

COUNTY OF LEHIGH, PENNSYLVANIA
COMMISSIONERS BILL 2014-05
SPONSORED BY COMMISSIONER CREIGHTON
REQUESTED DATE: FEBRUARY 19, 2014
ORDINANCE NO. 2014 -

APPROVING A REVISED AND RESTATED LEASE AGREEMENT WITH
THE VELODROME FUND

WHEREAS, the County of Lehigh (County) is the owner of real property located in Trexlertown, Upper Macungie Township, Lehigh County, upon which are situated the Lehigh Valley Velodrome and a Cycling and Fitness park, collectively known as Bob Rodale Cycling and Fitness Park (Facility); and

WHEREAS, the County entered into a lease for the velodrome portion of the Bob Rodale Cycling and Fitness Park to the Velodrome Fund (Velodrome), a 501(c)(3) nonprofit corporation, approved by Ordinance 1997-No.185, and amended by Ordinance 1998-No.156; and

WHEREAS, the County and the Velodrome desire to enter into a Revised and Restated Lease Agreement which is attached hereto as Exhibit "A", to modify the conditions of the lease; and

WHEREAS, Ordinance approval is required to amend the lease agreement.

NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED BY
THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH,
PENNSYLVANIA, THAT:

1. The foregoing Whereas clauses are incorporated herein as if set forth in their entirety.

2. The proposed Revised and Restated Lease Agreement between the County of Lehigh and the Velodrome Fund, attached hereto as Exhibit "A", is hereby approved.

3. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Ordinance.

4. The County Executive shall distribute copies of this Ordinance to the proper officers and other personnel of Lehigh County whose further action is required to achieve the purpose of this Ordinance.

5. Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance is hereby repealed insofar as the same affects this Ordinance.

6. This Ordinance shall become effective in ten (10) days after enactment.

ADOPTED this ____ day of _____, 2014, by the
following vote:

Commissioners

AYE

NAY

Geoff Brace
Thomas C. Creighton, III
Percy H. Dougherty
David S. Jones, Sr.
Vic Mazziotti
Brad Osborne
Scott Ott
Lisa Scheller
Michael P. Schware

ATTEST: _____
Clerk to the Board of Commissioners

APPROVED this ____ day of _____, 2014.

Thomas S. Muller
Lehigh County Executive

ENACTED this ____ day of _____, 2014.

REVISED AND RESTATED LEASE AGREEMENT

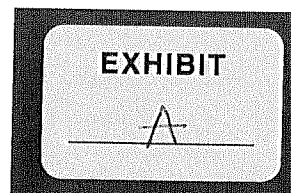
THIS REVISED AND RESTATED LEASE AGREEMENT (hereinafter sometimes referred to as "Lease"), made and entered into as of the _____ day of _____, 2014, in Allentown, Lehigh County, Pennsylvania, by and between: COUNTY OF LEHIGH, PENNSYLVANIA, County of the Third Class, organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter sometimes referred to as the "Lessor") and the VELODROME FUND, a corporation incorporated under Pennsylvania's Non-Profit Corporation Law of 1988, as amended, exclusively for charitable purposes within the meaning of §501(c) (3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States Internal Revenue law, including in particular to operate, support and maintain the BOB RODALE CYCLING AND FITNESS PARK, located in Trexlertown, Pennsylvania, and related programs in support of the government of Lehigh County of the Commonwealth of Pennsylvania (hereinafter sometimes referred to as the "Lessee").

WITNESSETH:

WHEREAS, Lessor is the owner of the BOB RODALE CYCLING AND FITNESS PARK; and

WHEREAS, Lessee is organized and existing, inter alia, to operate, support and maintain the BOB RODALE CYCLING AND FITNESS PARK located in Trexlertown, Pennsylvania and related programs in support of the government of Lehigh County of the Commonwealth of Pennsylvania; and

WHEREAS, Lessee and Lessor have agreed that Lessee shall lease a portion of the BOB RODALE CYCLING AND FITNESS PARK (such portion being hereinafter referred to as the "Facility" or the "Leased Premises") for the development, use and operation of the Facility in accordance with the best interests of Lehigh County;



WHEREAS, the leasing of the Facility by the Lessor and the management of the Facility by the Lessee will be a unique public-private partnership which will benefit the citizens of Lehigh County and the general public; and

WHEREAS, Lessor and Lessee entered into a Lease Agreement dated January 14, 1998, amended in 1998, which they desire to amend and restate it its entirety.

NOW, THEREFORE, intending to be legally bound hereby, and in consideration of the mutual promises set forth herein, the parties do hereby agree as follows:

I. RECITALS

The foregoing recitals are deemed to be a material part of the Lease Agreement and are incorporated herein.

II. DESCRIPTION, USE, TERM AND RENT

A. Lessor hereby agrees to lease the property described in Exhibit "A", attached hereto and incorporated herein by reference for a term of forty (40) years commencing on the second (2nd) day of January, 1998, and ending on the first (1st) day of January, 2038. The property is leased to Lessee for the purpose of staging cycling races, conducting training and cycling related events, but not including "Major Events" as described in Paragraph VIII herein.

B. Lessor and Lessee agree that Lessee's use and operation of the Facility shall be non-exclusive, and shall be subject to the right of Lessor to use the Facility.

(1) Prior to December 1 of each year, Lessee shall submit to Lessor for Lessor's approval, which shall not be unreasonably withheld, a proposed schedule for Lessee's use of the Facility during the succeeding calendar year.

(2) Lessee shall be permitted to make additional use of the Facility as may be approved by the Lessor from time to time during the year.

(3) Lessor shall have the right to use the Facility at those times not scheduled for use by the Lessee. In the event of such use by Lessor, Lessor agrees to be responsible for all costs associated herewith, including the repair of any damage resulting therefrom and the Lessor shall retain all revenues

generated from such use. With the exception of Major Events as described in Paragraph VIII herein, Lessor agrees that it will not engage in cycling events at the Facility except by mutual consent.

(4) Lessor and Lessee shall be permitted to use the roads in the Bob Rodale Cycling and Fitness Park for ingress and egress.

C. Lessee shall pay as rent for the Facility the sum of One (\$1.00) Dollar per year.

D. Personal property used for cycling events belonging to Lessee and cycling participants may be stored in the barn located adjacent to the Facility. Lessor is not responsible for any loss of or damage to said personal property.

III. ALTERATION, MODIFICATION AND IMPROVEMENT OF THE LEASED PREMISES

Lessee agrees as follows:

A. Lessee shall pay all operating costs of the Facility, including, but not limited to insurance, all personnel costs and all utilities. Notwithstanding the foregoing, in the event that Lessor uses the Facility, then Lessor shall pay a reasonable allocation of operating costs of the Facility, determined by the extent and scope of Lessor's use and shall provide insurance for its use of the Facility. Lessor shall reimburse Lessee for up to Thirteen Thousand (\$13,000.00) Dollars per year in utility expenses for years prior to 2014 and Sixteen Thousand (\$16,000.00) Dollars per year for years 2014 and after. Lessee shall submit paid utility receipts to Lessor's Fiscal Office for reimbursement.

B. Lessor agrees to provide daytime maintenance and to make repairs. Lessor reserves the right to make capital improvements to the Facility, at the cost of the Lessor, as may be mutually agreed upon between Lessor and Lessee.

C. If at the end of any calendar year, the amount of Lessee's cash balances (exclusive of any balances from endowments, trusts, restricted gifts or bequests), exceeds the total of the calendar year's operating expenses ("the Excess"), the Lessee will divide such Excess and reserve same, one-half (1/2) in a "Capital Reserve Fund" and one-half (1/2) in a "Operating Reserve Fund".

D. Lessee agrees that it shall not make any alteration, modification, addition or improvement to the Facility without the prior written consent of Lessor. In the event of an emergency, Lessee may

make necessary emergency repairs but must promptly notify Lessor of the emergency and the repairs. Lessee further agrees that temporary alterations or modifications will be removed and the Facility restored at Lessee's expense.

E. Upon termination or expiration of the term of this Lease or any renewal thereof, all improvements, fixtures, appliances (with the exception of fixtures and appliances owned by third parties), utilities, mechanical systems and the like installed by Lessee shall be deemed to be fixtures and shall remain with the Leased Premises and become the sole and exclusive property of Lessor to the extent permitted by law and in accordance with the Internal Revenue Service Code, Internal Revenue Service Regulations, and other regulations applicable at that time to the Lessee.

IV. QUIET POSSESSION

On the commencement date of this Lease, Lessor shall place Lessee in quiet possession of the Leased Premises for its use, purpose and function as set forth herein and subject to the rights of the Lessor as set forth in this Lease.

V. INSURANCE AND INDEMNITY

A. Fire and Extended Coverage

At all times during the term of this Lease, and any renewals thereof, Lessor shall maintain insurance covering the Facility and all improvements that may be erected on the Leased Premises, against loss or damage by fire, vandalism, malicious mischief, riot, civil commotion, vehicles, aircraft, or earthquake, together with any other insurance that Lessor may reasonably require from time to time. The insurance shall be carried by insurance companies authorized to transact business in Pennsylvania, selected by Lessor. In addition, the following conditions shall apply:

- (1) The insurance shall be maintained for the mutual benefit of Lessor and Lessee.

Lessee must be named on the Certificate of Insurance as "additional insured" on all policies referenced hereunder.

(2) In the event of any loss or damage or destruction to the buildings or other Improvements that may be erected on the Leased Premises, Lessee shall give immediate telephone and written notice thereof to Lessor.

(3) Any and all fire or other insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any improvements on the Leased Premises shall be paid to Lessor, and shall be applied by Lessor to the cost of repairing, restoring, and replacing the damaged or destroyed Improvements as nearly as possible to the same type as existed prior to such casualty.

B. Property and Liability Insurance

At all times during the Term of this Lease, and any renewal thereof, Lessee shall maintain comprehensive broad-form general public liability insurance against claims and liability for personal injury, death, and property damage arising from the use, occupancy, disuse, or condition of the Leased Premises, Improvements and Supplemental Parking Areas. For purposes of the Lease the term "Supplemental Parking Areas" shall mean other property owned by Lessor and used by Lessee for parking cars. The insurance shall be carried by an insurance company authorized to transact business in Pennsylvania, selected by Lessee and approved by Lessor and the following conditions shall be met:

(1) Public Liability Insurance, pursuant to this provision, shall be in the minimum amount of One Million (\$1,000,000.00) Dollars per occurrence and Two Million (\$2,000,000.00) Dollars in the aggregate for loss from an accident resulting in bodily injury to or death of persons.

(2) The insurance shall be maintained for the mutual benefit of Lessor and Lessee and Lessor must be named on the Certificate of Insurance as an additional insured on all policies required hereunder.

C. Certificates of Insurance

Lessee and Lessor shall provide each other with the original or a certified copy of certificates of all insurance coverage required under this Lease, and all renewals or extensions thereof. Lessor reserves the right to review categories and levels of insurance coverage held by the Lessee in an ongoing program

of risk management. The Lessee will be notified in writing of coverage requirements or revisions to coverage requirements as determined by the review, all of which shall be commercially reasonable. The Lessee agrees to comply with the commercially reasonable liability coverage requirements of the Lessor set forth above in order to maintain the present contract in force. Lessee agrees to notify Lessor, in writing, of any changes in or cancellation of coverage by Lessee's insurance agent(s). Lessee's insurance shall contain (by endorsement, declarations page, or certificate of insurance), a clause stating that the insurer will provide Lessor of not less than thirty (30) days notice of cancellation or non-renewal of Lessee's insurance.

D. Indemnification of Lessor

Lessor and Lessee agree that the insurance provided for in paragraphs V.A. and V.B. shall be primary. In the event that the insurance provided by Lessee pursuant to paragraph V.B. is exhausted, Lessor shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from any use of the Leased Premises, Improvements, Supplemental Parking Areas or areas used by Lessee's employees, licensees, guests, visitors, invitees and members of Lessee which are caused by or arising from any act or omission of Lessee, or any of its agents, employees, licensees, guests, invitees or members of Lessee, or by or from any accident, fire, or other casualty on the land, or occasions by failure of Lessee to maintain the Premises or Supplemental Parking Areas in safe condition.

E. Vendor Certificates of Insurance

Lessee shall require vendors with whom contracts are for a term in excess of twelve (12) months or for an amount greater than Ten Thousand (\$10,000.00) Dollars or for a hazardous activity, to provide certificates of insurance naming Lessor as an additional insured.

F. Surety Bond

Lessee shall purchase a surety bond in an amount no less than Twenty-Five Thousand (\$25,000.00) Dollars for each and every director, business manager, cashier, and/or agent or employee of Lessee, who has responsibility for handling funds to protect against theft, conversion or other

malfeasance. Lessee shall provide Lessor with evidence of the surety bond which shall indemnify County and provide that County is entitled to the rights of Lessee under the surety bond in the event of default.

VI. GENERAL REPRESENTATIONS OF LESSEE

A. Compliance with Legal Requirements

With respect to the operation of the Facility, Lessee shall promptly comply with all applicable laws and ordinances, and all orders, rules, regulations, and requirements of federal (including, but not by way of limitation, the Americans with Disabilities Act, employment law and tax requirements), state and municipal governments and appropriate departments, commissions, boards, and officers of these governments having jurisdiction over Lessee (hereinafter sometimes referred to as "Legal Requirements"), and in accordance with the terms and provisions of its Articles of Incorporation and its Bylaws, throughout the term of this Lease, and without cost to Lessor, Lessee shall promptly comply with these Legal Requirements whether they are foreseen or unforeseen, or ordinary or extraordinary. To the extent that compliance with any such requirements requires construction, renovation or modification of the Facility, Lessor agrees to provide such construction, renovation or modification to the Facility at its cost.

B. Contest of Legal Requirements

Lessee shall have the right, after prior written notice to Lessor, to contest the validity of any Legal Requirements by appropriate legal proceedings, provided that such contest shall not subject Lessor to any criminal or civil liability as a result of any legal consent. Lessee shall indemnify and hold Lessor harmless from all loss, claims and expenses, including reasonable attorney's fees, as a result of Lessee's failure to comply with Legal Requirements or any contest relating to Legal Requirements.

C. Waste and/or Nuisance

Subject to the specific provisions of this Lease and properly conducted activities operated or administered by Lessee, the Lessee shall not commit any waste on the Leased Premises nor shall Lessee commit or permit the commission of any nuisance on the Leased Premises or use the Leased Premises for any unlawful purpose.

D. Environmental Protection

Lessee, in operating the Facility, will not contaminate the Leased Premises by petroleum or petroleum by-products, by polychlorinated biphenyls (PCBs) or their by-products; or by any other toxic or hazardous substance.

E. Non-Profit Status

Lessee or its successor in interest, if applicable, shall maintain its status as a registered, non-profit corporation during the term of this Lease and any renewal or conversion thereof. If Lessee loses its status as a non-profit corporation, this Lease shall terminate immediately.

F. Non-Compliance

Any failure to comply with the insurance provisions of paragraph V, herein shall constitute a breach of this Lease.

G. Sponsorship

Lessor shall receive all of the rights and benefits for both the season and the events which shall be afforded to the highest sponsor category and/or venue title sponsor for the Velodrome Facility. Major events (as defined in Section VIII) will offer additional promotional opportunities to be mutually agreed upon within the terms of the Major Event agreement.

H. Non-Agency

Lessee further agrees and acknowledges that Lessee is not authorized under the terms of this Lease to bind Lessor in any contractual undertakings with any third parties as a result of the within Lease, and Lessee will not make any representation that it is capable of binding Lessor unless agreed to in writing by Lessor.

VII. OPERATIONS OF FACILITIES

A. Lessee affirmatively covenants to develop, manage, promote and operate the Facility as follows:

- (1) Insure the safe use of the Facility;

(2) Promote revenue growth through marketing promotion, advertising, sponsorship, ticket sales, concession sales and management of the Facility in a fiscally responsible manner;

(3) Promote the reputation of the Facility as a leisure attraction and as a World Class Operation for cycle racing among competitors, sponsors and attendees:

(4) Employ staff as needed;

(5) Cultivate volunteer support;

(6) Organize the regular use of the Facility;

(7) Notify the Lessor of needed maintenance and repairs; and

(8) Prepare and submit an annual report no later than January 15 of each year describing the Lessee's activities and accomplishments in the use and development of the Facility during the preceding year; and

(9) Utilize appropriate business practices in dealing with vendors, employees, racing competitors and volunteer workers. Lessee shall provide Lessor with a list of all vendors. Copies of written contracts with vendors and employees shall be provided in advance to Lessor where the contract is for a term in excess of twelve (12) months or for an amount greater than \$10,000. Lessee shall provide Lessor with a list of vendors updated monthly. Notwithstanding the above contracts for all hazardous activities, including but not limited to fireworks, must be provided in advance to Lessor, along with certificates of insurance satisfactory to Lessor.

B. Lessee will receive all revenues, including but not limited to, all gate, sponsorship and concession revenues. Lessor acknowledges that Lessee may charge for the use of the Facility, and shall retain all revenues derived therefrom. Lessee acknowledges that it shall be entitled to use such revenues only for operation of the Facility in accordance with the terms of this Agreement, including but not limited to the promotion, operation and improvement of the Facility.

C. Lessee's financial records shall be audited by independent public accountants on an annual basis. The results of any audit shall be reported to Lessor annually.

D. Lessee shall furnish to Lessor monthly, through its Fiscal Office, financial statements including a monthly statement of income and expenses and an annual balance sheet. Lessee shall make its accounting records available for Lessor's inspection and audit at any time without advance notice. The cash accounts may be audited without advance notice at any time.

VIII. MAJOR EVENTS

Lessor and Lessee acknowledge that it may be in their mutual best interests to use the Facility for Major Events from time to time. The parties agree that the operation of such events shall be in accordance with a separately agreed to Major Events agreement, which shall be entered into by the parties from time to time for the development, management, promotion and operation of such Major Event(s). The decision as to what constitutes a Major Event, and the terms of the development, management, promotion and operation of such Major Event, including the division of costs and revenues with respect thereto shall be made by the parties by mutual agreement with respect thereto.

IX. DEFAULTS BY LESSEE

If Lessee shall default under the terms of any provisions of this Lease, or if there shall be a material noncompliance with the affirmative covenants or use and operation provisions of the Lease Agreement, and if Lessee does not cure such default(s) within sixty (60) days of receiving written notice from Lessor of such default(s), or if Lessee does not commence reasonable efforts to cure such default(s) within sixty (60) days of receiving written notice from Lessor of such default(s) and reasonably pursue the correction of such default(s) in a timely manner, then Lessor may, as its option, terminate this Lease. Notice of default shall be provided to Lessee, in writing. In the event that Lessor exercises its option to terminate this Lease, Lessee shall have no further liability of any kind to Lessor except those obligations that have accrued under the provisions of this Lease.

X. INSPECTION BY LESSOR

Lessee shall permit Lessor and its agents, servants or employees to enter into and upon the Leased Premises at all times for purposes of inspecting the same for purposes of maintaining or making repairs or alterations to the Improvements on the Leased Premises.

XI. ASSIGNMENT OF SUBLEASE

Lessee shall not assign this Lease or sublet all or any portion of the Leased Premises without the prior written consent of Lessor.

XII. NOTICES

All notices to be given pursuant to the terms of this Agreement shall be served either in person by facsimile or by depositing such notice in the United States Mail, certified, with certifications and postage prepaid, properly addressed and directed to the party to receive the same as follows:

To the County of Lehigh:

Director of Planning and
General Services Manager
Lehigh County Government Center
17 South Seventh Street
Allentown, PA 18101
Fax: 610-820-3615

With a copy to:

Department of Law
Lehigh County Government Center
17 South Seventh Street
Allentown, PA 18101
Fax: 610-820-2093

To Velodrome Fund:

Velodrome Fund
ATTN: Board of Directors
33 South 7th Street
Suite 400
Allentown, PA 18101
Fax: 610-395-7393

With a copy to:

Paul A. McGinley, Esquire
Gross, McGinley, LaBarre & Eaton, LLP
33 South 7th Street
P.O. Box 4060
Allentown, PA 18105
Fax: 610-820-6006

Any party to this Agreement may designate a different person, entity or place to or at which notices shall be given by delivering a written notice to that effect to the other parties, which notice shall be effective on the date of actual receipt, in case of personal delivery, or on the date of mailing, in all other cases.

XIII. MISCELLANEOUS

A. This Lease Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns. This Lease Agreement shall be construed, performed and subject to the laws of the Commonwealth of Pennsylvania.

B. In the event that one or more of the provisions of this Lease shall be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Lease and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

C. This Lease constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties. No amendments, modification or alteration of this Lease or its term shall be binding unless the same is in writing, dated subsequent to the date of this Lease Agreement and executed by both parties hereto.

D. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein.

E. This Lease shall be recorded only by the mutual consent of Lessor and Lessee.

F. Lessee shall retain financial records for three (3) years.

G. Should it be determined that the entry into this Lease Agreement, or otherwise, causes the Leased Premises to become taxable under the various real estate tax laws of the Commonwealth of Pennsylvania and local taxing ordinances then and in that event, Lessor and Lessee shall each have the absolute option to terminate this Lease forthwith upon written notice to the other party.

H. Should Lessor, after consultation with its counsel, reasonably determine, that any or all provisions of this Lease Agreement (or any actions to be taken by any party hereunder), would invalidate Lessor's tax exempt status on its financing obligations or would cause a change in Lessor's rating for bond rating purposes, then: (a) Lessor and Lessee shall attempt to negotiate a revision of this Lease to permit the Lease to continue without the adverse consequences set forth above; and (b) In the event that such modification of the Lease cannot be achieved, the Lessor shall have the right to terminate this Lease forthwith upon written notice to Lessee.

I. Lessee agrees that throughout the term of this lease, the Board of Directors of Lessee shall elect to its membership, one (1) director, who shall be a representative of and designated by the County of Lehigh of the Commonwealth of Pennsylvania.

XIV. CAPTIONS

Captions and headings contained in this Lease are for convenience only and form no part of this Lease.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned Lessor and Lessee hereto execute this Agreement as of the day and year first above written.

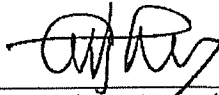
ATTEST:


LESSOR:
County of Lehigh

(Corporate Seal)

BY: _____
Name: Thomas S. Muller
Title: Lehigh County Executive

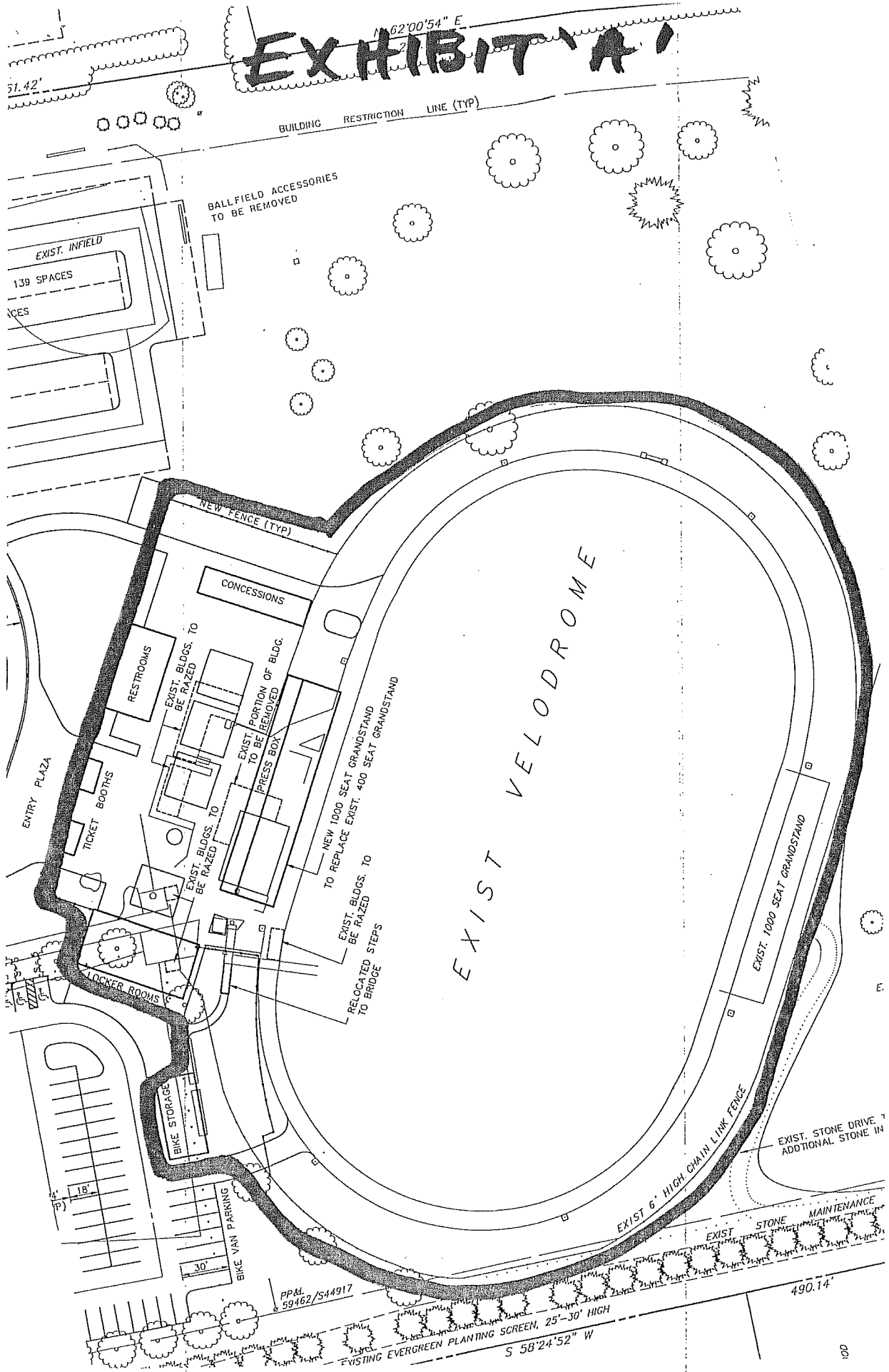
LESSEE:
Velodrome Fund

BY: 
Name: ANDREW CARLSON
Title: Chair



Secretary witness
(Corporate Seal)
Greg Schultz

EXHIBIT 'A'



PP&L
59462/544917