

COPY

THE CITY OF SAN DIEGO

KEARNY MOTO PARK

Flat Rate Lease

DOCUMENT NO. RR-277207

FILED JAN 14 1991

**OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA**

RECEIVED
CITY CLERK'S OFFICE

SAN DIEGO' CANTONMENT
OFFICE OF THE CITY CLERK

91 JAN 24 PM 3:35

SIGNED JAN 1 1981

SAN DIEGO, CALIF. 18

DOCUMENT NO.

CCbA

LEASE OUTLINE

<u>SECTION</u>	<u>PARAGRAPH</u>	<u>PAGE</u>
SECTION 1:	USES	
1.01	Premises	1
1.02	Uses	1
1.03	Related Council Actions	1
1.04	Quiet Possession	1
1.05	Easements and Reservations	2
1.06	Competent Management	2
1.07	Operation of Facilities	2
1.08	Rates and Charges	3
1.09	CITY Use	3
1.10	Political Activities	3
1.11	Public Use	3
1.12	Parking	3
SECTION 2:	TERM	
2.01	Commencement	4
2.02	Holdover	4
SECTION 3:	RENT	
3.01	Time and Place of Payment	4
3.02	Rent	4
3.03	Delinquent Rent	6
3.04	Inspection of Records	6
SECTION 4:	ASSIGNMENT	
4.01	Time is of Essence; Provisions Binding on Successors	7
4.02	Assignment and Subletting	7
4.03	Defaults and Remedies	7
4.04	Eminent Domain	10
4.05	Encumbrance	11
SECTION 5:	INSURANCE RISKS/SECURITY	
5.01	Indemnity	11
5.02	Insurance	11
5.03	Waste, Damage, or Destruction	13
5.04	Security Deposit	14
SECTION 6:	IMPROVEMENTS/ALTERATIONS/REPAIRS	
6.01	Acceptance of Premises	15
6.02	Maintenance	15
6.03	Improvements/Alterations	15
6.04	Utilities	15

LEASE OUTLINE

<u>SECTION</u>	<u>PARAGRAPH</u>	<u>PAGE</u>
	6.05 Construction Bond	16
	6.06 Liens	16
	6.07 Taxes	16
	6.08 Signs	16
	6.09 Ownership of Improvements and Personal Property	17
	6.10 Unavoidable Delay	18
SECTION 7:	GENERAL PROVISIONS	
	7.01 Notices	18
	7.02 Compliance with Law	18
	7.03 CITY Approval	19
	7.04 Nondiscrimination	19
	7.05 Equal Opportunity	19
	7.06 Partial Invalidity	19
	7.07 Legal Fees	19
	7.08 Number and Gender	19
	7.09 Captions	19
	7.10 Entire Understanding	19
	7.11 CITY Employee Participation Policy	20
	7.12 Bylaws	20
	7.13 Standard of Employees	20
	7.14 Relocation Payments	20
SECTION 8:	SIGNATURES	
	8.01 Signature Page	21
SECTION 9:	EXHIBITS	
	9.01 Parcel Map	22
	9.02 Schedule of Rates and Charges	23
	9.03 Schedule of Days and Hours of Operation	24

CITY OF SAN DIEGO
FLAT RATE LEASE

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and KEARNY MOTO PARK, hereinafter called "LESSEE."

SECTION 1: USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property located on the northwesterly point of Kearny Mesa Park and Recreation Center at 3170 Armstrong Street, San Diego, California, in the City of San Diego, County of San Diego, State of California, as outlined in red on Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises."

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE for the purposes of developing, operating and maintaining a BMX bicycle motocross facility including snack bar and concessions for the benefit of BMX bicycle motocross operations and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.03 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim

of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.05 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Competent Management. Throughout the term of this Lease Agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a BMX bicycle motocross facility and related activities in a fiscally responsible manner.

1.07 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 9.03; Schedule of Days & Hours of Operation, hereof. Any changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized representative. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.

JS
SMY
10

The Decibel Level on all amplified equipment used at the facility will be maintained at levels satisfactory to the City's Noise Abatement Officer.

- 1.08 Rates and Charges. All charges for merchandise and services or facilities on said premises shall be in accordance with the schedule set forth in Section 9.02, Schedule of Rates & Charges, hereof. Any changes in said schedule are subject to prior written approval by the City Manager or his authorized representative.
- 1.09 CITY Use. The premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, the premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use.
- 1.10 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1, USES, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.11 Public Use. The general public shall not be wholly or permanently excluded from any portion of the premises. LESSEE may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public, and are designed to allow LESSEE to use the premises for the purposes specified herein. LESSEE agrees that all activities conducted on the premises will be as stated in Section 1.02, Uses, hereof.
- LESSEE shall, at all times during the lease term, maintain a CITY-approved sign identifying the property as CITY-owned and available for public use consistent with the terms of this lease. The sign shall be installed by LESSEE at a location agreeable to CITY.
- 1.12 Parking. Scheduling of activities must be coordinated with the Park and Recreation Department to prevent conflict of parking spaces between the motocross operation and other park activities.

RECEIVED

91 JAN 11 AM 8:53

CITY CLERKS OFFICE
SAN DIEGO, CA

SECTION 2: TERM

- 2.01 Commencement. The term of this agreement shall be five (5) years commencing on the first day of the calendar month following execution by the City Manager. Either party hereto may, however, terminate this agreement at any time, without cause, by giving the other party 30 days notice of intent to so terminate. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

SECTION 3: RENT

- 3.01 Time and Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.02 Rent.

- a. Rent Amount. The initial rent is One Hundred Dollars (\$100) per month. Said rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) as hereinafter provided.

- b. (1) CPI Index Adjustments. At the end of 2½ years following the effective date of the lease, the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Long Beach/Anaheim, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1967, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection b.(1) CPI Index Adjustments. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days. In no event shall the adjusted rent as established by the Consumer Price Index be less than the rent in existence immediately prior to the adjustment date.

- (2) Index Adjustment Computation. The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth and sixth full months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index $\frac{121}{110} = 1.10$ (Adjustment Figure)
Base Figure

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index $\frac{138}{121} = 1.14$ (Adjustment Figure)
Base Figure

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 1.14).

- 3.03 Delinquent Rent. If LESSEE fails to pay the rent when due, LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional ten percent (10%) [being a total of fifteen percent (15%)] which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- 3.04 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable

times, so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises and will be complete and accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

SECTION 4: ASSIGNMENT

4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.

4.02 Assignment and Subletting. LESSEE shall not assign this lease, or any interest therein, and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of the City Manager.

4.03 Defaults and Remedies.

a. Default. In the event that:

(1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or

(2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or

(3) LESSEE shall be adjudicated a bankrupt; or

(4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.03a.(1) Default and Remedies, hereof, is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

(1) CITY may correct said default(s) and charge the costs thereof to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.

(2) CITY may correct said default(s) and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the costs of correction performed by or at the direction of CITY.

- (3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically

agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.04 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority

entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.

- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

- 4.05 Encumbrance. LESSEE may not encumber this lease, its leasehold estate, nor its improvements thereon.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.01 Indemnity. LESSEE shall at all times assume the defense of, relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines, and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:

- a. any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises;
- b. any operation, use, or occupation conducted on the premises;
- c. any act, omission, or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or
- d. any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

5.02 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by

authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.
- b. LESSEE'S responsibility to maintain said insurance also includes the following:
- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease. Anything to the contrary herein notwithstanding, the parties specifically agree that failure to maintain such insurance shall entitle City to immediately terminate this lease, with only 24 hours prior notice required for such termination.
 - (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
 - (3) Accident Reports. LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS (\$10,000)

worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.03 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.02, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs,

restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

- 5.04 Security Deposit. A security deposit shall be paid to the CITY by LESSEE in the sum of Five Hundred Dollars (\$500) on or before the commencement date of this lease. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE'S failure to faithfully perform all terms, covenants and conditions of this lease.

The security deposit shall take one of the forms set out below:

- a. Cash. Cash deposits shall be deposited with CITY and CITY shall not be liable to LESSEE for any interest thereon. Provided further, any interest earned by CITY from such deposit or redeposit shall be and remain the property of CITY.
- b. Instrument(s) of Credit. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, shall pledge that the funds are on deposit and guaranteed for payment, and agree that any or all funds shall be paid to CITY upon demand by CITY.

The financial institution and the form of any instrument pledging the funds must be approved by CITY.

LESSEE will maintain the required security deposit throughout the lease term and for ninety (90) days thereafter unless previously released by CITY. Failure to do so shall be considered a default and is grounds for immediate termination of this lease.

In the event CITY utilizes all or any portion of the security deposit, LESSEE shall reimburse the deposit within ten (10) days of notice from CITY to bring the security deposit up to the full specified amount.

The security or any balance thereof will be returned to LESSEE within ninety (90) days following expiration or termination of this lease, provided LESSEE has faithfully complied with all terms, covenants and conditions hereof.

The security deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon sixty (60) days' prior written notice from CITY of such required increase.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects in the premises.
- 6.02 Maintenance. Except as hereinafter provided, LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will perform all such repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to CITY and in compliance with all applicable laws. Appropriate codes and standards of CITY, state and federal agencies shall be observed in all maintenance, repairs and replacements on the premises.
- 6.03 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.04 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.

- 6.05 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.06 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.
- If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:
- a. take all actions necessary to record a valid release of lien, or
 - b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 6.07 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.
- 6.08 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings,

or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.09 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property, free of all liens and claims except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or One-Hundred-Eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

- 6.10 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

SECTION 7: GENERAL PROVISIONS

7.01 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention Property Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

- 7.02 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State, and Federal Governments, at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

- 7.03 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in LESSEE'S use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 7.05 Equal Opportunity. LESSEE agrees to abide by CITY'S Equal Opportunity Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease when LESSEE employs 15 or more persons on the premises. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by CITY for its Equal Opportunity Program each year. LESSEE agrees to respond to CITY'S requests for information concerning said Equal Opportunity Program within thirty (30) days from the date of each such request.
- 7.06 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.09 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement,

agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Bylaws. Membership in LESSEE'S organization shall be open to anyone meeting the requirements of its rules and bylaws. All restrictions, rules, bylaws, and fees, if any, and changes thereto proposed by LESSEE'S organization shall, before being put into effect, be submitted to and receive the written approval of the City Manager. Bylaws shall be on file in the office of the Property Department prior to CITY execution of this lease.
- 7.13 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.14 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.

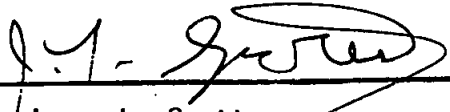
SECTION 8: SIGNATURES

8.01 Signature Page

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

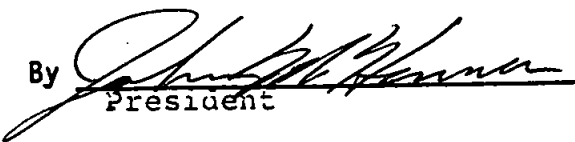
THE CITY OF SAN DIEGO

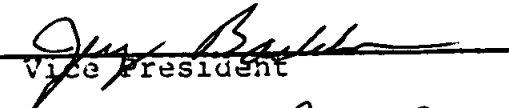
Date January 22, 1991

By 
James L. Spotts
Property Director

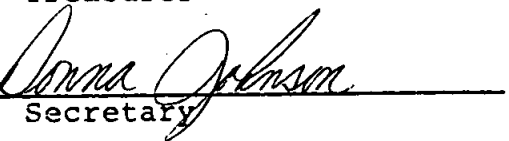
LESSEE: KEARNY MOTO PARK

Date 2 OCT 1990

By 
President

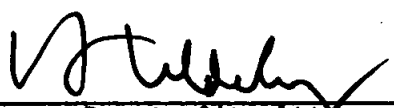
By 
Vice President

By 
Treasurer

By 
Secretary

APPROVED as to form and legality this 24 day of January, 1991.

JOHN W. WITT, City Attorney

By 
Deputy City Attorney

CEBK:st(62-4)
10-2-90

R- 277207

48'00"



9.01 Parcel Map

9.02 Schedule of Rates & Charges

\$7.00 for each race
\$15.00 for double point race
\$25.00 for triple point race

9.03 Schedule of Days & Hours of Operation

Wednesday - 5:00 p.m. - 9:00 p.m.
Saturday - 9:00 a.m. - 1:00 p.m.
Sunday - 10:00 a.m. - 4 p.m.

(R-91-694)

RESOLUTION NUMBER R- 277207

ADOPTED ON JAN 14 1991

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a five- (5) year lease agreement with KEARNY MOTO PARK, for the development, operation and maintenance of a BMX bicycle facility at the Kearny Mesa Park and Recreation Center, at an initial rent of \$100 per month, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No.

RR- 277207.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
10/26/90
Or.Dept:Prop.
Job:220916
R-91-694
Form=r-t

Passed and adopted by the Council of The City of San Diego on JAN 14 1991 by the following vote:

YEAS: WOLFSHEIMER, ROBERTS, HARTLEY, PRATT, BERNHARDT, McCARTY, FILNER,

MAYOR O'CONNOR.

NAYS: NONE.

NOT PRESENT: HENDERSON.

AUTHENTICATED BY:

MAUREEN O'CONNOR

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

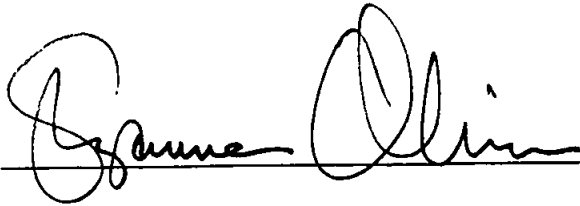
By: SUZANNE OLIVA, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION
NO. R- 277207, passed and adopted by the Council of The City of San Diego, California
on JAN 14 1991.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy

SIA
Kodame
1-22-91

(R-91-694)

277207

RESOLUTION NUMBER R-

ADOPTED ON JAN 14 1991

BE IT RESOLVED, by the Council of The City of San Diego,
that the City Manager is hereby authorized to execute, for and on
behalf of The City of San Diego, a five- (5) year lease agreement
with KEARNY MOTO PARK, for the development, operation and
maintenance of a BMX bicycle facility at the Kearny Mesa Park and
Recreation Center, at an initial rent of \$100 per month, under
the terms and conditions set forth in that lease agreement on
file in the office of the City Clerk as Document No.

RR- 277207.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
10/26/90
Or.Dept:Prop.
Job:220916
R-91-694
Form=r-t

BYLAWS
OF
KEARNY MOTO PARK
A California Nonprofit Mutual Benefit Corporation

ARTICLE 1 - Name

The name of this nonprofit mutual benefit corporation shall be Kearny Moto Park, herein referred to as "Corporation."

ARTICLE 2 - Objects and Purposes

The purposes for which this corporation is formed are pleasure, recreation and other nonprofitable purposes and are to promote bicycle motocross and to operate a facility for bicycle motocross races.

This corporation agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age or physical handicap in the use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.

ARTICLE 3 - Members

This corporation shall have no members.

*Includes
Non discrimination
clause*

ARTICLE 4 - Board of Trustees

4.1 Number of Trustees. The "Board of Trustees" shall consist of nine trustees, until changed by amendment to these

Bylaws as hereinafter provided, and a majority of the board shall constitute a quorum for the transaction of business.

4.2 Powers of Trustees. All corporate powers of the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be controlled by, the Board of Trustees. Without limiting the generality of the foregoing, the Board of Trustees shall have the following powers.

4.2.1 To select and remove all the other officers, agents and employees of the corporation, prescribe such powers and duties for them as may not be inconsistent with law, with the Articles of Incorporation or the Bylaws, fix their compensation, if any, and require from them security for faithful service.

4.2.2 To conduct, manage and control the affairs and business of the corporation and to make such rules and regulations therefore not inconsistent with law, with the Articles of Incorporation or the Bylaws, as they may deem best.

4.2.3 To change the principal office for the transaction of the business of the corporation from one location to another; to fix and locate from time to time one or more subsidiary offices of the corporation; to designate any place within or without the State of California for the holding of any trustees' meetings; and to adopt, make and use a corporate seal and to alter the form thereof from time to time as in their judgment they may deem best, provided such seal shall at all times comply with the provisions of law.

4.2.4 To borrow money and incur indebtedness for the purposes of the corporation and to cause to be executed and deliver therefore, in the corporate name, promissory notes, bond, debentures, deeds of trust, mortgages, pledges, hypothecations or

other evidences of debt and securities therefor.

4.2.5 To enter into contracts and other arrangements for the operation of a bicycle motocross facility and to control the operation of such facility in all manner as in their judgment they may deem best.

4.3 Election and Term of Office. The initial Board of Trustees shall be appointed by the sole incorporator. Three of the initial trustees so appointed shall serve terms of office of six months, three of the trustees so appointed shall serve terms of office of 12 months, and three of the trustees shall serve terms of office of 18 months. After the service of the initial terms of office, all trustees shall be elected for terms of 18 months.

4.4 Vacancies. Any vacancy or vacancies in the Board of Trustees resulting from death, incapacity, resignation, expiration of term of office, removal or otherwise, shall be filled by a majority vote of the trustees or trustee then in office if less than a quorum. All trustees in office at the time of an election, including trustees for whose term of office the election is being held, may vote in the election.

4.5 Place of Meeting. Regular meetings of the Board of Trustees shall be held at any place within or without the state which has been designated from time to time by resolution of the board or by written consent of all members of the board. In the absence of such designation, regular meetings shall be held at the principal office of the corporation. Special meetings of the board may be held either at a place so designated or at the principal office.

4.6 Regular Meeting. Regular meetings of the Board of Trustees shall be held without call on the first Tuesday of

April, July, October and January at 7:00 p.m. of said day: provided, however, should said date fall upon a legal holiday, then said meeting shall be held at the same time the next day thereafter ensuing which is not a legal holiday. Notice of all such regular meetings of the Board of Trustees is hereby dispensed with.

4.7 Special Meetings. Special meetings of the Board of Trustees for any purpose or purposes shall be called at any time by the president or by any three trustees.

Written notice of the time and place of special meeting shall be delivered personally to each trustee or sent to each trustee by mail or by other form of written communication, charges prepaid, addressed to the trustee at his or her address as it is shown on the records of the corporation or, if it is not so shown on such records or is not readily ascertainable, at the place at which the meetings of the trustees are regularly held. Such notice shall be mailed at least 72 hours prior to the time of the holding of the meeting.

Transactions of any meeting of the Board of Trustees, however, called and noticed and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if either before or after the meeting, each of the trustees not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.

4.8 Participation By Telephone. Members of the board may participate in a meeting through the use of conference telephone or similar communications equipment, so long as all members participating at such meeting can hear one another.

Participation in a meeting pursuant to this section constitutes presence in person at such meeting.

4.9 Adjournment. In the absence of a quorum at any meeting of the Board of Trustees, the majority of the trustees present may adjourn the meeting from time to time until the time fixed for the next regular meeting of the board. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the trustees who were not present at the time of the adjournment.

4.10 Removal. A trustee may be removed from office, for cause, by the vote of a majority of the trustees.

4.11 Compensation. The trustees shall receive no compensation for their services as trustees. This provision shall not prohibit the Board of Trustees from authorizing compensation for other services performed by a member of the Board of Trustees.

ARTICLE 5 - Officers

5.1 Officers. The officers of this corporation shall be a president, vice president, secretary and treasurer and such other officers as the Board of Trustees may appoint. When the duties do not conflict, one person, other than the president, may hold more than one of these offices. Officers other than the president need not be members of the Board of Trustees.

5.2 Election. The Board of Trustees shall elect all officers of the corporation for terms of one year or until their successors are elected and qualified.

5.3 Vacancies. A vacancy in any office because of death,

resignation, removal, disqualification or otherwise shall be filled by the Board of Trustees.

5.4 President. Subject to the control of the Board of Trustees, the president shall have general supervision, direction and control of the business and affairs of the corporation. He shall preside at all meetings of the trustees and shall have such other powers and duties as may be prescribed from time to time by the Board of Trustees.

5.5 Vice President. In the absence or disability of the president, the vice president shall perform all the duties of the president, and in so acting shall have all the powers of the president. The vice president shall have such other powers and perform such other duties as may be prescribed from time to time by the Board of Trustees.

5.6 Secretary. The secretary shall keep a full and complete record of the proceedings of the Board of Trustees, shall keep the seal of the corporation and affix the same to such papers and instruments as may be required in the regular course of business, shall make service of such notices as may be necessary or proper, shall supervise the keeping of the books of the corporation and shall discharge such other duties as pertain to the office or as prescribed by the Board of Trustees.

5.7 Treasurer. The treasurer shall receive and safely keep all funds of the corporation and deposit the same in such bank or banks as may be designated by the Board of Trustees. Such funds shall be paid out only on the check of the corporation signed by the president, vice president, treasurer or secretary or by such officers as may be designated by the Board of Trustees as authorized to sign the same. The treasurer shall have such other powers and perform such other duties as may be prescribed from time to time by the Board of Trustees.

ARTICLE 6 - Committees

6.1 Committees. The Board of Trustees shall have the power to establish such committees as it deems worthwhile or appropriate and shall prescribe the responsibilities and duties of such committees and the manner of appointment of members to such committees, except that the vice president shall be a member or ex-officio member of each committee.

6.2 Riders Advisory Committee. The Board of Trustees shall establish a "Riders Advisory Committee," a majority of whose members shall be regular participants in bicycle motocross races sponsored by the corporation. The Riders Advisory Committee, through its designated representative, shall advise the Board of Trustees from time to time as to matters of interest to the participants in such races.

ARTICLE 7 - Fiscal Year

The fiscal year of this corporation shall begin on January 1 and end on December 31 of each year.

ARTICLE 8 - Amendment of Bylaws

These Bylaws may be amended or repealed and new bylaws adopted by a vote of two-thirds of the members of the Board of Trustees at any trustees' meeting.

Amended 9/5/89