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(941) 366-8888

M E M O R A N D U M

TO: Scott Lampe, Assistant Superintendent
FROM: Art Hardy
RE: Sailor Circus
DATE: November 15, 2017

As you know, we have received a request by the Circus Sarasota to either make a change to the lease between the School Board and Circus Sarasota, Inc. or to grant a Landlord's Waiver to a portion of that lease to enable Circus Sarasota to secure a loan it is seeking in an effort to make improvements to the Sailor Circus facility. Either such action would require action by the School Board. A discussion of Circus Sarasota's request follows.

The lease

In 2011, the School Board entered into a lease with Circus Sarasota, Inc. for the Sailor Circus portion of the Sarasota High School campus. The lease is for a term of 42 years with a total rental of \$42.00. This lease followed a similar lease to the Police Athletic League which had operated the Sailor Circus for several years prior to determining it no longer wanted to be responsible for that activity. The School Board's lease with Circus Sarasota was accompanied by an operating agreement which imposed a number of requirements on Circus Sarasota including that it operate the Sailor Circus and thereby provide Sailor Circus instruction and performance opportunities for a minimum of 90 students of the Sarasota County School District per school year, and that Sailor Circus students have a minimum of 16 public performances each school year.

The lease contains several provisions germane to the pending request:

1. Circus Sarasota may demolish or alter current improvements on the leasehold premises and construct improvements on the leasehold premises including air conditioning, dressing and changing facilities and administrative offices, upon giving notice to, and securing the consent of the Superintendent or designee.
2. Any permanent improvement constructed upon the premises becomes property of the School Board upon expiration of the Lease. Circus Sarasota retains the right to remove all trade fixtures, including tangible personal property.
3. Circus Sarasota may not assign the lease or sublet or grant any concession or license to use the facilities.
4. Circus Sarasota must keep the leasehold premises and improvements thereon free and clear of all liens, mortgages, claims of lien, and encumbrances.

Circus Sarasota's Current Request

It is my understanding that Circus Sarasota is in the process of planning to construct improvements to the Sailor Circus property which it would like to begin in January. We have been told that in order to finance the construction, the Circus is attempting to secure a short term bridge loan from PNC Bank. (The Circus indicates that it has the majority of funds for the construction on hand and is anticipating additional funds from an estate that will be released in the 3rd quarter of 2018.) Initially, the Bank asked if the lease allowed it to take a Leasehold mortgage. I informed the Circus that the lease did not allow a mortgage. The Circus has now passed on the Bank's request that the School Board take one of two courses of action: 1) amend the lease to allow a leasehold mortgage; or 2) sign a Landlord Waiver that would allow the Bank to place a lien on the Circus's assets. (The Landlord's Waiver form provided by the Bank is attached hereto).

Whether the School Board wishes to consent to the Circus/Bank's request is a policy decision of the Board. I cannot recommend that it agree to allow the Bank to be given a leasehold mortgage. I think the Landlord's Waiver may be a more practical option if the Board wishes to proceed.

The Landlord's Waiver form provided by the Bank permits the Bank to take a lien and security interest in "All assets of the Tenant." I have two problems with the current language in the form. First, it includes in "assets of the Tenant" items including electrical systems, plumbing, HVAC systems "to the extent financed by the Bank." The lease specifically states that every permanent improvement is to become property of the School Board. Second, it is unclear to me whether, under the Landlord's Waiver whether the Bank could claim that the Lease itself is an asset of the Tenant which the Bank could take. I do not believe we want the Bank to have possessory rights under the lease.

In order to correct the two issues raised above, I propose we suggest that an additional paragraph be added to the Landlord's Waiver as follows:

"7. Notwithstanding anything herein to the contrary, the Bank shall not be permitted assume Tenant's rights under its Lease with Landlord nor shall Bank have any rights in any permanent improvement of any nature whatsoever constructed upon the leasehold premises."

Recommendation

As I am informed that time is of the essence, I suggest that you proceed to discuss this with the Superintendent for inclusion on the Board's November 28 agenda. At the same time, I will communicate with the Circus/Bank to see if they are willing to modify the Landlord's Waiver consistent with my proposed paragraph 7 above.

Landlord's Waiver



Date: _____

PREMISES: _____

LANDLORD: _____

TENANT: _____

LENDER: **PNC Bank, National Association**
ADDRESS: _____

The undersigned is/are the owner(s) and/or landlord(s) (the "Landlord") of the above premises (the "Premises") which are rented to the above-named tenant (the "Tenant"). The Tenant has granted or is granting a continuing lien and security interest to PNC Bank, National Association (the "Bank"), in the following collateral (the "Collateral"):

All assets of the Tenant, of every kind and nature, now existing and hereafter acquired and arising and wherever located, including without limitation accounts (including health-care-insurance receivables and credit card receivables), deposit accounts, commercial tort claims, letter of credit rights, chattel paper (including electronic chattel paper), documents, instruments, investment property, general intangibles, goods, inventory, equipment, furniture and fixtures, all supporting obligations of the foregoing, and all cash and non-cash proceeds and products (including without limitation insurance proceeds) of the foregoing, and all additions and accessions thereto, substitutions therefor and replacements thereof, but excluding electrical systems, lighting fixtures, plumbing and restroom fixtures, heating, ventilating and air conditioning units, life safety systems, and related equipment, except to the extent financed by the Bank.

NOW, THEREFORE, the Landlord, intending to be legally bound hereby, and for other good, valuable and sufficient consideration, receipt whereof is hereby acknowledged, hereby agrees as follows:

1. Any and all liens, claims, demands, or rights, including but not limited to the right to levy or distraint for unpaid rent, which the Landlord now has or hereafter acquires on or in any of the Collateral shall be subordinate and inferior to the lien and security interest of the Bank, and as to the Bank, the Landlord hereby specifically waives and relinquishes all rights of levy, distraint or execution with respect to such property, except for any security deposits held by the Landlord and any fixtures which are part of the Premises.
2. Any Collateral of the Tenant shall, at all times, be considered to be personal property and shall not become a part of the Premises, so long as any monies are owing to the Bank by the Tenant.
3. After giving at least two (2) days notice, the Bank may at any time enter upon the Premises and remove the Collateral. The Bank may also take possession of the Collateral on the Premises, and may remain on the Premises for a period of time not to exceed thirty (30) days, without charge, in order to dismantle, prepare for disposition or removal, dispose of or otherwise deal with the Collateral. If the Bank stays on the Premises for longer than thirty (30) days, the Bank shall pay to the Landlord a use and occupancy fee equal to the rent which

the Tenant would have paid to the Landlord during such additional period, pro rated for each day the Bank remains on the Premises. Upon receipt of documentation acceptable to the Bank, the Bank shall reimburse the Landlord for the commercially reasonable costs incurred in repairing damage to the Premises caused by the Bank or its representatives solely in connection with the removal of the Collateral.

4. The Landlord will notify any purchaser of the Premises and any subsequent landlord or other encumbrance holder of the existence of this waiver, which shall be binding upon the heirs, executors, administrators, successors, transferees or assignees of the Landlord and shall inure to the benefit of the successors and assigns of the Bank.

5. The Landlord will give the Bank, at the Bank's address set forth above, ten (10) days prior written notice of the termination of the Tenant's Lease or the termination of the Tenant's right to possess the Premises.

6. **THIS DOCUMENT WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE TENANT, THE BANK AND THE LANDLORD DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE PREMISES ARE LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES.**

WITNESS the due execution hereof as a document under seal, as of the date first written above.

LANDLORD:

WITNESS / ATTEST:

(Corporation, Partnership or other Entity)

By: _____

(SEAL)

Print Name: _____

Print Name: _____

Title: _____

Title: _____

(Include title only if an officer of entity signing to the right)

(Individual) (SEAL)

Print Name: _____

Print Name: _____

(Individual) (SEAL)

Print Name: _____

Print Name: _____

LANDLORD'S MAILING ADDRESS:

STATE OF _____)
)
COUNTY OF _____) ss:

On this, the _____ day of _____, _____, before me, a Notary Public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My commission expires:

Notary Public

Print Name (Delaware and Indiana only)

County of Residence (Indiana only)

STATE OF _____)
)
COUNTY OF _____) ss:

On this, the _____ day of _____, _____, before me, a Notary Public, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, a[n] _____, and that he/she, in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of said _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My commission expires:

Notary Public

Print Name (Delaware and Indiana only)

County of Residence (Indiana only)

Landlord's Waiver



Date: _____

PREMISES: _____

LANDLORD: _____

TENANT: _____

LENDER: **PNC Bank, National Association**

ADDRESS: _____

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NOW, THEREFORE, the Landlord, intending to be legally bound hereby, and for other good, valuable and sufficient consideration, receipt whereof is hereby acknowledged, hereby agrees as follows:

1. Any and all liens, claims, demands, or rights, including but not limited to the right to levy or distraint for unpaid rent, which the Landlord now has or hereafter acquires on or in any of the Collateral shall be subordinate and inferior to the lien and security interest of the Bank, and as to the Bank, the Landlord hereby specifically waives and relinquishes all rights of levy, distraint or execution with respect to such property, except for any security deposits held by the Landlord and any fixtures which are part of the Premises.

2. Any Collateral of the Tenant shall, at all times, be considered to be personal property and shall not become a part of the Premises, so long as any monies are owing to the Bank by the Tenant.

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the Tenant would have paid to the Landlord during such additional period, pro rated for each day the Bank remains on the Premises. Upon receipt of documentation acceptable to the Bank, the Bank shall reimburse the Landlord for the commercially reasonable costs incurred in repairing damage to the Premises caused by the Bank or its representatives solely in connection with the removal of the Collateral.

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WITNESS the due execution hereof as a document under seal, as of the date first written above.

LANDLORD:

WITNESS / ATTEST:

(Corporation, Partnership or other Entity)

By: _____

(SEAL)

Print Name: _____

Print Name: _____

Title: _____

Title: _____

(Include title only if an officer of entity signing to the right)

(Individual) _____ (SEAL)

Print Name: _____

Print Name: _____

(Individual) _____ (SEAL)

Print Name: _____

Print Name: _____

LANDLORD'S MAILING ADDRESS:

STATE OF _____)
)
COUNTY OF _____) ss:

On this, the _____ day of _____, _____, before me, a Notary Public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My commission expires:

Notary Public

Print Name (Delaware and Indiana only)

County of Residence (Indiana only)

STATE OF _____)
)
COUNTY OF _____) ss:

On this, the _____ day of _____, _____, before me, a Notary Public, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, a[n] _____, and that he/she, in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of said _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My commission expires:

Notary Public

Print Name (Delaware and Indiana only)

County of Residence (Indiana only)