



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: May 2, 2017

Title: Southern Arizona Kart Club- Landlord's Release

Introduction/Background:

The Southern Arizona Kart Club (SAKC), is entering into an agreement with Bank of Tucson, a division of Grandpoint Bank whereby Bank of Tucson has acquired a security interest in the personal property of SAKC.

Pima County hereby consents to the security interest in the agreement and disclaims all interest, liens and claims which SAKC now has or may acquire in the property. Pima County agrees that any lien or claim it may now have or may have in said property will be subject at all time to SAKC's security interest in the property and will be subject to the rights granted by Pima County to SAKC in this Agreement. Nothing in this Agreement provides Bank of Tucson with any right, title or interest in or to any Pima County owned property. Nothing in this Agreement affects Pima County's rights under it's operating agreement with SAKC.

Discussion:

The Bank of Tucson requires a Landlord's Release since the property is owned by Pima County to be able to process a loan to the Vendor. The Bank may only lien the Vendors personal property.

Conclusion:

SAKC and Bank of Tucson will enter into an agreement and release Pima County of all liens and claims.

Recommendation:

Attractions and Tourism Department recommends signature of the release allowing the Vendor to enter into an agreement with the bank to obtain funds for further improvement of the property.

Fiscal Impact:

With increased funding more improvements will be made to the Attraction increasing the attendance therefore increasing income.

Board of Supervisor District:

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ All

Department: Attractions and Tourism

Telephone: 724-7356

Department Director Signature/Date: JAN Lesher

[Signature] 4-17-2017

Deputy County Administrator Signature/Date: JAN Lesher

[Signature] 4-17-2017

County Administrator Signature/Date: C. P. [Signature]

[Signature] 4/17/17

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LANDLORD'S RELEASE

Principal	Loan Date	Maturity	Loan No.	Call/Coll	Account	Officer	Initials
	07-29-2016	08-05-2021	142791395	4A/ 400	SAA0605	MTD	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Borrower: SOUTHERN ARIZONA KART CLUB LLC
11800 South Harrison Road
Tucson, AZ 85747

Tenant: SOUTHERN ARIZONA KART CLUB, INC.
11800 South Harrison Road
Tucson, AZ 85747

Lender: Bank of Tucson, a division of Grandpoint Bank
Main Office
4400 East Broadway
Tucson, AZ 85711

Landlord: Pima County, a body politic and corporate
130 West Congress Street
11th Floor
Tucson, AZ 85701

THIS LANDLORD'S RELEASE is entered into among SOUTHERN ARIZONA KART CLUB LLC ("Borrower"), whose address is 11800 South Harrison Road, Tucson AZ 85747; SOUTHERN ARIZONA KART CLUB, INC. ("Tenant"), whose address is 11800 South Harrison Road, Tucson, AZ 85747; Bank of Tucson, a division of Grandpoint Bank ("Lender"), whose address is Main Office, 4400 East Broadway, Tucson, AZ 85711; and Pima County, a body politic and corporate ("Landlord"), whose address is 130 West Congress Street, 11th Floor, Tucson, AZ 85701. Borrower, Tenant, and Lender have entered into, or are about to enter into, an agreement whereby Lender has acquired or will acquire a security interest or other interest in the Collateral. Some or all of the Collateral may be affixed or otherwise become located on the Premises. To induce Lender to extend the Loan to Borrower against such security interest in the Collateral and for other valuable consideration, Landlord hereby agrees with Lender, Tenant, and Borrower as follows.

- 1. COLLATERAL DESCRIPTION.** The word "Collateral" means certain of Borrower's and/or Tenant's personal property in which Lender has acquired or will acquire a security interest, including without limitation the following specific property:

All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights,

letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

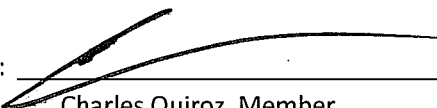
- 2. DISCLAIMER OF INTEREST.** Landlord hereby consents to Lender's security interest (or other interest) in the Collateral and disclaims all interests, liens and claims which Landlord now has or may hereafter acquire in the Collateral. Landlord agrees that any lien or claim it may now have or may hereafter have in the Collateral will be subject at all times to Lender's security interest (or other present or future interest) in the Collateral and will be subject to the rights granted by Landlord to Lender in this Agreement. Nothing in this Agreement provides Lender with any right, title or interest in or to any Landlord-owned property. Nothing in this Agreement affects Landlord's rights under its operating agreement with Tenant.
- 3. ENTRY ON TO PREMESIS.** Landlord, Tenant, and Borrower grant to Lender the right to enter upon the Premises for the purpose of removing the Collateral from the Premises or conducting sales of the Collateral on the Premises. The rights granted to Lender in this Agreement will continue until a reasonable time after Lender receives notice in writing from Landlord that Tenant no longer is in lawful possession of the Premises. If Lender enters onto the Premises and removes the Collateral, Lender agrees with Landlord not to remove any Collateral in such a way that the Premises are damaged, without either repairing any such damage or reimbursing Landlord for the cost of repair.
- 4. MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement: This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement. The covenants of Borrower, Tenant, and Landlord respecting subordination of the claim or claims of Landlord in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any claim or claims to which this Agreement shall apply. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. If Landlord is other than an individual, any agent or other person executing this Agreement on behalf of Landlord represents and warrants to Lender that he or she has full power and authority to execute this Agreement on Landlord's behalf. Without notice to Landlord and without affecting the validity of this Consent, Lender may do or not do anything it deems appropriate or necessary with respect to the Loan, and obligors on the Loan, or any Collateral for the loan; including without limitation extending, renewing, rearranging or accelerating any of the Loan indebtedness.

- 5. AMENDMENTS.** This Agreement, together with any Related Documents, constitutes the entire understating and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- 6. NO WAIVER BY LENDER.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Landlord, shall constitute a waiver of any Lender's rights or of any of Landlord's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.
- 7. SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.
- 8. CANCELLATION for CONFLICT of INTEREST.** This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by this reference.
- 9. DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:
- **Agreement.** The word "Agreement" means this Landlord's Release, as this Landlord's Release may be amended or modified from time to time, together with all exhibits and schedules attached to this Landlord's Release from time to time.
 - **Borrower.** The word "Borrower" means SOUTHERN ARIZONA KART CLUB LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

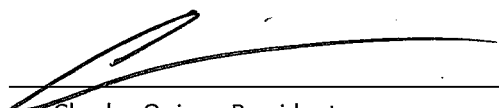
- **Collateral.** The word “Collateral” means all of Borrower’s and Tenant’s right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.
- **Landlord.** The word “Landlord” means Pima County, a body politic and corporate, and is used for convenience purposes only. Landlord’s interest in the Premises may be that of a fee owner, lessor, sublessor or lienholder, or that of any other holder of an interest in the Premises which may be, or may become, prior to the interest of Lender.
- **Lender.** The word “Lender” means Bank of Tucson, a division of Grandpoint Bank, it’s successors and assigns.
- **Loan.** The word “Loan” means any and all loans and financial accommodations from Lender to Borrower and/or Tenant whether now or hereafter existing, and however evidenced.
- **Note.** The word “Note” means the Note dated July 29, 2016 and executed by SOUTHERN ARIZONA KART CLUB LLC in the principal amount of \$296,765.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.
- **Premises.** The word “Premises” means the real property located in Pima County, State of Arizona, commonly known as 11700-11800 South Harrison Road, Tucson, AZ 85747.
- **Related Documents.** The words “Related Documents” mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.
- **Tenant.** The word “Tenant” means SOUTHERN ARIZONA KART CLUB, INC.

BORROWER, TENANT, AND LANDLORD ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS LANDLORD'S RELEASE, AND BORROWER, TENANT, AND LANDLORD AGREE TO ITS TERMS. THIS AGREEMENT IS DATED JULY 29, 2016.

BORROWER: SOUTHERN ARIZONA KART CLUB LLC

By: 
Charles Quiroz, Member

TENANT: SOUTHERN ARIZONA KART CLUB, INC.

By: 
Charles Quiroz, President

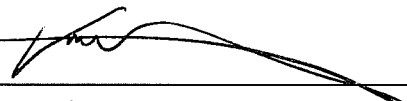
LANDLORD: PIMA COUNTY, a body politic and corporate

By: _____
Sharon Bronson, Chair, Board of Supervisors

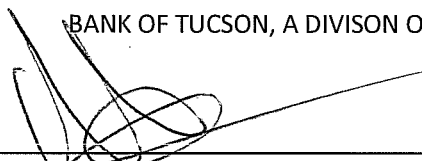
ATTEST:

By: _____
Julie Castaneda, Clerk of the Board

APPROVED AS TO FORM:

By:  3/20/17
Tobin Rosen, Deputy County Attorney

LENDER: BANK OF TUCSON, A DIVISION OF GRANDPOINT BANK

By: 
Mark Davis, Vice President