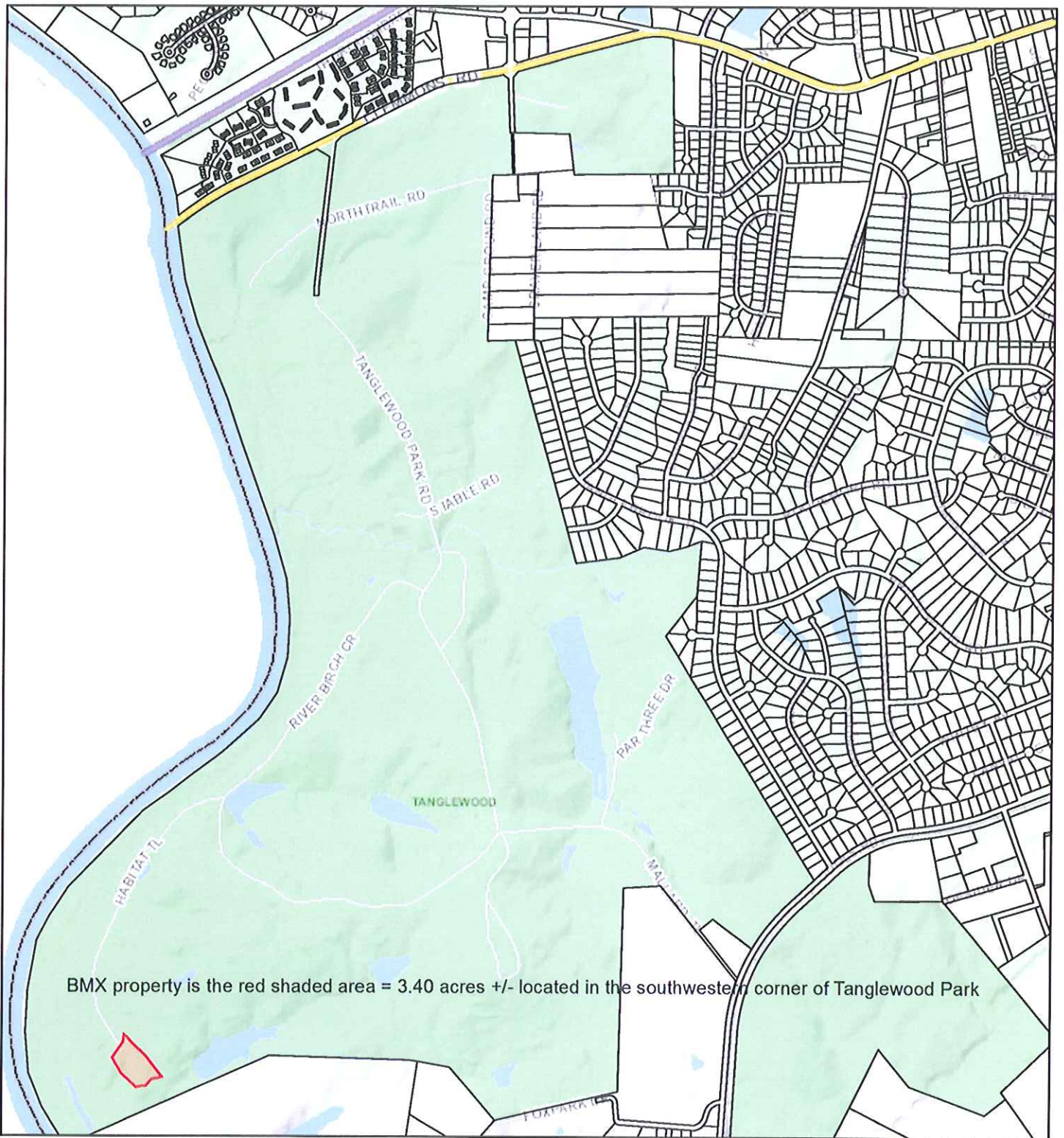
NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby determines that the southwestern corner of Tanglewood Park, consisting of 3.40 acres, which is the subject of the proposed Lease Agreement between Forsyth County and Winston-Salem/Forsyth County BMX Parents' Association, Inc., a non-profit corporation, will not be needed by the County for County purposes during the term of the proposed three-year lease.

BE IT FURTHER RESOLVED that a public notice has been published pursuant to the provisions of N.C.G.S. 160A-272 announcing the Board's intent to authorize the lease at its May 8, 2017 regular meeting, describing the property to be leased, and stating the annual lease payments.

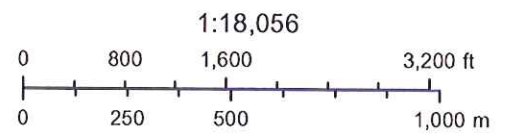
BE IT FURTHER RESOLVED that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, a Lease Agreement of the above-described property with Winston-Salem/Forsyth County BMX Parents' Association, Inc., a non-profit corporation, for a three-year term, beginning July 1, 2017 and expiring June 30, 2020, at an annual rent of \$2,800, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney. The proposed Lease Agreement is attached hereto and incorporated herein by reference.

Adopted this the 8th day of May, 2017.

Forsyth County, NC



March 31, 2017



**PUBLIC NOTICE OF INTENT TO AUTHORIZE
A LEASE OF COUNTY OWNED PROPERTY
(A PORTION OF TANGLEWOOD PARK)**

Notice is hereby given pursuant to the provisions of N.C.G.S. 153A-176 and 160A-272, that the Forsyth County Board of Commissioners, at its regular meeting scheduled for Monday, May 8, 2017 at 2:00 p.m. in the Commissioners' Meeting Room on the fifth floor of the Forsyth County Government Center located at 201 N. Chestnut Street in Winston-Salem, N.C., intends to authorize the execution of a lease between Forsyth County and Winston-Salem/Forsyth County BMX Parents' Association, Inc of a portion of Tanglewood Park for use as a BMX track. The real property to be leased by Forsyth County to Winston-Salem/Forsyth County BMX Parents' Association, Inc. will consist of approximately 3.40 acres. The term of the lease would be three (3) years, beginning July 1, 2017 and expiring June 30, 2020.

The leased property is located within the southwestern corner of Tanglewood Park. The annual rental under the proposed lease is \$2,800 per year.

The property identified herein will not be needed by Forsyth County for other County purposes during the term of the proposed lease.

This notice shall be published once at least thirty (30) days prior to the regular meeting date in which the lease is considered.

This 6th day of April 2017.

FORSYTH COUNTY

By: _____

Carla D. Holt
Clerk to the Board

NORTH CAROLINA }
 }
FORSYTH COUNTY)

LEASE

THIS LEASE AGREEMENT made and entered into this 17th day of February 2017, by and between Forsyth County, North Carolina (the "County") and American Bicycle Association dba. USA BMX dba. Winston-Salem/Forsyth County BMX Parents Association, Inc., (the "Tenant"):

1. Lease of Premises: County hereby leases to Tenant the area within Tanglewood Park ("Park") designated on Exhibit A as BMX Property (hereinafter "Premises") for use as a BMX track during the Term defined in paragraph 2. Tenant shall pay the County an annual lease payment payable in two installments of 50% of the annual amount each:

The first year (7/1/17 — 6/30/18) annual lease amount is \$2,800

The second year (7/1/18 — 6/30/19) annual lease amount is \$2,800

The third year (7/1/19 — 6/30/20) annual lease amount is \$2,800

The first installment is due on July 1, 2017 and on each anniversary of that date, and the second installment is due on November 1, 2017, and on each anniversary of that date.

Exhibit A is incorporated herein by reference.

2. Term: The Term of this Agreement shall begin on July 1, 2017 and terminate on June 30, 2020, provided, however, that the County shall have the right at any time to terminate the Agreement, without cause, by providing the Tenant thirty (30) days written notice, and Tenant shall have the right at any time to terminate the Agreement, without cause, by providing the County thirty (30) days written notice.

3. Park Rules: Tenant and its guests and invitees shall be subject to the rules and regulations of the County and the Park at all times. Tenant and its guests and invitees shall pay the required entrance fee for the Park to access the premises. The failure of Tenant, its guests or invitees to abide by national law, state law, County ordinances, and County and Park rules and regulations shall constitute a breach of this Agreement.

4. Tenant Improvements: Tenant shall not make any improvements, with the exception of ordinary maintenance, to the premises without first requesting and receiving written approval from the County signed by the Assistant County Manager. The Assistant County Manager has given tentative approval for pump track construction by Tenant, pending receipt of detailed plan and specifications. Tenant shall submit to the County detailed plans and specifications for all Tenant improvements, which shall become part of the Premises. Tenant shall not obtain or retain ownership of any real property, including buildings, fixtures, track, or other property affixed to the Premises. At the end of the Term, Tenant shall remove all of its personal property which is not affixed to the Premises and shall make such repairs as necessary, in the sole discretion of the County, to leave the Premises in good condition. In the event that Tenant damages the Premises, beyond ordinary wear and tear, Tenant will be responsible for repairing the Premises to the satisfaction of the County.

Tenant shall be responsible for obtaining all necessary permits for any improvements, repair or other work.

5. Open to the Public. Tenant shall not exclude any member of the public from using the Premises while the Premises are open for *use* by anyone, nor shall Tenant charge any member of the public an admission fee for use of the Premises, Notwithstanding anything herein to the contrary, during BMX Events, as defined herein, Tenant shall have the option of charging an admission fee to participate in a BMX Event, provided that such restrictions do not violate any state, federal, local or Park statute, rule or regulation.

6. BMX Events. Tenant may schedule BMX Events, at which it may charge admission and restrict use of the Premises. By April 1 of each year, Tenant must submit a proposed schedule of all BMX events for the year. Tenant must receive prior written approval from the County for each BMX Event. Failure to receive prior written approval for a BMX Event is a breach of this Agreement. Tenant may not schedule or hold any event that is not a BMX Event. Tenant may not sublet the Premises or authorize any other party to hold any event. All use of the Premises for non-BMX Events or use by any party other than Tenant must be authorized by the County and will be subject to separate rental agreements and fees. The County reserves the right to close any unauthorized event or usage of the Premises immediately.

7. Advertising. Tenant shall not place any advertising banners or other advertising upon the Premises unless it:

- a. Submits a proposal to the Assistant County Manager containing a scale rendition of the advertising; and
- b. Receives written permission from the Assistant County Manager to display such advertising.
- c. Exception to the above, already granted, is event signage near the Tanglewood Park entrance, only during race day or practice day events.

8. Beverages. Tenant shall not serve any alcoholic beverages, and shall not allow the consumption of any alcoholic beverages upon the Premises. If Tenant serves non-alcoholic beverages, it shall purchase such beverages from the County or the County's designee.

9. Food. Tenant must obtain all required permits if it sells food on the Premises. Tenant may sell food only during BMX Events.

10. Hours and Dates of Operation. Tenant shall have access to the Premises on the dates and during the hours for which the Park is open to the general public. If Tenant desires to have access to the Park during other times, Tenant must receive written permission from the Assistant County Manager. Notwithstanding anything to the contrary herein, the County reserves the right to deny Tenant access to the Premises during certain County events, County will limit access through the BMX road gate through controlled availability of keys to BMX road gate lock, but also recognizing that employees must access this gate nearly daily to check river pump operation, or occasionally allow access to river boat ramp from park.

11. Security and Supervision. Tenant shall have sole responsibility for the supervision of all use of the Premises. Tenant shall provide supervision during all of the dates and hours of operation of the Premises. Tenant shall ensure that all persons who access the Premises abide by national, state, County, and Park statutes, rules and regulations. Tenant shall ensure that all persons at the Premises operate their bicycles safely and reasonably. Tenant shall prohibit the use of motorized vehicles on the BMX track.

12. Maintenance, Cleaning, Trash Removal. Tenant shall be responsible for maintaining the Premises in a safe and aesthetically appropriate manner, at least to the level of maintenance by the County throughout the Park. Tenant shall be responsible for cleaning the Premises. County will rough mow and clear fallen tree debris outside the BMX track facility fence.

13. Indemnification. Tenant shall Indemnify, defend and hold harmless the County, its officers, officials, and employees from all claims, actions, threats of litigation, and other demands, which are related to the Premises or use thereof or related to any breach of this Agreement by Tenant.

14. No Warranties. THE COUNTY DOES NOT MAKE ANY WARRANTY OR REPRESENTATION REGARDING THE HABITABILITY, FITNESS, OR SUITABILITY OF THE PREMISES FOR USE BY TENANT. TENANT ASSUMES THE RISK OF USING THE PREMISES.

15. Insurance. Tenant shall procure and maintain for the duration of the contract occurrence version commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit, Such insurance shall:

- a. Include the County, Its officials, officers, and employees as insureds with respect to performance of this Agreement and with respect to the Premises. The coverage shall contain no special limitations on the scope of protection afforded to the above listed Insureds.
- b. Be primary with respect to any insurance or self-insured retention Programs covering the County, its officials, officers, and employees.

16. Limitation of Liability. The County shall not be liable or responsible for any injury or damages suffered by Tenant, its guests, Invitees, or any person using the Premises. in the event that the County Is held liable to the Tenant for any reason, Tenant's recovery shall not exceed two thousand five hundred dollars (\$2,500.00)

17. Assignment, Tenant may not assign this Agreement unless the County provides written permission from the County Manager.

18. Release. Tenant shall require each person who rides on the BMX track on the Premises to sign a form which includes the statement: "This track is operated by Winston-Salem/Forsyth County BMX Parents Association, Inc. It is not operated or maintained by Forsyth County or the Park. Forsyth County shall not be liable for any injury or damages you may suffer. All riders ride at their own risk." Tenant shall maintain all Release forms for the Term of this Agreement and for three years afterward. The County shall have the right to inspect all Releases at any time.

19. Governing Law and Jurisdiction, This Agreement is governed by and shall be construed in accordance with North Carolina law, with the exception that provisions relating to conflict of laws shall not apply. The County and Tenant agree that any action relating to this Agreement or use of the Premises shall be brought In the North Carolina General Court of Justice In Forsyth County, and the County and Tenant agree to be subject to the personal Jurisdiction of such court.

20. Non-Waiver. Failure by the County to enforce and Provision of this Agreement shall not constitute a waiver of that provision.

21. Inspection of Premises. The County shall have the right to enter upon and inspect the Premises at any lime, without any notice to Tenant.

22. Interest. Interest shall accrue at the annual rate of eight percent (8%) on any amounts owed by Tenant to the County which are not paid when due.

23. Attorney's Fees and Collection Costs. In the event that Tenant fails to pay the County amounts owed when due, then Tenant shall be responsible and liable to the County for all collections costs, litigation costs, attorney's fees, and other costs which the County may reasonably Incur.

24. Default. In the event that Tenant violates and provision of this Agreement or defaults, then the County shall have the right to terminate the Agreement immediately. Such termination shall not limit any remedy the County has to recover or amounts owing from Tenant,

25. Hold-over. In the event that Tenant does not vacate the Premises on or before the date of termination and has not removed all personal property which was not affixed to the Premises, then Tenant shall be responsible for payment to the County of \$250 per week until Tenant vacates the Premises and shall be responsible for any lost revenue or damages caused *by* its failure to vacate.

26. Notice. Where notice Is required, the County and Tenant shall provide notice by first-class mail to the following addresses:

For the County:

Michael Anderson
Parks & Recreation Director
201 N. Chestnut Street
Winston-Salem, NC 27101

For Tenant:

Nate Haggstrom
BMX Parents Association, Inc.
PO BOX 1426
Clemmons, NC 27012
336-407-2817

27. Entire Agreement: This Agreement embodies the entire agreement between the County and the Tenant, and no representation or agreements, oral or otherwise, between the parties not embodied herein or incorporated by reference shall be of any force and effect. The Agreement shall not be modified, changed or altered in any respect except by a writing signed on behalf of the County by the County Manager and properly signed on behalf of the Tenant.

The Provider hereby certifies that it is not on the North Carolina State Treasurer's list of persons engaging in business activities in Iran, prepare pursuant to NCGS §147-86.58, nor will Provider utilize on this agreement any subcontractor on such list.

It is the expectation of Forsyth County that the provider will comply, and the Provider agrees to comply, with all applicable federal immigration laws in its hiring and contracting practices related to the services covered by this contract involving County funds, as outlined in the Resolution adopted by the Forsyth County Board of Commissioners at its regular meeting of October 2, 2006.

IN WITNESS WHEREOF the County and the Provider have set their hands and seals as of the day and year first above written.

FORSYTH COUNTY , NORTH CAROLINA

By: _____

J. Dudley Watts Jr.
County Manager

ATTEST:

Clerk to the Board
(SEAL)

WINSTON-SALEM/FORSYTH COUNTY BMX
PARENTS ASSOCIATION, INC.

By: *Nate Haggstrom* *March 1, 2017*
Nate Haggstrom
Principal Officer

Exhibit A



CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

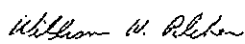
PRODUCER USI Insurance Services LLC 2375 E. Camelback Rd, Suite 250 Phoenix, AZ 85016 602 279-5800	CONTACT NAME: Clorinda Thompson
	PHONE (A/C, No, Ext): 602-234-4101 FAX (A/C, No):
E-MAIL ADDRESS: phx.certificates@usi.com	INSURER(S) AFFORDING COVERAGE
INSURER A: Philadelphia Indemnity Ins.	NAIC # 18058
INSURED American Bicycle Association dba: USA BMX P.O. Box 718 Chandler, AZ 85244	INSURER B:
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			PHPK161583	03/01/2017	03/01/2018	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$Excluded PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$5,000,000 PRODUCTS - COMP/OP AGG \$1,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> Hired AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			PHPK161583	03/01/2017	03/01/2018	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			PHUB573938	03/01/2017	03/01/2018	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Certificate holder and any other entities listed below are listed as additional Insured under the General Liability on a primary & Non Contributory Basis including waiver of subrogation with respect to the American Bicycle Association/USA BMX sanctioned events/competitions/practices and other operations conducted by American Bicycle Association/USA BMX track operators on behalf of the American Bicycle Association/USA BMX.

CERTIFICATE HOLDER Forsyth County, its officials, officers, and employees 201 North Chestnut Street Winston Salem, NC 27101-0000	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

Additional Insured/Waiver of Subrogation/Primary & Non-Contributory

ADDITIONAL INSURED: OWNERS AND / OR LESSORS OF PREMISES, LESSORS OF LEASED EQUIPMENT, SPONSORS OR CO-PROMOTERS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This policy is amended to include as an additional Insured any person or organization of the types designated below, but only with respect to liability arising out of your operations:

1. Owners and / or lessors of the premises leased, rented, or loaned to you, subject to the following additional exclusions:
 - a. This insurance applies only to an "occurrence" which takes place while you are a tenant in the premises;
 - b. This insurance does not apply to "bodily injury" or "property damage" resulting from structural alterations, new construction or demolition operations performed by or on behalf of the owner and / or lessor of the premises;
 - c. This insurance does not apply to liability of the owners and / or lessors for "bodily injury" or "property damage" arising out of any design defect or structural maintenance of the premises or loss caused by a premises defect.

With respect to any additional insured included under this policy, this insurance does not apply to the sole negligence of such additional insured.

2. Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s) subject to the following additional exclusions:
 - a. This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

All other terms and conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

3. Sponsors

4. Co-Promoters

THIS INSURANCE IS PRIMARY, WITH ANY INSURANCE OR SELF-INSURANCE PROGRAM MAINTAINED BY THE NAME OF PERSON OR ORGANIZATION LISTED ABOVE BEING NON-CONTRIBUTING EXCEPTING LOSS RESULTING FROM THE SOLE NEGLIGENCE OF THE NAME OF PERSON OR ORGANIZATION LISTED ABOVE.

BLANKET WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is agreed that, notwithstanding anything to the contrary in paragraph 8. Transfer of Rights of Recovery Against Others To Us of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, in the event of any payment under this policy, we waive our right of recovery against any person or organization with respect to which the insured has waived its right of recovery.

It is further agreed that work commenced under letter of intent or work order, subject to subsequent reduction to writing, with customers whose customary contracts would require a waiver of recovery rights against them also falls within this blanket waiver of subrogation.

All other terms and conditions of this Policy remain unchanged.