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GILA COUNTY
www.gilacountyaz.gov

LEASE AGREEMENT NO. 102113
BETWEEN
GILA COUNTY
AND
ARIZONA PUBLIC SAFETY FOUNDATION

This Lease Agreement is made effective as of _____, 2014, by and between Gila County, a political subdivision of the State of Arizona, (herein referred to as County), and the Arizona Public Safety Foundation, a nonprofit corporation organized for the purpose of operating and managing Go Kart racing for young children and teenagers, (herein referred to as Tenant). The parties agree as follows:

1. **PREMISES**

Gila County, is the Owner of real property known as the Go Kart Track located at the Gila County Fairgrounds, in consideration of the lease payments provided in this Lease, leases to Tenant the Go Kart Track (the "Premises") located at 900 E. Fairgrounds Road, Globe, Arizona, 85501.

2. **TERM**

The lease term shall begin on _____, 2014, and will terminate two years later. Upon agreement of both parties the lease may be extended for two (2) additional one (1) year terms. County and Tenant wish to enter into a long term lease agreement so Tenant will have the ability to pursue improvement opportunities for the Go Kart Track and provide young children and teenagers the opportunity to participate in Go Kart racing events.

3. **LEASE PAYMENTS**

Tenant shall pay the County a total annual lease payment of Ten Dollars (\$10.00) payable in advance, payable on July 1 of each year, beginning on July 1, 2014. Lease payments shall be made to Gila County, and sent to Gila County Facilities Department, 745 N. Rose Mofford Way, Globe, AZ. 85501.

4. **POSSESSION**

Tenant shall be entitled to possession on the first day of the term of this Lease, and shall yield possession to County on the last day of the term of this Lease, unless otherwise agreed by both parties in writing.

5. USE OF PREMISES

Tenant desires to manage and operate the Go Kart Track and conduct, at a minimum, one race event during the Gila County Fair, and other Go Kart race events for the use and benefit of the public, and to otherwise use the premises for recreational activities pursuant to A.R.S. §42-6208.

6. PERMITTED AND REQUIRED ACTIVITIES

Tenant shall use the Go Kart Track to conduct an annual race season and may also use the Go Kart Track to conduct activities reasonably related thereto, under the terms set forth herein, all for the benefit of the public. Tenant will provide County the annual race season schedule 30-days prior to the first race event. From time to time, the County may request to use the Go Kart Track for a purpose. Tenant shall not unreasonably deny such a request, provided that the facility is available.

7. MANAGEMENT AND OCCUPATION OF GO KART TRACK

Tenant agrees that it shall operate, manage, maintain and improve the Go Kart Track. County agrees that Tenant shall have the right to use and occupy the Go Kart Track and all improvements located thereon for the term of this Lease.

7.1 ELECTRICITY

Tenant is responsible for paying the electric services year round at the Go Kart Track.

7.2 PARAMEDIC

Tenant agrees to have a paramedic present at the Go Kart Track for all events.

7.3 FEES

Tenant may charge nominal fees for Go Kart racing events to offset the costs of providing events for the recreational use by the public. All fees will be retained by Tenant for its use in connection with the use, operation, and improvements of the Go Kart Track.

7.4 ALCOHOL

Tenant may not serve or sell alcoholic beverages for consumption at the Go Kart Track.

7.5 SIGNS

Tenant may affix and maintain upon the Go Kart Track such signs relating to the events held as Tenant deems appropriate. Any and all advertising signs placed by Tenant at the Go Kart Track shall be immediately removed by Tenant upon termination of this Lease. Tenant shall not remove any operational or safety signage from the Go Kart Track.

7.6 MAINTENANCE AND IMPROVEMENTS

Tenant agrees to maintain and repair fences and lights at the Go Kart Track. Notwithstanding, County reserves the right to assist Tenant in Maintenance and Improvements with either materials and/or labor and to undertake other improvement projects. County's willingness to assist Tenant does not absolve Tenant's obligation to repair fences and lights under this section.

7.7 GO KART TRACK MAINTENANCE

County agrees to maintain the race track surface for Tenant. Race track surface activities include screening clay, blading, water and rolling track surface. County agrees to assist in providing trash service, weed maintenance and pest control service as required.

7.8 FOOD AND DRINK STAND

County agrees, based on availability and convenience of County staff, to provide ice for the Pit Stop (food and drink stand).

7.9 RESTROOMS

Tenant agrees to maintain and pay for cleaning and pumping of Go Kart Track restrooms.

8. MAINTENANCE

Tenant shall have the responsibility to maintain the Premises in good repair at all times.

9. ALTERATIONS

Tenant may not make any improvements, alterations, additions, or changes to the Go Kart Track without first obtaining the written consent of the Gila County Manager or his designee.

10. LONG RANGE PLAN

County and Tenant shall cooperate to create and develop a long-range master plan. The plan, with County approval, may include planned use and operation for other existing facilities in the area of the Go Kart Track, not specifically identified in this lease agreement.

11. LIENS AND ENCUMBRANCES

Tenant shall keep the Go Kart Track free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of the Tenant.

12. PROHIBITED ACTIVITIES

Tenant shall not do or permit anything to be done on or about the Go Kart Track nor bring or keep anything therein which is not within the permitted use of the Go Kart Track as set forth in Section 7, above.

12.1 ACTIVITIES NOT INSURED OR THAT AFFECT INSURANCE

Tenant shall not conduct any activity or permit any activity to be conducted on the Go Kart Track which is not covered by their insurance policies.

12.2 STORAGE

Tenant shall not store within the Go Kart Track equipment, supplies, or scrap items, other than that to be used at the Go kart Track, or used in connection with activities described in Section 7.

12.3 UNLAWFUL ACTIVITIES

Tenant shall not use the Go Kart Track, or permit to be done in, on, or about the Go Kart Track, which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation now in force or which may hereinafter be enacted or promulgated (herein referred to as a "Law" or collectively as "Laws").

13. BOOKS, RECORDS AND REPORTS

An annual written status report of the Tenant activities will be provided to the Gila County Manager by October 31.

14. SECURITY

Tenant shall be responsible for all security and safety relating to the Go Kart Track and shall provide such security personnel and security and safety features sufficient to adequately protect the County, Go Kart Track and persons at the Go Kart Track, from property damage or bodily injury.

15. COMPLIANCE WITH LAWS

Tenant shall, at its sole cost and expense, promptly comply with all Laws in connection with the Tenant's use of the Go Kart Track. Any changes in the governing laws, rule and regulations during the terms of this Lease Agreement shall apply without the necessity of an amendment. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether County be a party thereto or not, that Tenant has violated any Law, shall be conclusive of that fact as between County and Tenant.

Notice is hereby given pursuant to A.R.S. §42-6206, that under A.R.S. §42-6201 *et seq.* government property lease excise taxes ("GPLET") could be owed under this Lease Agreement, except as provided in Section 5 of this Lease Agreement, where the Tenant is required to use the Premises in such a manner to justify an exception from GPLET liability. The failure of Tenant to pay a tax owed under the GPLET statutes after sixty (60) days' prior written notice shall be a default of this Lease Agreement. In the event of such default, at the election of the County, this Lease Agreement may be terminated.

16. INDEMNIFICATION

Gila County requires two items from the Foundation:

1. Proof of insurance (insurance certificate, not the entire policy) with "Gila County" named as additional insured on certificate (located on the lower left hand corner of the insurance certificate)
2. Signed indemnification clause (Attachment A to Lease Agreement No. 102113).

In consideration of the approval of this Lease Agreement by Gila County, to the fullest extent permitted by law, the Tenant shall indemnify, defend, save and hold harmless Gila County, its officials, agents, employees and volunteers ("County") from and against any and all claims, actions, liabilities, damages, losses, or expenses including court costs, reasonable attorneys' fees, and costs of claim processing, investigation and litigation caused, or alleged to have been caused, in whole or in part, incurred or suffered by County as a result of any damages to property or injuries to persons (including death), or any suits, legal or administrative proceedings, claims, or demands, and costs attendant thereto, arising out of or directly related to any act, omission, fault or negligence by the Tenant, its agents, employees, invitees, or anyone under its direction or control or acting on its behalf, or anyone permitted by Tenant to conduct any activity on the Go Kart Track, or in connection with any use or occupancy of the Go Kart Track under the terms of this Lease Agreement, but only to the extent that such claims result in vicarious/derivative liability to the County and are caused by the act, omission, negligence, misconduct or other fault of the Tenant; provided, however, that the Tenant shall have no obligation to indemnify the County for the County's passive negligence. Tenant's

obligations under this Section 16 shall survive the expiration or earlier termination of this Lease Agreement and vacation of the Go Kart Track.

The insurance certificate must be received by the Human Resources and Risk Management Department within ten (10) days of signed Lease agreement, and continued in full force during the entire term of Lease Agreement.

The failure by Tenant to maintain insurance policies as set forth above for any time; in which event Tenant must immediately cease all operations at the Go Kart Track located at the Fairgrounds until such insurance is obtained. In the event of such a default, County may, in County's sole discretion, obtain necessary insurance coverage in which the Tenant shall, within ten (10) days of demand, reimburse and pay to County the full amount of any costs and premiums expended by County to obtain such coverage, including any deductibles or losses within a self-insurance retention. Insurance requirements of Gila County do not limit the indemnity provisions of this agreement. Gila County does not represent that the required insurance is adequate to protect the interests of the Tenant, producer, vendor or any other person or entity. Tenant will obtain the following minimum amount of Commercial general liability coverage: **Commercial General Liability** (occurrence form) including contractual liability: \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

To the fullest extent permitted by law, County shall indemnify, defend, and hold harmless Tenant, its officers, employees, and agents from and against any and all losses, costs, or expenses (including reasonable attorney's fees) incurred or suffered by Tenant as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal or administrative proceedings, claims or demands, and costs attendant thereto, but only to the extent that such losses, costs or expenses result in vicarious or derivative liability to Foundation arising out of any act, omission, negligence, misconduct, or other fault of the County, its officers, officials, agents, or employees. County's obligations under this Section 16 shall survive the expiration or earlier termination of this Lease Agreement.

17. INSURANCE

17.1 Insurance Certificates and Copies of Policies

Tenant shall provide County with current certificates of insurance which shall show County as an additional insured where required. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change.

17.2 Waiver of Subrogation

Each party waives its claims and subrogation rights against the other for losses typically covered by property insurance coverage.

17.3 Changes to Insurance Requirements

County retains the right to reasonably increase the limits or types of coverage from time to time as determined in the best interest of County.

17.4 Injury Reports

Tenant shall provide written notice to Gila County Manager or designee, of any significant injury, defined as an injury likely to result in head or spinal injury, loss of a limb or organ, or serious burns or scarring, within one business day of Tenant becoming aware of such injury. Nothing in this section shall be construed as a request by the County, or a requirement, that the Tenant provide any information in contravention of the Health Insurance Portability and Accountability Act.

18. DEFAULT AND REMEDIES

18.1 DEFAULT

The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by the Tenant:

18.1.1 OPERATION OF FAIRGROUNDS

The vacating or abandonment of the Go Kart Track by Tenant, where such failure shall continue for a period of ten (10) calendar days after notice of such default is sent by County to the Tenant.

18.1.2 OPERATION FEES

The failure by Tenant to timely pay the Operation Fee where such failure shall continue for a period of ten (10) calendar days after notice of such default is sent by County to the Tenant.

18.1.3 GROSS NEGLIGENCE

Tenant or any employee or agent of Tenant acts in a grossly negligent or intentionally wrongful manner and such results in significant injury to any person, as described at Section 17.4 above, or substantial damage to any improvements on the Go Kart Track which County is required to repair under the terms of this Lease Agreement.

18.1.4 OTHER COVENANTS

The failure by Tenant to observe or perform any other of the covenants, conditions or provisions of this Lease Agreement to be observed or performed by Tenant, where such failure shall continue for a period of thirty (30) days after written notice thereof by County to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion provided such cure is completed within one hundred and twenty (120) days of the notice by County.

18.1.5 REPEATED DEFAULTS

More than three (3) material defaults by Tenant, as set forth in Subsections 18.1.1-18.1.5 above, in any calendar year, even if Tenant cures the defaults within the applicable grace periods set forth above.

18.2 REMEDIES

Either party may pursue any remedies provided by law and in equity for breach of this Lease Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Lease Agreement, including without limitation, the right to recover all future Operation Fees, subject to the duty to mitigate.

19. GENERAL PROVISIONS

19.1 CONFLICT OF INTEREST

This Lease Agreement is subject to cancellation pursuant to Arizona Revised Statutes § 38-511, which is incorporated herein by reference.

19.2 WAIVER

The waiver by County or Tenant of any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein. The subsequent acceptance of Fees hereunder by County shall not be deemed to be a waiver of any preceding default by Tenant or any term, covenant or condition of this Lease Agreement, other than the failure of Tenant to pay the particular Operation Fees so accepted regardless of County's knowledge of such preceding default at the time of the acceptance of such Operation Fees. Failure of County or Tenant to insist upon strict performance of any provision or to exercise any remedy hereunder shall not be deemed to be a waiver by such party of any breach relating to such provision or giving rise to such remedy. No provision of this Lease Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party against whom such waiver is sought to be enforced. Nothing herein shall require or obligate County to accept any partial payment of the then current and owed Operation Fees due or partial performance of obligations under this Lease Agreement. County may, in its sole discretion, accept partial payments of amounts due or partial performance of obligations hereunder, such acceptance of partial payments of Operation Fees due or partial performance of obligations hereunder shall in no way be considered or constitute a waiver by County of any failure on the part of Tenant to timely pay Operation Fees due or perform the obligations hereunder nor shall such acceptance be considered an accord and satisfaction of the Operation Fees than due under this Lease Agreement.

19.3 MARGINAL HEADINGS

The marginal headings and Section titles to the Sections of this Lease Agreement are not a part of this Lease Agreement and shall have no effect upon the construction or interpretation of any part hereof.

19.4 TIME

Time is of the essence for this Lease Agreement and each and all of its provisions in which performance is a factor.

19.5 SUCCESSORS AND ASSIGNS

Except as permitted in this Lease Agreement, Tenant shall not voluntarily or by operation of law, assign or transfer this Lease Agreement or any interest therein, or allow any other person to occupy or use the Go Kart Track, or any portion thereof, without first obtaining the written consent of the County. The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the successors and assigns of the parties hereto.

19.6 RECORDATION

This Lease Agreement may be recorded by either party.

19.7 PRIOR AGREEMENTS, AMENDMENTS, AND MODIFICATIONS

This Lease Agreement constitutes the entire agreement between the parties and contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease Agreement, and no prior or contemporaneous agreements or understanding pertaining to any such matters, shall be effective for any purpose. No provision of this Lease Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease Agreement shall not be effective or binding on any party until fully executed by both parties hereto.

19.8 PARTIAL INVALIDITY

Any provision of this Lease Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate another provision hereof and such other provision shall remain in full force and effect unless an essential purpose of this Lease Agreement would be defeated by loss of the invalid, void, or illegal provision.

19.9 CHOICE OF LAW AND VENUE

This Lease Agreement shall be governed by the laws of the State of Arizona and the jurisdiction and venue for any action in regard hereto shall be the Gila County Superior Court.

19.10 ATTORNEY'S FEES

In the event of any action or proceeding brought by either party against the other under this Lease Agreement the prevailing party shall be entitled to recover its expenses and costs, including its Attorney's fees and expert witness fees, in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable.

19.11 APPROVALS

Unless otherwise provided herein, whenever the approval of a party is required by this Lease Agreement, such approval shall be given within thirty (30) days, in writing, if such written approval is not given with such time period, the request shall be deemed disapproved and denied. Unless otherwise noted herein, when the approval or consent of the County is required hereunder, it shall mean the written consent of the County Manager or designee. The approval of the Board of Supervisors of the County shall be required for any extension or amendment of this Agreement.

20. NOTICES

Wherever this Lease Agreement requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or by either regular mail, certified mail (return receipt requested), or by commercial delivery service such as Federal Express or United Parcel Service, addressed to the parties at the addresses specified below and to the following individuals. Notice shall be deemed effective upon personal delivery, three (3) days after deposit, postage prepaid, in the U.S. mail, or one (1) day after overnight delivery via commercial delivery service. Either party may change such address by written notice to the other as herein provided.

Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage paid, to the following addresses:

Gila County
Attn: Gila County Manager
1400 E. Ash Street
Globe, Arizona 85501

Arizona Public Safety Foundation
Attn: Joe Trasser, President
6499 N. Kings Ranch Road, Suite 6-16
Gold Canyon, Arizona 85118

Addresses may be changed from time-to-time by either party by providing notice as set forth above.

21. AUTHORITY OF MANAGER

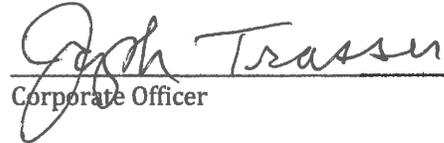
Each individual executing this Lease Agreement on behalf of Tenant represents and warrants that he or she has full authority to do so and that this Lease Agreement binds the corporation. If any court or administrative agency determines that County does not have authority to enter into this Lease Agreement, County shall not be liable to Tenant or any third party by reason of such determination or by reason of this Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed by their respective duly authorized officers as of the date of first set forth above.

GILA COUNTY

Michael A. Pastor, Chairman of the Board

ARIZONA PUBLIC SAFETY FOUNDATION



Corporate Officer

ATTEST

Marian Sheppard, Clerk of the Board of Supervisors

APPROVED AS TO FORM

Bryan B. Chambers, Deputy Attorney Principal
for Bradley D. Beauchamp, County Attorney

ATTACHMENT A TO LEASE AGREEMENT NO. 102113

INDEMNIFICATION CLAUSE:

In consideration of the approval of this Lease Agreement by Gila County, the Tenant shall indemnify, defend, save and hold harmless Gila County, its officials, agents, employees and volunteers ("County") from and against any and all claims, actions, liabilities, damages, losses, or expenses including court costs, reasonable attorneys' fees, and costs of claim processing, investigation and litigation caused, or alleged to have been caused, in whole or in part, by the acts or omissions of the Tenant or any of its owners, directors, employees, agents, contractors or volunteers, but only to the extent that such claims result in vicarious/derivative liability to the County and are caused by the act, omission, negligence, misconduct or other fault of the Tenant; provided, however, that the Tenant shall have no obligation to indemnify the County for the County's passive negligence. It is agreed that the Tenant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Tenant agrees to waive all rights of subrogation against County for losses arising from this Lease Agreement.

WITNESS the hands of the parties hereto this _____ day of _____, 2014.

ARIZONA PUBLIC SAFETY FOUNDATION

By: Joseph Trasser
Name: JOSEPH TRASSER
Date: 3.17.14

GILA COUNTY

By: _____
Name: Michael A. Pastor
Chairman of the Board
Date: _____

APPROVED AS FORM AND WITHIN THE SCOPE OF THE AUTHORITY OF GILA COUNTY

Bryan B. Chambers, Deputy Attorney Principal
for Bradley D. Beauchamp, County Attorney