

FORSYTH COUNTY BOARD OF COMMISSIONERS

MEETING DATE: MARCH 19, 2020

AGENDA ITEM NUMBER: 11

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: Recommend Approval

SUMMARY OF INFORMATION: See Attached

ATTACHMENTS: YES NO

SIGNATURE: J. Dudley Watts, Jr. /AMS
COUNTY MANAGER

DATE: March 17, 2020

RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT BETWEEN FORSYTH COUNTY AND WINSTON-SALEM/FORSYTH COUNTY BMX PARENTS' ASSOCIATION, INC., 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 property from Forsyth County located on the southwestern corner of Tanglewood Park, consisting of 3.40 acres for a three-year term, with the option to renew for an additional three-year term, at an annual rent of \$2,800.00 for use as a BMX track;

WHEREAS Forsyth County staff has determined 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., will not be needed by the County for County purposes during the term of the proposed lease terms; and

BE IT FURTHER RESOLVED, by the Forsyth County Board of Commissioners that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, the attached Lease Agreement of the above-described property with Winston-Salem/Forsyth County BMX Parents' Association, Inc., for lease of property located on the southwestern corner of Tanglewood Park, consisting of 3.40 acres for a three-year term, with the option to renew for an additional three-year term, at an annual rent of \$2,800.00, for use as a BMX track, 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 19th day of March 2020.

LEASE AGREEMENT

THIS AGREEMENT, made and entered into effective January 17, 2020, by and between FORSYTH COUNTY ("Landlord"), a political subdivision of the State of North Carolina, and the Winston-Salem/Forsyth County BMX Parents' Association, Inc. ("Tenant"), a non profit 501(c)(3) organization;

For the purpose and subject to the terms and conditions hereinafter set forth, the parties agree that Landlord shall lease to Tenant the properties hereinafter set forth.

1. **PREMISES.** Landlord, for and in consideration of rent, conditions, and consideration hereinafter mentioned, provided for and covenanted to be paid, kept and performed by Tenant, leases the BMX track at Tanglewood Park (4061 Clemmons Rd, Clemmons, NC 27012) more particular described in Attachment A (the "Premises"), to be used by Tenant exclusively as BMX track and in conformity with this Agreement.

2. **TERM.** The term of this Agreement shall commence on July 1, 2020, and unless sooner terminated by mutual consent or as hereinafter provided, shall expire on June 30, 2023 (the "Term"); notwithstanding anything to the contrary herein, either party may terminate the Agreement, for any reason or for no reason, by providing written notice to the other party of at least sixty (60) days. The term set out above may be extended by Tenant for a single term of three (3) years. Tenant shall notify the Landlord in writing at least ninety (90) days in advance of the date of expiration of its desire to exercise this option. If the Landlord agrees in writing to extend the Lease, the Agreement shall terminate on June 30, 2026, unless sooner terminated provided herein.

3. **LEASE FEE.** In consideration of the Lease and such conditions set forth herein, Tenant shall pay the Landlord an annual lease payment of two thousand eight hundred dollars (\$2,800.00) each year, payable in two installments of one thousand four hundred dollars (\$1,400.00), which is fifty percent (50%) of the annual lease fee.

The first installment is due on July 1, 2020 and on each anniversary of that date, and the second installment is due on November 1, 2020, and on each anniversary of that date.

4. **USE OF PREMISES.** Tenant, functioning as an independent contractor, shall have the exclusive right and obligation during the Term to operate BMX activities at the Premises. Tenant shall organize, direct and publicize Tanglewood Park's total BMX instructional program, hiring and paying additional staff as needed and resolving all disputes that may arise from the conduct of the program. Tenant shall offer BMX services including private lessons, open practice, clinics, races, and new BMX programs at the Premises. Tenant shall provide updated schedules of practices, race, and other BMX events at the Premises to the County's Parks and Recreation Department staff. Tenant must have prior written authorization by the Parks and Recreation Director or designated Parks and Recreation staff member to hold special events in order to coordinate these BMX events with other Tanglewood Park events. Tanglewood Park events and operations will take precedence over BMX track events. Except as set forth in this Agreement, Tenant shall make no use of the Premises except as set forth in this Agreement without express written consent of Landlord.

5. **INDEMNITY; INSURANCE.** Tenant agrees to and hereby does indemnify and hold Landlord harmless against all claims for damages to persons or Premises by reason of Tenant's use or occupancy of the Premises, and all expenses incurred by Landlord because thereof, including attorney's fees and court costs. Supplementing the foregoing and in addition thereto, Tenant shall during the term of this Lease and any extension or renewal thereof, and at Tenant's expense, maintain in full force the following insurance coverage:

- a) Commercial General Liability Insurance. The Tenant shall maintain 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 three times the occurrence limit. Such insurance shall:
 1. **Include the County, its officials, officers, and employees as additional insureds** with respect to performance of the Services. The coverage shall contain no special limitations on the scope of protection afforded to the above listed insureds.
 2. Be primary with respect to any insurance or self-insured retention programs covering the County, its officials, officers, and employees.
- b) Commercial Premises Insurance. The Landlord is responsible for maintaining real Premises insurance for the Premises located at 4061 Clemmons Rd, Clemmons, NC. The Tenant is solely responsible for maintaining insurance coverage for any improvements made to the Premises by the Tenant and any business personal Premises of the Tenant. In no event will the Landlord be required to repair or replace any improvements or personal Premises owned by the Tenant, its employees, or contractors.
- c) Workers' Compensation and Employers' Liability Insurance. The Tenant shall maintain workers' compensation insurance with North Carolina statutory limits and employers' liability insurance limits no less than \$100,000 each accident and disease.
- d) Other Insurance Requirements. The Tenant shall:
 1. Furnish the County with properly executed certificates of insurance which shall clearly evidence all insurance required in this section.
 2. Provide certified copies of endorsements and policies, if requested by the County, in lieu of or in addition to certificates of insurance.
 3. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of the services.
 4. Maintain such insurance from the time the lease commences until the lease is terminated.

5. Place such insurance with insurers authorized to do business in North Carolina and having A. M. Best Company ratings of not less than A:VII. Any alternatives to this requirement shall require written approval of the County's Risk Manager.
- e) The Tenant understands and acknowledges that these insurance coverage requirements are minimums and that they do not restrict or limit the hold harmless provisions of this agreement.

6. **SERVICES BY LANDLORD.** Landlord agrees to rough mow and clear fallen tree debris outside the BMX track facility fence, but on the leased Premises. Landlord shall not maintain any Premises belonging to Tenant or provided or altered by Tenant. Tenant shall be responsible for its own employees' and participants' safety. Tenant shall promptly report in writing to Landlord any defective condition known to it which Landlord is required to repair and failure to report such conditions shall make Tenant responsible to Landlord for any liability incurred by Landlord by reasons of such conditions.

Additionally, Landlord agrees to provide:

- a) Two (2) 55 gallon trash cans.
- b) One (1) Recycle Bin.

7. **SERVICES AND REPAIRS BY TENANT.** Tenant accepts the Premises in their present condition and as suited for the uses intended by Tenant unless advance notice is provided to Landlord. 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. At the expiration of the Term, the Tenant agrees to return the Premises to the in as good condition and repair as when first received, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted. Tenant, Tenant's staff, agents, contractors or subcontractors shall take no action which may void any manufacturers or installers warranty with relation to the Premises. Tenant shall indemnify and hold Landlord harmless from any liability, claim, demand or cause of action arising on account of Tenant's breach of the provisions of this paragraph.

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 Parks and Recreation Director. Notwithstanding anything to the contrary herein, the Landlord 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.

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.

BMX Events. Tenant may schedule BMX Events, at which it may charge admission and restrict the 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 Landlord 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 shall be responsible for any additional amenities necessary to accommodate event needs; including but not limited to: trash receptacles, dumpsters, portable toilets, seating, etc. 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 Landlord and will be subject to separate rental agreements and fees. The Landlord reserves the right to close any unauthorized event or usage of the Premises immediately.

Sales. If Tenant receives prior permits, licenses, and insurance coverage required by law, including those from the Forsyth County Health Department, Tenant may serve food and non-alcoholic beverages. Proof of necessary certificates and licenses shall be provided to the County's Parks and Recreation Department.

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.

Parks and Recreation Regulations. Tenant shall abide by and comply with all County regulations related to the operation and activities allowed within Tanglewood Park. 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

8. ALTERATIONS. Except as permitted in the underlying Agreement, Tenant shall not make any alterations, additions, or improvements to the Premises without Landlord's prior written consent. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Paragraph upon Landlord's written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, free of any liens or encumbrances. Landlord may require Tenant to remove any alterations, additions or improvements (whether or not made with Landlord's consent) at the termination of the Lease and to restore the Premises to its prior condition, all at Tenant's expense. All alterations, additions and improvements which Landlord has not required Tenant to remove shall become Landlord's Premises and shall be surrendered to Landlord upon the termination of this Lease, except that Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Premises. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the removal of any such machinery or equipment.

9. REMOVAL OF FIXTURES. Tenant may (if not in default hereunder) prior to the expiration of this Lease, or any extension or renewal thereof, remove all fixtures and equipment which it has placed in the Premises, provided Tenant repairs all damage to the Premises caused by such removal.

10. DESTRUCTION OF OR DAMAGE TO PREMISES. If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, this lease shall terminate as of the date of such destruction. If the premises are damaged but not wholly destroyed by any such casualties, rental shall abate in such proportion as effective use of the Premises has been affected and Landlord shall restore Premises to substantially the same condition as before damage as speedily as is practicable, whereupon full rental shall recommence. Tenant is responsible for insuring its personal Premises stored on the Premises, and Landlord shall not be responsible for any damage or loss to Tenant's Premises.

11. GOVERNMENTAL ORDERS. Tenant agrees, at its own expense, to comply promptly with all requirements of any legally constituted public authority made necessary by reason of Tenant's occupancy of the Premises. Landlord agrees to comply promptly with any such requirements if not made necessary by reason of Tenant's occupancy.

12. CONDEMNATION. If the whole of the Premises, or such portion thereof as will make the Premises unusable for the purposes herein leased, is condemned by any legally constituted authority for any public use or purpose, then in either of said events the term hereby granted shall cease from the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of said date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damage caused by condemnation from the condemner. It is further understood and agreed that Tenant shall not have any rights in any award made to Landlord by any condemnation authority.

13. ASSIGNMENT AND SUBLETTING. Tenant shall not, without the prior written consent of Landlord, assign this Lease or any interest hereunder, or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than the Tenant.

14. EVENTS OF DEFAULT. To the extent allowed by law, the happening of any one or more of the following events (hereinafter any one of which may be referred to as an "Event of Default") during the term of this Lease or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Tenant: (a) Tenant fails to pay the rental as provided for herein; (b) Tenant abandons the Premises; (c) Tenant fails to comply with or abide by and perform any other obligation imposed upon Tenant under this Lease; (d) Tenant is adjudicated bankrupt; (e) A permanent receiver is appointed for Tenant's Premises and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; (f) Tenant, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be reduced or payment thereof deferred; (g) Tenant makes an assignment for benefit of creditors; (h) Tenant's effects are levied upon or attached under process against Tenant, which is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof.

15. REMEDIES UPON DEFAULT. Upon the occurrence of Event of Default, Landlord may pursue any one or more of the following remedies separately or concurrently,

without prejudice to any other remedy herein provided or provided by law; (a) if the Event of Default involves nonpayment of rental and Tenant fails to cure such default with five (5) days after receipt of written notice thereof from Landlord, or if the Event of Default involves a default in performing any of the terms or provisions of this Lease other than the payment of rental and Tenant fails to cure such default within thirty (30) days after receipt of written notice of default from Landlord, Landlord may terminate this Lease (if Tenant has failed to cure such default after receiving 30 days written notice) by giving written notice to Tenant and upon such termination shall be entitled to recover from Tenant damages as may be permitted under applicable law; or (b) if the Event of Default involves any matter other than those set forth in item (a) of this paragraph, Landlord may terminate this Lease by giving written notice to Tenant and, upon such termination, shall be entitled to recover from the Tenant damages in an amount equal to all rental which is due and all rental which would otherwise have become due throughout the remaining term of this Lease, or any renewal or extension thereof (as if this Lease had not been terminated); or (c) upon any Event of Default (if Tenant has failed to cure such default after 30 days written notice), Landlord may, without terminating this Lease, re-let the Premises, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlords for the deficiency, if any, between Tenant's rent hereunder and the price obtained by Landlord on reletting, provided however, that Landlord shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant's default. In the event Landlord hires an attorney to enforce its rights upon default, Tenant shall in addition be liable for reasonable attorney's fees and all costs of collection.

16. EXTERIOR SIGNS. The Tenant may only erect an outside sign, which may not exceed 3' X 5', on the Premises identifying Tenant as the operator of the Premises and/or sponsors if the Landlord, in its sole discretion, agrees upon its content, appearance, and location before placement. The decision to erect a sign shall be at the discretion of the Tenant. Additional signage may be requested by the Tenant but must have prior approval by the Landlord before placement.

17. PARKING. Tenant shall be entitled to use parking spaces as available and as assigned by Landlord in the lots serving the Premises.

18. LANDLORD'S ENTRY OF PREMISES. Landlord may advertise the Premises For Rent or For Sale. Landlord may access the Premises at any time necessary to exhibit the Premises to prospective purchasers or tenants, to inspect the Premises and to make repairs required of Landlord or to provide services under the terms hereof or to make repairs to Landlord's adjoining Premises, if any.

19. EFFECT OF TERMINATION OF LEASE. No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof.

20. MORTGAGEE'S RIGHTS. Tenant's rights shall be subject to any bona fide mortgage, deed of trust or other security interest which is now or may hereafter be placed upon the Premises by Landlord. Tenant shall, if requested by Landlord, execute a separate agreement reflecting such subordination, and shall be obligated to execute such documentation as may facilitate Landlord's sale or refinancing of the Premises, including, but not limited to estoppel certificates, subordination or attornment agreements.

21. HOLDING OVER. If Tenant remains in possession of the Premises after expiration of the term hereof or any renewal period, with Landlord's acquiescence and without any express agreement of the parties, Tenant shall be a tenant at will and there shall be no renewal of this Lease by operation of law. If Tenant remains in possession of the Premises after expiration of the term hereof without Landlord's acquiescence, Tenant shall be a tenant at sufferance and commencing on the fraction thereof during which Tenant so remains in possession of the premises, be twice the monthly rental otherwise payable under Paragraph 3 above.

22. RIGHTS CUMULATIVE. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law.

23. WAIVER OF RIGHTS. No failure of Landlord or Tenant to exercise any power given hereunder or to insist upon strict compliance of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's or Tenant's right to demand exact compliance with the terms hereof.

24. ENVIRONMENTAL LAWS. Tenant shall be liable for all environmental damage, liability or cost, including reasonable attorney's fees, arising out of Tenant's use of the Premises and shall defend and hold Landlord harmless from any claims or actions relating to environmental damage, spills, exposure or other effects caused by Tenant within the Premises. Tenant shall comply with all federal, state, and local laws, ordinances, and regulations. Tenant shall not bring unto the Premises any Hazardous Materials without the prior written approval by Landlord. Any approval must be preceded by submission to Landlord of appropriate Safety Data Sheets (SDS Sheets). In the event of approval by Landlord, Tenant covenants that it comply with all requirements of any constituted public authority and all federal, state, and local codes, statutes, rules and regulations, and laws, whether now in force or hereafter adopted relating to Tenant's use of the Premises, or relating to the storage, use, disposal, processing, distribution, shipping or sales of any hazardous, flammable, toxic or dangerous materials, waste or substance, the presence of which is regulated by a federal, state, or local law, ruling, rule or regulation (hereafter collectively referred to as "Hazardous Materials"); (2) comply with any reasonable recommendations by the insurance carrier of either Landlord or Tenant relating to the use by Tenant on the Premises of such Hazardous Materials; (3) refrain from unlawfully disposing of or allowing the disposal of any Hazardous Materials upon, within, about or under the Premises; and (4) remove all Hazardous Materials from the Premises placed upon, released into or introduced to the Premises by Tenant, it's agents, contractors, employees, clients, or invitees, either after their use by Tenant or upon the expiration or earlier termination of this Lease, in compliance with all applicable laws.

25. TIME OF ESSENCE. Time is of the essence in this Lease.

26. ABANDONMENT. Tenant shall not abandon the Premises at any time during the Lease term. If Tenant shall abandon the Premises or be dispossessed by process of law, any personal Premises belonging to Tenant and left on the Premises shall, at the option of Landlord, be deemed abandoned, and available to Landlord to use or sell to offset any rent due or any expenses incurred by removing same and restoring the Premises.

27. DEFINITIONS. "Landlord" as used in this Lease shall include the undersigned, its representatives, assigns, and successors in title to the Premises. "Tenant" shall include the undersigned and its representatives, assigns and successors, and if this lease shall be validly assigned or sublet, shall include also Tenant's assignees or sublease as to the Premises covered by such assignment or sublease. "Landlord", "Tenant", and "Agent" include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

28. NOTICES. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by United States certified mail, return receipt requested, postage prepaid to individuals listed below:

Notice to Tenant:

Winston-Salem/Forsyth County BMX Parents Association, Inc
Attn: Braden Romer
PO Box 1426
Clemmons, NC 27012

Notice to Landlord:

Michael Anderson
Parks and Recreation Director
Forsyth County Government Center
201 N. Chestnut St.
Winston-Salem, NC 27101

With copies to:
Parks Program Manager
Forsyth County Government Center
201 N. Chestnut St.
Winston-Salem, NC 27101

Gordon Watkins
County Attorney
Forsyth County Government Center
201 N. Chestnut St.
Winston-Salem, NC 27101

All notices shall be effective upon delivery. Any party may change its notice address upon notice to the other parties, given as provided herein.

29. ENTIRE AGREEMENT. This Lease contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein shall be of any force or effect. This Lease may not be modified except by a writing signed by all the parties hereto.

30. AUTHORIZED LEASE EXECUTION. Each individual executing this Lease as director, officer, partner, member or agent of a corporation, limited liability company, or partnership represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of such corporation, limited liability company, or partnership.

31. TRANSFER OF LANDLORD'S INTEREST. In the event of the sale, assignment or transfer by Landlord of its interest in the Premises or in this Lease (other than a collateral assignment to secure a debt of Landlord) to a successor in interest who expressly assumes the obligations of Landlord under this Lease, Landlord shall thereupon be released and discharged from all its covenants and obligations under this Lease, except those obligations that have accrued prior such sale, assignment or transfer. Landlord's assignment of this Lease, or of any or all of its rights in this Lease, shall not affect Tenant's obligations hereunder, and Tenant shall attorn and look to the assignee as Landlord, provided Tenant has first received written notice of the assignment of Landlord's interest.

32. MEMORANDUM OF LEASE. Upon request by either Landlord or Tenant, the parties hereto shall execute a short form lease (Memorandum of Lease) in recordable form, setting forth such provisions hereof (other than the amount of Rent and other sums due) as either party may wish to incorporate. The cost of recording such Memorandum of Lease shall be borne by the party requesting execution of same.

33. GOVERNING LAW. This Agreement is governed by the laws of North Carolina, except that provisions relating to conflict of laws shall not apply.

34. INDEPENDENT CONTRACTOR. The Tenant shall operate as an independent contractor, and the Landlord shall not be responsible for any of the Tenant's, its employees or students acts or omissions. To the extent permitted under North Carolina law, the Tenant agrees to hold the Landlord harmless from and against any claims, expenses (including attorney fees), costs or liability for the negligent or intentional acts or omissions of the Tenant or its employees. The Tenant, its employees, and agents have no authority to enter into contracts or agreements on behalf of the Landlord. The Tenant declares that it has complied with all federal and state laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Lease. The Landlord shall not be liable to the Tenant for any expenses paid or incurred by either the Tenant, its employees, or students unless otherwise agreed in writing. The Tenant shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide services unless otherwise agreed in writing. The Tenant, its employees and students shall protect client privacy by complying fully with all federal and state privacy protection laws and regulations concerning the security and privacy of client information. Specifically, the Tenant, its employees and students are required to protect the privacy of any personally identifiable protected health information if it is collected, processed or learned as a result of services provided to the Landlord. The services provided shall comply with applicable privacy regulations pursuant to the Health Insurance Portability and Accountability Act (HIPAA). To the extent permitted by North Carolina law, the Tenant shall indemnify and save harmless the Landlord from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any negligent or intentional act or omission of the Tenant or its employees in the execution of the work or in consequence of any negligence or carelessness in guarding the same, to the extent authorized by law. The Tenant shall assume all risk and bear any loss or injury to Premises or persons occasioned by neglect or accident while using the premises; and shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation or order, to the extent authorized by law.

35. Landlord represents and warrants to Tenant that all action required to authorize Landlord's execution, delivery and performance of this Lease has been taken, and that this Lease constitutes Landlord's binding and enforceable obligation.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have set their hands and seals of the day and year first above written.

FORSYTH COUNTY, NORTH CAROLINA

(SEAL)

By: _____
J. Dudley Watts, Jr, County Manager

Date: _____

ATTEST:

Ashleigh M. Sloop, Clerk to the Board

Date: _____

TENANT: Winston-Salem/Forsyth County BMX
Parents' Association, Inc.

(SEAL)

By: _____

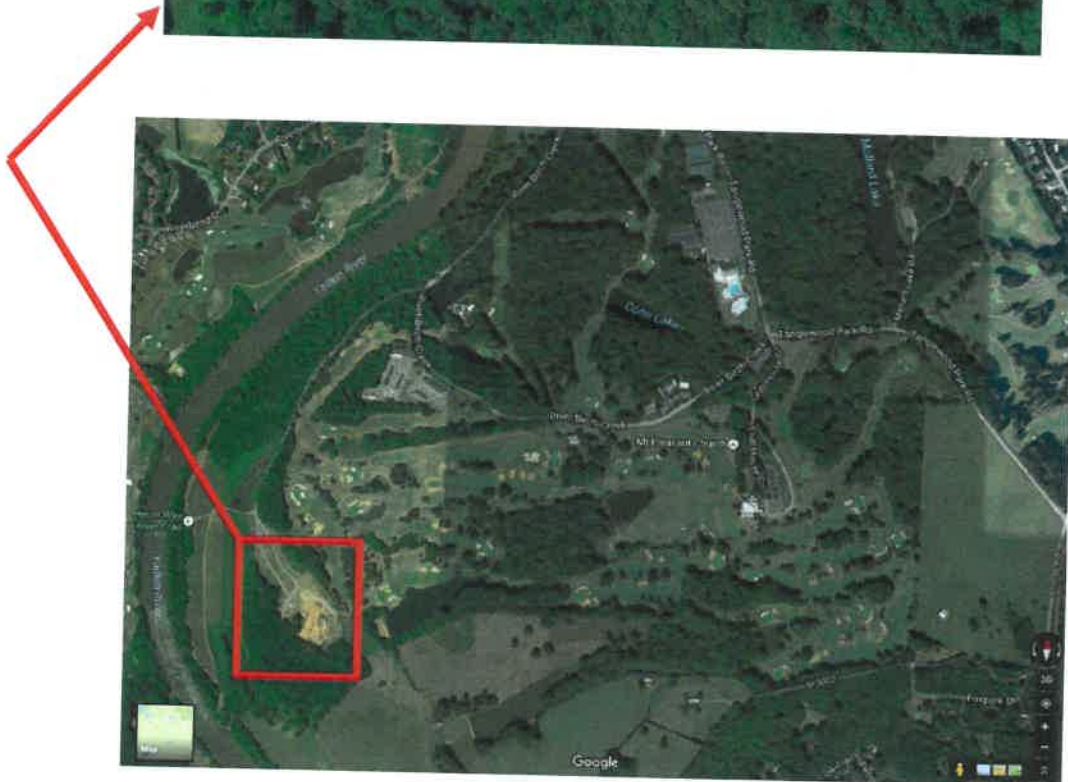
Printed Name: _____

Title: _____

Date: _____

Attachment A

Tanglewood Park BMX Lease Property Description



(to be published in the WSJ on February 17, 2020)

**PUBLIC NOTICE OF
LEASE OF FORSYTH COUNTY PROPERTY**

Notice is hereby given by publication, pursuant to the provisions of N.C.G.S. 160A-272 and other applicable statutory provisions, that the Forsyth County Board of Commissioners, at its regular meeting scheduled for Thursday, March 19, 2020, 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, Winston-Salem, N.C., intends to authorize the execution of a three-year lease agreement, beginning July 1, 2020, and ending June 30, 2023, with one three-year renewal option, of County owned property located in Tanglewood Park at 4601 Clemmons Road, Clemmons, N.C., containing approximately 3.40 acres of real property to the Winston-Salem/Forsyth County BMX Parents' Association, Inc., at an annual rental of \$2,800.00 and other valuable consideration as outlined in the Lease Agreement.

FORSYTH COUNTY BOARD OF COMMISSIONERS
Ashleigh M. Sloop, Clerk to the Board