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CALL TO ORDER

[Time: 00:00:05]

Mayor Lane: Good evening, everyone. And welcome to our December 11, 2018, City Council meeting. It's a Regular Meeting. It's approximately 5:00.

ROLL CALL

[Time: 00:00:16]

Mayor Lane: And we will start with the roll call, please.

City Clerk Carolyn Jagger: Mayor Jim Lane.

Mayor Lane: Present.

Carolyn Jagger: Vice Mayor Guy Phillips.

Vice Mayor Phillips: Here.

Carolyn Jagger: Councilmembers Suzanne Klapp.

Councilwoman Klapp: Here.

Carolyn Jagger: Virginia Korte.

Councilwoman Korte: Here.

Carolyn Jagger: Kathy Littlefield.

Councilwoman Littlefield: Here.

Carolyn Jagger: Linda Milhaven.

Councilwoman Milhaven: Here.

Carolyn Jagger: David Smith.

Councilman Smith: Present.

Carolyn Jagger: City Manager Jim Thompson.

Jim Thompson: Here.

Carolyn Jagger: City Attorney Bruce Washburn.

Bruce Washburn: Here.

Carolyn Jagger: City Treasurer Jeff Nichols.

Jeff Nichols: Here.

Carolyn Jagger: City Auditor Sharron Walker.

Sharron Walker: Here.

Carolyn Jagger: And the Clerk is present.

[Time: 00:00:40]

Mayor Lane: If you would like to speak, there are white cards the city clerk is holding up to my right over here for any of the agenda items and/or Public Comment if you'd like to give us some written comments, that's the yellow card she's holding up over her head as of right now. We have Scottsdale police officers Eric Boles and Tony Wells and fire captain Sean Cooney who are here to assist you. Police officers are right here, and our fire is right there. If you have any other need for assistance, they're there for you. Behind the Council dais are for staff and Council members only. There are rest rooms to my left under that exit sign, the rest rooms for your convenience.

PLEDGE OF ALLEGIANCE

[Time: 00:01:35]

Mayor Lane: This afternoon, we have the Daughters of American Revolution Grand Canyon Chapter who are here to lead us in the pledge of allegiance, please.

Daughters of American Revolution Grand Canyon Chapter: I pledge allegiance to the flag of the United States of America, and to the republic, for which it stands, one nation, under God, indivisible, with liberty and justice for all.

Mayor Lane: Thank you, ladies.

INVOCATION

[Time: 00:02:11]

Mayor Lane: Our invocation, we have pastor Bruce Johnson of Scottsdale Presbyterian church here with us this evening. Welcome, pastor.

Pastor Bruce Johnson: Thank you, Mr. Mayor. Let us pray. Dear God as the lights of Hanukkah have gone out for another season and the lights of other holidays are upon to be upon us, we give you thanks for our community and the rich diversity that is here, a different customs and cultures that enrich our lives the month of December. We're also mindful of the recent passing of president George Herbert Walker Bush and of his encouragement for all of us to be lights in our community, to do that good that we can do, to play that part each of us can play. And we pray for the wisdom for each of us to play our part this evening.

We also want are reminded of his kinder, gentler ways of a different season in our nation where people of different viewpoints got along, it seems, somewhat better than we do now. We pray for a more gracious attitude for all of our hearts. We pray that if it doesn't fall on other parts of our country, that it would fall here tonight and on our City Council who serves us so well. We pray your blessing on all city employees especially those who will miss family celebrations because they are serving us during the holiday season. And we thank you for our city and pray your blessing on them. All this we pray in your great name. Amen.

Mayor Lane: Amen. Thank you, Pastor. There's no Mayor's report and no presentations for this meeting, outside presentations the.

PUBLIC COMMENT

[Time: 00:04:08]

Mayor Lane: So we'll move on to the Public Comment. It's regarding non-agenda items. Comments are limited to issues within the jurisdiction of the City Council specifically and the speakers are limited to three-minute each with a maximum of five speakers. There will be another opportunity for Public

Comment at the end of the meeting if it's so desired or required. We have five individuals who would like to speak. There will be three minutes each, and we'll start with Darlene Petersen.

[Time: 00:04:58]

Darlene Petersen: Darlene Petersen, I have lived here 60 years, same address. Mayor and members of the Council, same old thing. I just want to review and get you to remember what I came here for about a month ago. My neighbor who got me involved in this had almost a heart attack, and so she's sick again tonight, so here I am. You've got me. And then it's the same old thing. If you don't have a gated community, and if you don't have a homeowners association, you're up the creek without a paddle. And so we come to you to help solve. Now my neighbor said to tell you times have changed, and even though that the signature on the parking ordinance that was parked in 2002, it's not enough. If other cities can do it, then you can. I received this truck classifications from the city, and I had expected that maybe there was some meetings and why weren't we invited? Well, I don't know what the heck you guys do when there is a petition. Why don't you have a meeting? Do I have to make an appointment with the City Manager? Well, I'll do that.

Now, here are all these trucks and classifications well, the one we want to get rid of is in class 6, which is, we don't want any of this crap in our neighborhood. It's all right if the plumber's truck or if an electrical truck parks overnight, but to sit there for weeks and then it takes away from our cost of our, if we wanted to sell, our \$10,000, yeah, \$10,000 house now, they're going for \$200,000 and \$300,000, and so nobody wants to have a big truck. And the message I got from the city was that well, the staff doesn't want to do anything about it. Well, B.S. The staff should tell you that you have to do something about it. Okay. Thank you.

Mayor Lane: Thank you, Darlene.

Darlene Petersen: I was sorry to hear that Bob Vairo died. Bob was very involved in this city, and protect his area.

Mayor Lane: Thank you, again, Darlene.

Darlene Petersen: Merry Christmas.

Mayor Lane: Next would be Sam Colby.

[Time: 00:09:12]

Sam Colby: Hello Mr. Mayor and City Council and people of the jury. We spend millions of tax dollars for the improvement of our city which is necessary. However, I think in order for real change, we should start in the home. Our health is our wealth, and I think we can all agree on that. We could have all the money in the world, but without our health, we truly have nothing. Time is another crucial piece for our success. With the support of the city of Scottsdale, I would like to implement a home health program for our residents. Each participant will receive three things: A core pump machine manufactured locally, a smart scale and a nutrition app. With these three items they'll see an improvement in their strength, their flexibility, and their heart health. Health will improve throughout

Scottsdale that will in turn make for a better quality of life. What an amazing service this would be especially if the city took part in this effort. Daily iso kinetic workouts are approximately only ten minutes. The smart scale tracks progress instantly, and the food app fits in the palm of your hand. Let's work together so that we can make Scottsdale the healthiest city in America. I'm not just another health guy selling a fitness product. I'm a concerned citizen offering each resident the opportunity to save more time, space, and a better quality of living. My petition is simple and will have lasting health benefits for Scottsdale residents. Thank you.

Mayor Lane: Thank you, Mr. Colby. Next is Pat Shaler.

[Time: 00:11:21]

Pat Shaler: Council, my name is Pat Shaler and my address is of record. I submitted a petition to you for violation of the gift clause which you referred to staff. We had a meeting with staff. You received a response. It was nonresponsive. 2010, Neptune's Swim Foundation approached the city about allowing their Scottsdale swimmers to swim in Scottsdale and offered to pay \$5 per lane per hour. The city refused. However, in response to a recent Supreme Court decision, they did start charging the Scottsdale Aquatic Club \$3 per lane per hour. Scottsdale Aquatic Club had that contract continuously until January of '18. Well, they still have it. January of this year, request for proposals were put out. Neptune's Swim Foundation offered to pay \$10 per lane per hour beginning January 2019. After that, when the city knew that that was a market rate and a proposal, you, the City Council, signed Resolution 11120 for \$3 per lane per hour.

Now, it may be the left hand didn't know about the right hand, but the fact is that request for proposal was submitted for \$12 per lane per hour, and you signed resolution for \$3 per hour. October 2, I submitted the GIF or petition for violation November 1, the city filed a response. Revenue is only 30% of scoring. Money is not that important. That's not what they consider. Oh, there we go. Revenue is 30% of the, excuse me. I've got a cold. Cactus Pool only, and by the way, this the given to the clerk to hand out to all of you. It's got the petition on one side and a breakdown of the numbers of what Scottsdale Aquatic Club is paying. For cactus pool alone, under MSFs, Neptune swimming foundation bid for one year, the city would have \$236,804 more than what you're getting now. The bid of Neptune's Swim Foundation works out to \$284,000 a year. That's if you go, if you re-sign the thing that you sign for \$3 an hour. If you re-signed it for, I'm sorry. I've got a temp, and I'm just not doing well. If you re-sign that at \$12 an hour, you would be getting \$224,000 a year more.

Mayor Lane: Your time has expired. If you could wrap up real quick.

Pat Shaler: Over five years, 3-year contract, 2-year extension, that amounts to \$1,420,000, and we could have a fourth pool. Thank you.

Mayor Lane: Thank you, Ms. Shaler. Next is Jason Alexander.

[Time: 00:15:24]

Jason Alexander: Hello. Jason Alexander, 9976 East Jasmine Drive. Last time I was here, a couple months before the election, I spoke about social media anonymity and asked the Council to consider

some statement or making it part of the ethics clause or the civility agreement, but some way that as a group, we could insure that folks could say what they want to say but would put their names behind their words. Now in retrospect after the election, I believe this even more that it is a key component to civil dialogue especially in our very localized conversation. There were anonymous groups on both sides of the election. I have to say in retrospect, I don't think any of them really helped the conversation. I think at times, one side or the other might feel they got a little win from an anonymous post, an anonymous group, an anonymous something but that was quickly dissipated by the rancor and anger it created in the other side t went round and round.

We realized very early on over two and a half years ago that anonymity only hurt our credibility and moving forward that, will be a cornerstone of our presence. We will not tolerate anonymity if someone complains about soft puppet accounts or such on our site, we'll look into it and put them on a time-out. Ask everyone to consider this as a collective step to elevating the further conversation, to making sure that some of the feelings and animosity that took place in the prior election don't occur again. It's something we can all control within ourselves. To simply deny the credibility and the voice and amplification of anonymous sites. Say what you want. Put your names behind it.

Mayor Lane: Thank you, Mr. Alexander. Next is John Seipel.

[Time: 00:17:32]

John Seipel: Thank you. My name is John Seipel. I'm in Maricopa County. The cross streets are 136th and Cascolate. My wife and I ride our mountain bikes and horses into the park. What you have done inside that park is absolutely fantastic. We live about a mile south of the Granite Mountain Trailhead. To get to the entrance, we have to go on Montgomery or parallel to 136th. And if the people went 25 miles per hour, which is the speed limit, it would be fantastic, and I wouldn't be wasting your time. But as it stands now, it's a death-defying dash to the entrance. You know, on a horse or even on a mountain bike, it's even more frightening.

So my request is that you put another entrance in straight across from Cascalote. I have a petition I conjured up and took to a Christmas party and had most of the neighbors sign. This is not exactly a grass roots rebellion or anything. It's in the interest of safety. I'm an excavator by trade. I just kind of paced it off and looked at the path that the trail would take to meet up with the trail that most adjacent trail inside. Roughly 600 feet and the good news is that it would start out on a high point so erosion would not be an issue. If I had to get it done and hire a welder, I think I could probably get it done for \$600. In the interest of the safety once again, I'd like to you consider that proposal. Thank you very much for your time.

Mayor Lane: Thank you, Mr. Seipel. That completes our public testimony at this point in time. Public comment. And as I said before, we may have an opportunity at the end of the meeting if in fact it's called for.

ADDED ITEM

[Time: 00:19:44]

Mayor Lane: Next order of business is we have an added item, Consent Item 6A was add to the agenda on December 7, request a vote to accept the agenda as presented or continue the item to the next scheduled Council meeting which is January 8, 2019. And I might just say to that, these adds need to come within our policy of ten days ahead of time. That's why it's coming to us. So I would ask Council, unless they have some concern or otherwise, if I could have a motion to accept that Consent item as has been presented.

Councilmember Korte: So moved.

Councilwoman Littlefield: I have a question.

Mayor Lane: Go ahead Councilwoman.

Councilwoman Littlefield: The airport lease agreement number two. I received information that had been amended. That the, and I wanted to make sure that that amendment is a part of this current Consent Agenda. Or do we need to make an amendment to add the change to the agreement?

Mayor Lane: It's become part of the motion.

Councilwoman Littlefield: Thank you.

Mayor Lane: We have a motion and a second, I believe. Right? Yes. And therefore, we're now ready to vote. All those indicate by aye or register nay if you're opposed. It's unanimous. So that item is included in our agenda for tonight.

MINUTES

[Time: 00:21:27]

Mayor Lane: Our next order is business is the Minutes. I'd like to request to approve the Special Meeting minutes of November 13, 2018, Regular Meeting minutes of November 13, 2018, and Executive Session minutes of November 13, 2018.

Vice Mayor Phillips: So moved.

Councilwoman Klapp: Second.

Mayor Lane: Motion made by Councilman Phillips and seconded by Councilwoman Klapp. Indicate by aye when the screen comes up. Those opposed with a nay. It's unanimous then. It is minutes are approved.

CONSENT AGENDA

[Time: 00:22:03]

Mayor Lane: Moving on to the Consent Items 1 through 6A. There's been a request by some Council

members to move Item Two to the Regular Agenda. We'll move that Item Two to the Regular Agenda. And that item is the Airport Lease Replacement Agreement. Staff has provided some changes to the Council regarding the effective date of the lease, and staff requests that those changes be included in any motion to approve that agreement, that that item will be removed from Consent to our Regular Agenda items. So unless there are any comments on the Regular Agenda items, let me take a quick look see. Having no public testimony requests on it, then we're then, we're ready for a motion to the Consent items minus Item Two.

Councilmember Korte: Mayor, I would like to move to accept Consent Agenda items 1 through 6 with the exception of Item number 2.

Mayor Lane: I presume you meant to say 1 through 6A.

Councilmember Korte: Excuse me. 1 through 6A.

Mayor Lane: Motion has been made by Councilmember Korte and seconded by Vice Mayor Phillips. We're ready to vote on that Consent Agenda minus Item 2. Register your vote. It's unanimous to pass the Consent items as motioned.

REGULAR AGENDA

ITEM 2 - AIRPORT LEASE AGREEMENTS

[Time: 00:23:40]

Mayor Lane: Moving along to our Regular Agenda items now inclusive with Item Two which is a call for a presentation by staff. We have some requests to speak on that item as well. So that Regular Agenda item, let me just put the proper language on it, it's the proper lease agreement in the request to adopt Resolution 11307 to authorize the following agreements to terminate all the previous lease agreements and replace them with a new consolidated lease agreement for new fixed base operator at Scottsdale airport. So do we have someone, Gary, do you want to come forward?

Aviation Director Gary Mascaro: Mr. Mayor and members of the City Council, I'm going to ask Mr. Herb Marchman and provide this presentation on behalf.

[Time: 00:24:52]

Applicant Herb Marchman: Good evening, Mr. Mayor and members of the Council. I'm Herb Marchman, one of the members of Scottsdale Jet Center and also Santa Fe Jets Center who is the proposed lessee of this property. We have acquired or have reached an agreement to acquire the property on the very south end of the airport on the west side from the Murphy Ventures Group, which is, you would know as Air Commerce Center as well as the Greenway hangar lease. Our intent there is to build a new terminal building and hangars. It's in a phased project.

First building would be 25,000-square foot hangar, and approximately 12,000-square foot terminal, passenger terminal building. Second phase would go to what is known as the finger, which is a portion

that sticks out to the east at the southeast end of the runway, which will accommodate approximately 50,000 square feet of additional hangar space. The third portion, the third phase would be on the greenway hangars which has hangars and T-shades on it. Another portion would be picking up with this lease from the city is approximately 2.8 acres that is now operated by the city that has T shades some hangars for the smaller aircraft owners. Our position is that we would accommodate in the greenway hangars and the T shades to handle all of the current tenants under the T shades. We have agreed in our lease that we would not begin construction until that is satisfied. And we would do that on a gradual basis, probably starting in February or March, and work with each individual that wants to go down there and find a home for them.

Right now, there is not quite enough space, but that space turns fairly frequently according to the Murphy Ventures that have handled that, and so we feel like that we will be able to accommodate everyone within the next year or year and a half before we end up taking those hangars down. There's been some comment about we do not have proper numbers for the construction from our competitors, but we have worked and built on the airport before. We are actually the company that built Scottsdale Air Center which is now Signature Flight Support.

We would be using the same general contractor W. Neil that we used there. We have hired the same engineering firm and architect that the city used on the Gemini project, and so we feel like we pretty well know what our numbers are and that we can present to you a top-quality project that you'll be proud of. And the city would be proud of. It will give a third choice on the airport. It goes along directly with the master plan that was accepted by the city in 2015. And so unless you have some specific questions, that's primarily the oversight of what we're planning to do.

Mayor Lane: Thank you, Mr. Marchman. There may be some questions of you. We generally have a presentation from the staff with regard to the circumstances of this as well. So we may ask for that as well. But we also have some folks who want to speak toward this.

Herb Marchman: Okay. We have a full presentation if you'd like to see it.

Mayor Lane: If you want to, you're certainly welcome to do that. But I guess if I might say, I'm just a little perplexed as to why this is a presentation is strictly on the basis of perspective leaseholder. We went through a process of some evaluation on this, I would presume and went to the Airport Commission as well with a presentation. Is that something that you're not prepared, or you're prepared to give us some background as to how we came to this conclusion?

[Time: 00:29:51]

Gary Mascaro: Absolutely, Mayor, members of the Council. The Aviation department did not do a presentation at Airport Commission because this was brought forward to us as a simple lease assignment. What we presented to the Airport Commission was a background of the process, the existing tenant, Murphy Ventures, provided us notice that they were interested in selling their leasehold interest to this new entity Scottsdale Jet Center to operate as an FBO. We had negotiations with all three parties and concerning this type of situation.

And we created a new lease agreement working with our City Attorney's office to basically perform as a

third FBO in the future. They would have to do significant improvements on those existing leaseholds. If I may ask to put up my presentation, I just have a couple of slides. If you could do slide number one, please. Thank you very much. So the items in blue and red are the two locations in which their existing leasehold today is Murphy Ventures. Those entities came to the city and said we'd like to do an assignment of the agreement. We in turn said there was a request of the green space as well, which was called our city shades and hangars and they'd like to include those locations as well. The reasons why they wanted to include that location is they wanted to build their primary facility there.

In addition, they want to relocate those existing tenants that are city tenants. There are 22 existing t-shaped tenants and ten hangar tenants from the green area to the red area. In order to do that, the Scottsdale Jet Center would have to take over that leasehold as well from the existing tenant Murphy Ventures. We provided them the new lease agreement which is a similar lease agreement as the other two FBOs and the lease agreement spells out performance measures they'll need to complete in order to meet the requirements to be in a third FBO. They would have to do a significant investment, build new hangar space, build a new what they call terminal or executive building and all of those piece would occur during the time frame outlined in the agreement.

There are three phases, phase one would be the green area where they valid to relocate those existing tenants to the red area, and then it would build their new facilities that we can provide you some drawings if you'd like to look at it. The applicant has it in the slides they want presented to us. Phase two would be the in the blue area, on the south end of that blue area is that where we call the finger where they valid to have build a new hangar there. They're not sure what they would to build there because that's a few years out f they don't build by the time frame as outlined in the lease agreement, that blue area will revert back to the city and the airport that we can relook at what we want to do and maybe create a new Gemini hangar part two down there. Then the third area would be in the red area where they would consider taking down a couple of t shades to build a new corporate area. That's about 6 to 8 years down the road.

All of those processes, once those are complete, if they don't complete it, the airport gets that property back, and we can do what we want. If the leasehold doesn't get transferred over to the new entity, the airport does not get that blue area back until another nine years from now much that's when the existing lease goes away. The new performance measures are one we would get that blue property, part of that blue property back sooner for us to develop, because there is a demand, and two, we get the new rental rate which is higher than the existing rental rates of any of the FBOs today and three we would get a new modern lease. That's generally the presentation, Mayor and members of the Council.

[Time: 00:33:40]

Mayor Lane: It sounds an awful lot like a development for consequences in the future that of some kind of failure route. But nevertheless, let me just ask you this. Is this a normal transaction? And frankly also one that the city is fine with. It's under normal circumstances, the kind ever thing that's been done and the criteria we set out.

Gary Mascaro: Members of Council, yes. This is an exciting opportunity for the airport. It's providing a new competitor in the field and provide additional development that our area has been developed in sometime. Those are our oldest leaseholds from the 70 and 80s. It will give an

opportunity for a potential new business client, increase fuel flowage. It's a performance-based lease. We're trying to make sure we maximize that property with the highest and best use.

Mayor Lane: If you could stand by or have a seat, I'm going to go ahead and allow the testimony that's in at the box office. I'll present your slide presentation. Start with Mr. Tom Dorn.

[Time: 00:35:10]

Tom Dorn: Thank you, Mayor Lane, members of the Council. Thank you very much for hearing us today. I'm here on behalf of Signature Flight Support, Signature Aviation Los Angeles as well as Greg Gibson who is the operator of the FBO here. As you know, Signature is one of the leading FBO operators in the country. And internationally also. And they do an excellent job. As you know, they're a strong corporate citizen here in Scottsdale, members of the Scottsdale chamber, very active in the community. And we have concerns and first of all, I'd like to thank Councilwoman Korte for removing this from the Consent Agenda and hearing our concerns. Our request here is that you postpone this.

Mayor, you just mentioned is this normal. We would argue that it is not normal, this process. The November 26 Airport Commission did not go well. It was, the director worked, God bless him. Eventually they got a lot of the questions answered and it did pass through 4-1, but there were many questions from the Commission, why are we doing this? What are the current people on the airport think? And to us, that screams it's not ready? Have we done a market analysis? Do we even need this? Yes, it's a performance-based lease, but before you do that, you would, we would think that you would do an analysis of the market and determine whether or not you even need a third FBO as opposed to doing a lease that's based on performances where they can prove that they're worthy of an FBO. All you have to do is look at some examples around the country, Bakersfield, California, Denver, Colorado. Thermal, Oakland, where it just wasn't ready. And its equivalent, and I've said to all of you, it's like putting four grocery stores on one corner and expecting them all to prosper. One is going to close and the others are going to lose money. They only need so much milk and so much fuel.

It's our understanding that there was a study done the last time this was considered when fuel levels were getting to the prerecession levels at the airport much it was determined there was no need for an additional FBO. This time it's not normal. We haven't done a study on the front end to determine if we even need this third FBO. Back then it was determined it was not. We're finally catching up to those level of fuel. We haven't done a study. We're proceeding with this performance lease, performance-based lease.

If I may add one thing, replacing the shades, the T shades and everything is important, that can be done without an FBO. They can just be built on that property. So there's many other points we'd like to point out, and I'm sure Gary will do that. But please consider postponing this to January if it's going to be a good idea now, it will be a good idea then. Let's do the due diligence for the taxpayers.

Mayor Lane: Thank you. Next will be Greg Gibson.

[Time: 00:38:56]

Greg Gibson: Good evening. Mr. Mayor, Council members, thank you for giving me the time to speak briefly about this matter. My name is Greg Gibson, the general manager at Signature Flight Support in Scottsdale airport. We've been on the field since 2014. Since that time, Signature Flight Support has been voted one of the best FBOs in the United States in trade publications, AIN and pro pilot. Currently there's two FBOs which you're aware of on the field, Ross Aviation and Signature Flight Support. We split the market support essentially 50/50. We have from a competitive standpoint a unique challenge in that we have several other businesses that we are in competition with on the field. What I mean by that, there are three other operators on the field currently. Gemini Group, Southwest Jet Aviation and Hangar One that offer fuel and hangar services as well. We believe there's not been a comprehensive evaluation to determine if a third FBO at Scottsdale will serve or segregate the market. We believe a market valuation for a third-party consultant as to the total impact of this should be completed prior to approving a third lease at Scottsdale airport.

Tom mentioned Denver, Colorado, Centennial Airport is the third largest airport the in United States. After a fourth FBO was brought on to the field, revenues declined as the FBOs fought for market share. The FBOs have been unable to invest back in the airport. There has been one recent build at that airport in the last several years. It's been a lease obligation for a hangar build. As Tom mentioned at the November 26 Advisory Commission meeting, some of the members questioned the agreement as well. Members, further questions the impact on the general aviation community. It's just clear that more due diligence is needed at this point is our position. I would respectfully ask you to consider these things. Who does this development help? The development costs are very high, so the new entrant will have to earn or win high margins in order to compete for business. Was there a study done for the economic impact for adding a third FBO at the airport? And finally what will happen to the newest aircraft that are currently based at the T shared and the hangars, they call this home today. We call it a short-term investment whose risk will be born by other who is have long supported Scottsdale airport. Thank you.

Mayor Lane: Right now it's just your testimony but thank you very much, Mr. Gibson.

Greg Gibson: Thank you.

Mayor Lane: Next would be Steven Gampp who has donated time so four minutes rather than three.

[Time: 00:42:12]

Steven Gampp: Mr. Mayor, thank you, members of the Council. My name is Steven Gampp. I'm the chief financial officer for Ross Aviation. I reside in Denver, Colorado. Ross is one of the two fixed-base operators called FBOs located at Scottsdale municipality. The manager have operated an FBO in Scottsdale since 2005. Like Signature Flight Support and Mr. Gibson's testimony, it's our firm belief that approval of the transfer of this lease and more importantly the addition of another FBO at the airport is not in the best interest of the airport or the Scottsdale community.

One justification that was given by the proposed lessee is that the two current FBOs provide low-quality customer service in Scottsdale. However, the highly respected Annual Aviation International News survey of pilots and other users on the quality of the facilities and services of FBOs across the United States, their 2018 survey, the highest-rated FBO in the United States scored 4.74 out of five. Signature

and Ross at Scottsdale received scores of 4.64 and 4.32 respectively placing them in a top 10% and the top quartile of all FBOs in the country. No FBO at the Santa Fe airport where the proposed lessee currently operates its one and only FBO was ranked in that survey.

It was suggested the third FBO will promote competition to result in lower prices for aviation fuel and generate additional revenue to the airport. It's difficult to compare the price of fuel among airports to see if fuel prices is competitive, because the cost structure of airports is so different. Even though the advertised list price of fuel may be higher or lower in a comparison, the effect of contract fuel agreements available to customers reduces the actual price paid substantially. To give you some evidence of that, so far in 2018, our gross profit per jet fuel gallon at the Scottsdale airport that we collect from our based local customers is less than 50% of the amount that we collect from transient out of town customers.

It costs tens of millions of dollars to build and develop an FBO. Any new operator can offer reduced fuel and hangar pricing on a short-term basis as a loss leader. Without an adequate continuing profit, the operation cannot meet its expenses, will not be able to operate and will potentially default on its lease obligation. Both of the current FBOs are part of larger organizations with substantial financial resources in investor commitments that own multiple FBOs in the United States and in Signature's case, around the world. We do not believe that adequate due diligence has been performed on the proposed lessee to determine the adequacy of its business plan, its sources of committed financing and resources, and its long-term financial viability.

And lastly, and perhaps the most important point is the local aviation community would be harmed by this lease transfer. Although the proposal requires that new FBO to relocate the local aircraft to other areas of the airport from that green parcel, numerous exceptions are or rejections were posted at the November meeting of the advisory committee by local owners about the capacity of the red area to handle the movement. It's not a fair and reasonable long-term plan for these local small aircraft owners to be forced to relocate to build storage hangars that will benefit primarily out of town customers. For these reasons and many more, if we had more time to discuss, we request that the Council deny the proposed lease transfer in the addition of a third FBO or at a minimum to table this decision until such time that an updated market study can be completed to prove the need for a third FBO and that it will be financially viable in a long-term asset to the Scottsdale community. Thank you.

Mayor Lane: Thank you, Mr. Gamp. Next would be Andrew Swesky.

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[Time: 00:47:13]

Andrew Swesky: Mr. Mayor, and Councilmembers. Thanks for hearing my portion of this. I'm with the ATP flight school and I'm based at Scottsdale airport and work very closely with Ross Aviation and Rick Wolesky. Coming here today and seeing the or hearing about this proposed plan and hearing about the potential lack of due diligence, our view is what's going to happen to our aircraft? Dealing with Ross aviation, we have always had fair rates. They offer fantastic customer service, but our aircraft are in front of the green area on the ramp close to the runway. We have seven spots there. So in my thinking, that if an FBO goes there, we'll most likely get displaced as well based on the jet aircraft traffic that would be there. They need to park somewhere. So no one has talked to us.

I've done some research within our company, and this is the first, today was the first we've ever heard of it. Based on the number of aircraft we have operations throughout the airport, you would think someone would let us know or at least give us a heads-up there may be a FBO coming and we may have some issues where our aircraft are going to be. If they were to move to the red area, we are right next to the green area in that building, and that's going to cause an issue for our students and instructors to get to those aircraft every single day when we do multiple flights in each aircraft. With Ross Aviation as I stated before, it's a fantastic FBO. No complaints with them whatsoever. I think if another FBO is going to be considered, we need to look into what's going to happen to those that are on-site. And that's where I am every single day. So thank you.

Mayor Lane: Thank you, Mr. Swesky. Next is Art Rosen.

[Time: 00:49:18]

Art Rosen: Good evening, Mr. Mayor, Councilmembers. It's been a pleasure. I haven't been here in seven years. It's pretty nice. I was not going to be here this evening, but unforeseen circumstances, family members, I was here. I am here, and at the end, I'd like to give a rebuttal to the last couple of people speaking. Both are considered to be general of an area. Piston and jet airplanes make up 50% of the tenants at Scottsdale.

There are two issues here at hand. In order for the Scottsdale Jet Center to be approved, Scottsdale Jet Center has agreed that all piston airplanes located city hangars and shades will be relocated to greenway hangars and shades before any construction commences. Without this relocation 1-for-1, this will never happen. Tenants from the city property were offered the same price for 18 months for what they're paying now. And then after that, price is competitive what deer valley are paying for their hangars. So they won't be gouged. The Marchman group has been an asset to the community in Santa Fe by having Signature when they signed up, Signature lowered their fuel prices to a price that had never been seen before in Santa Fe before they had competition. That was the day after the Santa Fe Jet Center who owns the proposed Scottsdale Jet Center was approved.

This past September, Santa Fe Jet Center held one of the four AOPA fly-ins. Result of that were 5,000 people attended and a direct impact to the economy of Santa Fe of \$800,000 for a 3-day event. A lot of pistons fill up at Deer Valley Airport, and we lose a lot of fuel here because out of the pump here, we charge 1.20 more a gallon, and I'll remind the Council that Ross Aviation's pump was shut down by ADOT for illegal charges to customers who have turned on the pump and charging them a half-gallon fee and leakage and other sundry items they wouldn't fix until ADOT shut them down. I don't know how good they are to us. There's no competition here. You look at the rates that Scottsdale charges for fuel. We're losing a lot of fuel flow fee on the field for pistons which to be honest doesn't make up that much, but it's also for jets that they're porting in fuel, putting on minimum fuel and leaving. We're losing a lot of business.

You can't throw an FBO off the field here because of the leases we have like other airports have done, but you can add a third FBO to increase and enhance competition. In 2000, the City Council directed that Scottsdale be airport be self-sufficient and no tax dollars be spent by the taxpayer. This \$24 million investment from Scottsdale Jet Center further allows Scottsdale to be self-sufficient. Also all these areas are at 1977 lease prices right now would go to 2019 lease prices, which would enhance

the value of self-sufficiency at the airport. Therefore, and again, I want to say no one is being displaced. Nothing can happen until everybody who is involved in this can be replaced, and the gentleman that just spoke from the flight school, as far as I know is not being displaced. The city hangar people are being displaced to the Greenway on a 1-on-1 basis and nothing can start for the Jet Center until they're all settled. Thank you very much.

Mayor Lane: Thank you, Mr. Rosen. That completes the public testimony at this time. And so I would ask if either the city or, I'm sorry, Mr. Marchman, if you would like to come and make any further comments.

[Time: 00:53:58]

Herb Marchman: I don't think there's any business that I know of that would like to see competition come in and take away their profits. That's what I'm hearing from Ross and from Signature. They don't want anybody else to take away any of the money they are putting in their pocket. Or goal is not to do that. Our goal is to enhance the airport and take care of new customers who are coming in according to the study that was done for the master plan. There shows to be a negative hangar space that is needed now. It's estimated they need 500,000 square feet. There's about 380,000 square feet. By 2030, we would need 900,000 square feet. We would only be building 80,000, but it's a start to that.

As far as what kind of analysis has been done, we've been four years on this project. We started, in fact I started talking to the Murphy group about six years ago, and it's taken a lot of negotiation and 8 lot of figures. We have run the numbers and worked with contractors and talked with the city. There has been a 20% growth in fuel sales just in the last two, in fuel volume on the Scottsdale airport just in the last two years. So the growth is there. The need is there. We will be adding approximately 25 new employees to the marketplace. We have some hope of bringing in a major maintenance facility to be on the phase two project, which would be significant for this airport to do all the phase inspections and more detailed things that are not being done at the present time. I want to reiterate we've had a lot of experience on the business when we opened Scottsdale Air Center. We were rated number three by AIN which they keep referring to on our first year of business and we're rated in the top five every year since then.

So and our experience with 11 FBOs, we have always provided service to the customer, our customer is our main focus, and I think if anybody looked at the comments that come through the various aviation websites, we get five stars from Santa Fe every time that you see one. We've never had a negative, and we did that as well when we had Scottsdale Air Center here. So we will make you happy that you have brought us here. We'll make you proud of the industry that we bring in, and we believe in taking care of the people first and our customers first. We'll listen to them, and we'll build to what their needs are. So I thank you for our time, and I encourage you to vote for this.

Mayor Lane: Thank you, Mr. Marchman. You might stand by for questions. You can go ahead and sit down, please, for now. I'm sorry.

[Time: 00:57:34]

Gary Mascaro: Thank you, Mayor and members of the Council. I want to make some comments on comments made during the Public Comment. We did our due diligence much the aviation department when this was brought forward by the existing tenant, again the existing tenant asked us for a lease assignment. We want to transfer our lease rights to this new individual. They're going to operate it as it's been operated since the 70s and 80s but they also want to turn it into a new FBO. If they do not meet the minimum qualifications or minimum standards we have in our code required by the FAA that they have to build certain facilities and, they cannot become an FBO. They can still operate as they operate it today. That's why we call it a performance-based lease, they want to get to here, but they can operate here until existence. That's one.

Two is we did complete our due diligence with regards to existing qualified tenant, the new Marchman group. We had to do an evaluation, can they operate the facility as it is operating today? We did complete that evaluation in the beginning. They talked about a market assessment or valuation. We had done a market assessment quite sometime ago when we had one FBO and were looking at investing into a second FBO. This was created and we evaluated the numbers of fuel. Fuel is the big driver and I'll try to keep it simple. Based on the minimum standards there should be so much fuel volume that should be generated at the airport. At the time it was 5 million gallons of fuel can support two FBOs. It's a market assessment. We have almost 7.5 million to 8 million gallons of fuel if you run the numbers, it would equate to three potentially FBO operators. The concern is if they operate as a third FBO is not as much of a concern as you would think.

[Time: 00:59:28]

Finally, and most importantly, this entity is willing to invest \$24 million to become an FBO operator. So I'm assuming they have done their homework as well with their direct customers. And the last piece, there's a lot of FAA regulations and rules. One of the challenges from an airport's perspective of a business operator that wants to conduct aviation business at the airport and there's space available for that entity to do it, it's very hard for the airport to say no further questions we're not going to allow that particular entity to try to do that type of operation.

As a matter of fact, there's a quote in a memo that was provided in the FAA if you could do slide four, please. The bottom quote says the FAA has historically relied on market supply and demand to commercial and aeronautical services. All of these requirements I list here are grand assurances that we sign on and agree to as well as an advisory circular for the minimum standards when we have minimum standards in place so an FBO operator can't just show up with a truck and start fueling. They have to build those facilities and maintain those facilities very similar to FBOs today. The market will drive the use of the airport. If there's an opportunity for any commercial aeronautical opportunity, hangar opportunity or new Gemini hangars, if there's a demand and a need, we should allow that opportunity to happen. I want to make those clarifications, Mayor and members of Council.

Mayor Lane: Thank you. With that, we've got some questions, and I'll start with Vice Mayor Phillips.

[Time: 01:01:10]

Vice Mayor Phillips: Thank you, Mayor. I don't know if it's a question are if Mr. Marchman or anybody else that could answer it. I'm guessing if they want to come in and be an FBO, they probably

have their own customers. Would they be bringing in more business on their own because their loyal customers would go to them anyway?

Gary Mascaro: I'll try to answer it but I'll also probably ask that's okay with the Mayor and Council to bring herb Marchman back up, but the question is yes. That's what they shared with us that they have a customer base. Obviously several of their customers go to the existing FBOs today that do a great job. They do potentially say they have new customers they may bring as well. I'll probably defer that to Mr. Marchman.

Mayor Lane: Would you confirm that, Mr. Marchman.

Herb Marchman: I will confirm that. We'll be trying to get customers from competition. That's what competition is supposed to do. But we have a number of customers that come in to Santa Fe that are also fly in to here who have expressed to us their dissatisfaction with the services that they get, and have encouraged us to come in here. We have talked to other people that would be, if they had the facility, if we had the facilities would be moving their aircraft from other airports, surrounding Phoenix, and so, yes, we would be after additional business, would be bringing additional business.

[Time: 01:02:48]

Vice Mayor Phillips: Thank you. That's interesting to know. The gentleman earlier had mentioned the analogy of the grocery stores, you know, if we had a Fry's and Albertson's on each corner and Safeway wanted it to come in. If wouldn't be up to the government to say we already have two grocery stores. If Safeway wants to come in, that's their business, and the way I see it, that's your business. You're take the risk of coming in and possibly failing because everybody will remain loyal to the FBOs we already have. You have to take that risk. So my only question is if you take that risk and there's a default, what happens then?

Herb Marchman: Then the city is not at risk, because everything would be bonded, so it would have to be built. If a default on the lease, then everything goes back to the city, and we have lost it all.

Vice Mayor Phillips: Is that right, Gary?

Gary Mascaro: Mayor, and Vice Mayor, correct.

Vice Mayor Phillips: Then in my opinion, I don't see any reason not to allow this third FBO.

Herb Marchman: I'd like to make one other comment if I might. In 2001, when we first approached, the city sent out an RFP for the second FBO on the field. We were selected to be the receiver of that RFP. Everybody in the country came to me and told me how stupid we were, that corporate jet had been on the field forever, and that there was no way we were going to be able to take any business away or get anything. Well, we ended up taking over 50% of the business in the second year. We became profitable in the first year. We are now competing against, we had the same message come to us when we went to Santa Fe. Signature was there. We now have 50% of the business. We're starting our second year. And so we know how to operate the business. We are willing to take the

risk, and we do know there are risks. We do also know there's some upside not only for the city but for us as well.

Vice Mayor Phillips: Okay. Thank you, again. I don't want to pick winners or losers. I think the competition is fair and I'll be voting for it.

Councilwoman Littlefield: I'll second the motion.

Mayor Lane: There wasn't a motion.

Councilwoman Littlefield: I thought you made a motion. I'm sorry.

Vice Mayor Phillips: Let me make a motion then. Where is this at? I'll make a motion to adopt Resolution number 11307.

Councilwoman Littlefield: I'll second that.

Mayor Lane: Motion has been made and seconded. It's on the table. I'm sorry. Mr. Washburn.

City Attorney Bruce Washburn: I'm assuming that includes the changes brought forward by staff.

Vice Mayor Phillips: Yes, including the changes brought by staff.

Councilwoman Littlefield: Yes.

[Time: 01:05:42]

Mayor Lane: Okay. Very good. I'll be voting for this as well. I'd have to say thank you, Gary, pardon me, Gary thank you for giving us a little bit more of the background of what the city actually had done in preparation for this. I think it covered and responded to a couple of questions that seemed to be out there. And the other is certainly just less than two years ago, you came before this Council and said that the market was growing to such an extent that our property under there was you underutilized and we needed to develop t we're now in competition to some degree with the services that are provided to a greater extent than we once were. And this is something that you have also established is that this is where a public facility would end up growing to, if in fact a private sector competitor was not. So I think that it's well within the realm of not only the viability on the basis of the market growth. When we went from 1 to 2 FBOs, we had the same kind of resistance. And understandably so.

I couldn't be in any greater agreement with Councilman Phillips that we don't want to be picking winners and losers. We're not look for the city to be a competitor with the leaseholders at airport. We want to make sure we're utilizing it right. That has made this airport run right and make it responsive and to give some very real credit to Signature and Ross. They have been very good on the overall FBOs and that's reflected in what we would expect to have in Scottsdale. And we thank them very much for the amenity they provide and the quality of service you provide to a tremendous array of customers that we have the great fortune of having visit our Scottsdale airport by virtue of events and just visitors and frankly businesses alike. So I want to thank you for that, and certainly, anything we're

deciding here is not in any way, shape, or form meant to be detrimental. It's the marketplace, and that's what we believe in. I'll be voting for it as well. I'm sorry. Councilwoman Littlefield.

[Time: 01:08:04]

Councilwoman Littlefield: If we're increasing our fuel usages 20% a year, by the time this is built, we'll be over the 75,000 or million, whatever it is, gallons that we need in order to support a third FBO. So it's already going to be fully operational, and all three should be running at maximum especially if we can full pull in some of the piston business from some of the nearby airports. That might even make it go faster. So I think this is a good time to do this. I think the timing is excellent, and by the time this is built, there won't be a question as to whether or not we can support a third one much it's going to be do we need a fourth. Thanks.

Mayor Lane: Thank you, Councilwoman. Seeing no further request to speak or question, I think we're then ready to vote. All those in favor indicate by aye and those opposed with a nay. It's unanimous then to accept that lease agreement as has been indicated and motioned with the changes required. Thank you very much and thank you for the input on the part of everyone.

REGULAR AGENDA

ITEM 7 - ROCKBAR OUTDOOR DINING REVOCABLE LICENSE AGREEMENT

Mayor Lane: So moving then of course to the Regular Agenda items 7 and 8. We'll start with Rockbar Outdoor Dining Revocable License Agreement. Presenter is Mr. Worth. We don't see enough you over here. It's good to have you over here, our illustrious Public Works Director.

[Time: 01:10:11]

Public Works Director Dan Worth: Good evening, Mayor and Council, and it's great to be here. As you mentioned I'm going to talk to you tonight about an outdoor dining license for Rockbar on Craftsman Court. This is the action I'm asking you to consider to authorize a dining license with the owner and tenant of an adjacent property, which is operating as Rockbar. Location is on Craftsman Court. I'll show you a graphic that details exactly the size and where it's at.

This is a new license. There's been a license in place at this location for 15 years. The reason that we're doing a new license is because the original license has run its course. It was for a total of 15 years. It expires in January. We are also taking advantage of the opportunity to bring the new license into conformance with standard license terms that we adopted in 2016 that we are slowly bringing all of our outdoor dining licenses into agreement with. This is the location. Craftsman Court between Third Avenue and Fifth Avenue. It's on the east side. This is the city's parking garage. The building in this picture is the building that's owned by Gray Group Southwest occupied by Rockbar. The licensed area is the area you see enclosed by the black railing just a little over 400 square feet. And the next few slides I'm going to go through are going to address some issues, some concerns that I know you've received several communications in the last few weeks that highlighted a number of issues that some other property owners and businesses and the Craftsman Court area have raised. I want to address each of those, and let you know how we believe that each of these concerns are addressed.

The first concerns food service. The agreement requires, and this is language that's in our standard agreement that we apply to all of our outdoor dining licenses that we apply the standard terms to, requires the operation to be operated as a restaurant. The agreement also has a set of conditions that must be met in order for the operation to meet this restaurant criteria. You see the conditions listed in three bullets up there. They have to have a full-service kitchen preparing entrees from individual customers. They've got to have at least ten entrees when the kitchen is open and the kitchen has to be open at all times that the business is open. They're allowed to close the kitchen an hour before closing time. So those are the requirements that any licensee has to meet in order to satisfy that operate as a restaurant condition.

This is how Rockbar currently satisfies the first of those requirements that they have a full-service kitchen. A kitchen was actually installed in 2016. The last time we talked about this particular outdoor dining license, they had operated previously under a license that did not require them to operate as a restaurant or to have a full-service kitchen. Council in 2016 approved an amendment that added this requirement. They built this kitchen in 2016 to comply with it. You can see some of the equipment. They've got the large piece of equipment to the right is my understanding is it's a 650° impinger oven and also have a microwave, deli slicer machine and food preparation sink installed in the kitchen.

Second requirement, to satisfy those restaurant conditions is that they must have a menu that includes at least ten entrees. I'm not sure they can judge what's an entree or not. This is the menu. They've got over ten items. And I suppose it depends on how you count pizzas and flatbreads as to whether they constitute multiple entrees or not. This is the menu.

[Time: 01:14:29]

Another concern that has been raised in some of those communications is that other dining licenses in the area have been terminated, and they felt that some of the business owners in the area felt that the same kind of conditions are prevalent in Rockbar, and they ought to see the same fate. Other licenses on Craftsman Court that we have terminated in the last few years are shown here. Upper Deck and dos Gringos. The big differences between these two is parking. Dos Gringos took up five or six parking spots.

This was something we tried several years ago as a new initiative. They had very stringent design guidelines and rules for what they had to do to warrant converting parking spots to dining license areas, more stringent than what we've ever imposed on Rockbar. Both of these agreements were terminated. The Upper Deck agreement was terminated for no cause, although it was not being used at all. The Upper Deck itself had been vacant for a period of several months. I think it might have been upwards of a year without a tenant using the dining licensed area. We felt it was more important to use that as parking than a vacant dining licensed area that was being shopped around to a prospective new tenant.

The Dos Gringos was terminated for cause as there were three deficiencies where the tenant was not comply to the license agreement. One was related to the use. They had removed all of the tables that were originally installed and were using that area primarily as a game area for the adjacent bar.

So they were not satisfying the use requirements to use it as a dining area. And they also had not met the requirements for an assignment. They assigned both the restaurant and the license area without getting a prior concurrence or asking for concurrence from the city.

The current occupant of the business declined to correct those issues. We gave them a cure period and so we terminated the license for cause. The key thing behind both of those terminations was a desire to get the parking back. You've also heard conditions about the valuation. You've heard the rent characterized as possibly below market rental rate. The rent is, I think, a very good deal for the city. We did a market-based evaluation when we implemented our standard terms in 2016. You can see in the bullets we came up with a \$70 per square foot valuation. Real estate varies widely across the downtown. In 2016 we felt that was a standard number. They have a CPI payment escalator. So the \$70 per square foot valuation, we applied what we had often applied for a lease, and used 10% of that \$7 a square foot to rent the space that's now up to almost \$7.5 with the escalator and over twice as much as what Rockbar pays now to use the same area.

[Time: 01:18:13]

Again one of the reasons we're updating much we want to bring everyone up to the current pricing. If you look at the last bullet, 15-year term on this license, that's an annual payment of roughly 10% of market value. At the end of 15 years, the city will have received \$111 per square foot in today's dollars for the use of that land. That compares very closely to the land about half a mile to the south that we were in the process of selling to a developer at about \$115 per square foot. At the end of 15 years, we still own the land. So it's a very good business deal for the city.

And then finally, you've heard comments about the term of the license that it's too long, that there should be opportunities to reevaluate. It is a 15-year term. We have added a provision that requires a reevaluation after five years of the rate that we're paying. If we feel somehow that real estate rates have gone up substantially in the downtown and we adjust the rate and a standard set of terms, we'll have the opportunity to go back and adjust the rate for this license. Every five years we'll do that review. I would also point out that the license is a 30-day revocable license. That means we can revoke it at any time with 30 days' notice just like we did the Upper Deck for no cause. We can revoke it even quicker than that if there is cause.

We'll give them a cure period, usually 30 days, so it works out to be pretty much the same. We do have that option at the same time. If for some reason we decide we no longer want to have this license in place, we can revoke it. As far as potential causes, we've gone back through the records as we do on all of our dining licenses, code enforcement, police, no record of any kind of complaints or violations being reported over the last 12 months for code enforcement and last two years for police is the length they go back. With that, I hope I've addressed the key questions and concerns. I'm happy to address any of these in more detail or to answer any other questions and I'd also point out that we have attending tonight Mr. Mundy from the Rockbar, the tenant as well as his counsel, Mr. Rich and they're prepared to present or to answer any questions as well.

Mayor Lane: We will hear from public testimony. But I'll leave it to Mr. Rich and your client as to whether you'd like to say something right now.

[Time: 01:21:06]

Applicant Court Rich: I would.

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Mayor Lane: Okay. Certainly.

Court Rich: I do have a presentation with some slides. Thank you. Good evening, Mayor, members of the Council. For your records, Court Rich with the Rose Law Group here as Mr. Worth said on behalf of the land owner and with me is Alex Mundy and his wife Carla who operate the establishment. And I want to take you through this. I will try to speed through some of the stuff that Mr. Worth just addressed. I will start by hitting the wrong button which is always a good way to go, here's a picture of the site. And you've seen this. One thing I would point out to you right off the bat that hasn't gotten mentioned yet is this is not the only patio in this alleyway. If you look at back of this photograph, you can see there's even another patio there as well that's in operation.

I want to talk about the history of this site, because I keep getting the questions from my client and the owner why is this happening to me right now. There's been a liquor license in operation at this site in one form or another for the last almost 40 years. There's been a series 6 liquor license in this location for the last 23 years. The patio lease has been in place for the last 14 years. And this operator has been operating there for the last four years. And this street, and those of White House have been in Scottsdale for a while know it's always been, there's been vibrant stuff on this street. When Trader Vic's was there and Pier Seven was there, this location was Sandstone's Deli. They had a liquor license and all other sorts of bars and restaurants that have come and gone on this street. It's not a new use.

There have been no violations recently. Mr. Mundy has been a great operator. So I want to take you through, here's just another view of the patio here. The truth, because there have been a lot of misinformation, and I think some members of the public are mistaken about some of the stuff that's going on there so I want to set the record straight. We had the chance to go out and walk around the neighborhood and collect a petition in support. Here are the folks, the business owners that have signed a petition on the street and immediately adjacent saying they're supportive of this patio use, and it is vibrant and helps the neighborhood.

[Time: 01:23:24]

I understand there are two folks from Craftsman Court that obviously have written you some letters, but I want to make sure that you understand that there is support. Rockbar has a kitchen. This has already been addressed. I even saw a quote in the newspaper from someone who wrote you a letter just from a couple days ago, quoted in the newspaper saying they don't have a kitchen. Well, they clearly have a kitchen. Mr. Mundy spent a hundred thousand dollars to build this kitchen at your direction last time around. They cook raw meat in that oven and cook pizzas and all sorts of different things as you saw before. I won't belabor this one. You've seen the menu already.

The patio was kept tidy and clean and your lease requires that they keep it clean. They sweep every day. They also power wash the entire city area of the alleyway once a week. So the other patios that went away, I appreciate Mr. Worth handling that, but one of the issues I was going to point out is those

institutions, those buildings and operators let those patios go. They didn't want to keep them. Upper Deck was out of business and Dos Gringos had a chance to remedy their situation and didn't.

No noise violations. I know you've received information about smoke. I wanted to take a moment to touch on this. Smoking on the patio is legal. Let me show you an example here. The state, Arizona Department of Health Services puts out a frequently asked questions pamphlet. I've got some excerpts. It says outdoor patios are one of the seven exemptions of the act that restricts where you can smoke. And therefore smoking is allowed on outdoor patios. It's not just allowed willy-nilly wherever you want. It gives us more information here.

If you look at the bottom paragraph, in order to prevent smoke from drifting into the establishment, some proprietors have chosen to use methods or a combination of method and one of those is air curtains were that's important. That's what Mr. Mundy has installed at establishment. They're over the windows and there are fans over the doors, those pipes you see there with the holes in them have been inspected by the Arizona Health Department. They're to keep flies out and also to keep the smoke from entering the establishment. He's 100% in compliance with the rules of Arizona in regards to smoking.

[Time: 01:26:02]

There have been other letters I've seen to you all that have mentioned that they bring in outdoor, I'm sorry, outside food service and have people serving food on the patio. That is untrue. Before they brought this new, before they built this kitchen five years ago, when Mr. Mundy moved in, there were a couple of occurrences before the kitchen was completed where they brought in outside vendors to serve their customers. That hasn't happened since the kitchen was completed. So to the extent that anyone is saying that, it's false. And as I mentioned, again, just to reiterate. Some people have tried to characterize it as bars moving into the neighborhood or something. Nothing could be farther from the truth at this point.

So let me summarize with a couple of key points. Here are the location of the 25 other patio licenses that are in the downtown area. I would submit to you there's no reason to single out Rockbar for any sort of unique or different treatment in this case. As it was mentioned earlier, if you decide you're just sick of Rockbar or they actually do something wrong, you always have the option of getting out of the lease within a 30-day notice to them. So you're protected in that situation. We have already agreed to something a little bit different than anyone else in the city has been asked to agree to is the way this lease will adjust, potentially adjust upwards from the CPI adjustment every five years. That was something even though we don't believe that any of the comments that have been made really hold any merit, the operator, you know, agreed to this in an effort to try to provide something to the city when he was asked to do something different than anyone else had done in the city before.

I would submit to you it's a well-managed establishment. We have established there's no calls for service. They've had no citations. They clean it, they maintain it very well. It's been a vibrant part of Scottsdale. It's a long-standing business. I guess I would wrap up by respectfully requesting that you approve the lease that's before you this evening, and I'd like to the opportunity to reserve some time if necessary to respond to what might be said.

Mayor Lane: Certainly. With that, we'll go ahead and call up those who have requested to speak on this subject. We'll start with Hunter Young.

[Time: 01:28:43]

Hunter Young: Good evening, Mr. Mayor and members of the Council. Sorry, I was the guy coughing in the back with the cold back there. My name is Hunter Young. I'm a board member for the university of Notre Dame Phoenix and we've been fortunate to have found a home for our game watches at Rockbar. We were Upper Deck before that. They weren't as loyal and we chose to go to Rockbar with Alex. For the last six years, they've been a trusted partner. Nothing better than a trusted adviser and advocate for our charities and extended charities. We have really enjoyed the partnership.

Game watches are extremely important to our organization as a gateway to the extended community and beyond just the alumni. And the most critical factor when we're look at these different game watches and having this outdoor-indoor environment, the ability to go inside and outside to have that flexibility. Our members love that and the ability to have the food is critical. Back in 2016 when they added the food, we were instrumental probably along with other members to request them to add food, because we probably individual left. Our members love and it our attendance has been growing. If we didn't have that outside option, we would probably choose to go somewhere else. We love Rockbar. I humbly request as a member of the university of Notre Dame club of Phoenix that you adopt this resolution. Thank you.

Mayor Lane: Thank you, Mr. Young. Next will be Tim Brashaw.

[Time: 01:30:29]

Tim Brashaw: Good evening. Thank you, Mr. Mayor, City Council. Again, I'm someone else who also enjoys the establishment at Rockbar. Same thing. A little different. We have the Philadelphia Eagles fan club we go and enjoy and watch the games there at Rockbar. And same thing. If they hadn't added the food a couple years ago, we would have ended up moving to a different establishment. But the addition of the food has been great.

Everybody who I've had a chance to talk to always raves about the food and how great that they enjoy it. Everybody is and especially concerning we have a pretty decent crowd that comes out. Everybody even on the patio gets served food and everybody seems to really enjoy it. Everybody has a great time. So again, I'd second, strongly agree and hope that you guys do get a chance to adopt this. Thank you.

Mayor Lane: Thank you, Mr. Brashaw. Next is Sandra Schenkat.

[Time: 01:31:50]

Sandra Schenkat: Good evening, Mayor Lane and Vice Mayor Phillips and Council members. My name is Sandra Schenkat and my address is on file. The Rockbar has been on my radar since 2014. It's a Hardrock, music, and sports bar that is located in a high-end business district on Craftsman Court.

The entertainment district on the east side of Scottsdale road is about half mile away. Scottsdale's entertainment district appears to be well supported by all of you as an economic driver. The Rockbar parcel owner John Abby has contributed to the Mayor's campaign fund as well as to campaign funds for Korte, Milhaven, and Klapp. The bar owner and manager Alex Mundy also has contributed to your campaigns.

In a recent meeting, Councilman Smith noted that Tempe has a limit of \$500 per campaign fund contributions, and he proposed that Scottsdale do the same. Council majority voted that motion down. Los Angeles has a cap of \$800. Scottsdale has a cap of \$6,350 from each individual donor. So this gives our funding of Council members a big opportunity to collect a lot of money. It appears to me that every vote for a bar or a developer....

Mayor Lane: The agenda item is the lease on this patio if you would stick to that.

Sandra Schenk: I'm getting there. It appears to me that the vote for the bar and developers who have donated to the Council campaigns is technically a city ethic code violation as a conflict of interest according to Arizona. I'm saying that you are.... this is....

Mayor Lane: I understand what you're saying. I'm just saying that we're not talking about elections here.

Sandra Schenk: I'm talking about you recusing yourselves because you're violating Arizona statute 38-503. So I'm requesting that the people have been given money be recused from this vote. There are so many issues that this vote for a 15-year land lease for drinking, a dining-drinking-smoking patio that several others would be addressing the ills of this lease arrangement. City staff has recommended. I certainly hope that the audience and Councilmembers have read the December 9, 2-page article published by Scottsdale Progress. It outlines all the relevant issues of why the three remaining Councilmembers who never received any contributions.....

Mayor Lane: I'm sorry. I probably should have caught that too. You're going to have to.....

Sandra Schenk: So....

Mayor Lane: Time has expired.

Sandra Schenk: Follow the money.

Mayor Lane: Okay. Thank you. Next would be Frederika Ranucci.

[Time: 01:35:40]

Frederika Ranucci: Good evening, Mayor Lane and Councilmembers. My name is Frederika Ranucci and my property across from Rockbar is a matter of record. I want to talk about the City Council report that incredibly recommends authorizing a 15-year outdoor dining license without offering a single good reason. By the way, \$7.41 cents a square foot is far below market. But nevertheless, it struck me as I read through the report how deficient, inadequate and frankly misreading it is. It tells us there's a

restaurant parcel, that there are no adverse impacts and many similar patios in the area.

The problem is this is completely false. I can't believe we pay city staff to engage in this kind of duplicity. It's examine the report first. What does it say about Rockbar? Absolutely nothing. Except that it's a restaurant parcel. Rockbar is not a restaurant. I met with Alex Mundy, and asked him if they call themselves a restaurant. No, he says, they're more like a bar and a grill. But they don't have a grill. And more importantly, they're not a restaurant. They are an event venue with loud, live rock n' roll music and events along with a bar this has a series 6 liquor license.

Second glaring omission. The report says nothing about Craftsman Court. By now, I hope most of you have had a chance to visit the street. I think you'll find it's lovely and charming with 95%st businesses either specialty retail or personal service-type businesses. Almost everyone catering to an upscale clientele. It's not entertainment. I had to laugh when I read the General Plan goal at the top of page one of the report. To request high-quality retail and entertainment. Apparently city staff doesn't really understand the meaning of "the high quality" with the loud, obnoxious travesty. Or the golf carts with the trashy ads.

How about this for deception? On page under background, it reads, quote, there are outdoor dining patios in operation in the surrounding area, including four on the canal and 3 on Scottsdale Road. The report doesn't bother to tell us those, Papa Fritas and vacant, Barrio Queen, Geisha Go Go, Form and Craft and they threw in B.S. West. This is not a model outdoor dining patio. So no honest report would have included this. So with the exception of B.S. West, there are full-scale, full-service restaurants. How could they possibly support the case for Rockbar?

Finally I'd like to say that city staff does a grave disservice if not outright damage to the community with this egregious deception, its relentless support of the bars and total disregard started for the rest of the street. I don't wish to be here. You force neighbors to oppose each other and force antagonism. For this reason, most would rather say nothing. That's why they all sign oh we love the street where we've had businesses for 20 can and 30 years, and we don't want to seat door once again opened to undesirable elements coming in and potentially ruining it. Those patios took eight years on my part and the hard work of others to actually get rid of them. We're looking at a 15-year lease here. I hope...

Mayor Lane: Your time has expired. Please wrap it up.

Frederika Ranucci: I hope you reject this license and find a better way to encourage high-quality if that is truly your intent. Thank you very much.

Mayor Lane: Thank you. Next would be Sonnie Kirtley with donated time from Louise Lamb and Jim Haxby. So five minutes, then, please.

[Time: 01:39:57]

Sonnie Kirtley: Four minutes and 50 seconds.

Mayor Lane: Okay.

Sonnie Kirtley: My name is Sonnie Kirtley the chairman of the COGS, Coalition of Greater Scottsdale. Mayor Lane, Vice Mayor Philips and Councilmembers, we alerted you last week with a pamphlets or a series of pages that we had three concerns about this lease agreement. As I listened to the testimony today, some of it I will not repeat because it was part of our position. We appreciate that Dan went through some of the concerns early on and tried to address them. However, we still have three concerns. The first concern is that definitions. That seems to be the problem on so many of the cases that we come to. How do you define dining? It's not a dining patio. How do you define fully prepared food? How do you define kitchen? These terms are throughout the lease. If it is patio dining, let's take a look at one of the images here.

Sandy, may I pull your, for some of us that go out for an evening, and we have budgeted, we do dining and dining usually has sit-down furniture. On this particular patio, it is barstools and bar tables. So the question comes, then, how is it used? The lease agreement says dining where it's a different definition. So this is a day time image. People are sitting at the open wall that we discussed in 2015. Right, Alex? And it's drinks. There's not food involved there. This is an evening one done recently. He's opening a pack of cigarettes and appears to be mostly drinking and smoke. When I worked on the General Plan, this is what we were not encouraging for downtown to energize. We were encouraging full use of patios.

[Time: 01:41:57]

This is city property, so we would hope you would support that as I a couple weeks ago, a that a live entertainment event, so of course the windows are or the wall is open and the front door is open too. It's supposed to be closed, Alex. The circle is around ashtrays much there's not food present here. I waited around quite a while and never got anybody that was eating food. The question is, is anything you put in your mouth going to qualify that you've just dined at Rockbar? You've heard seen the menu and already seen the kitchen. So again, what's the definition of a kitchen? If you go to the state, it requires that if you're doing a restaurant experience of dining, 40% of your receipts are food receipts. That hasn't been part of the conversation. The kitchen, oh, come on. Compare that to the kitchens of the other outside patio establishments. They have full menu, huge kitchens, full staff. The dining has the correct furniture.

One of our major problems in our town and for the future, we need to make some definitions here so that it will assist our establishments as well to know whether they meet the criterias. Back to our original three. Oh by the way, on the revenue, I disagree with you, Dan. It's common knowledge that commercial rental value factors in the tenant's revenue source. If you look at the figures for this, it's about \$258.75 cents a month in rent for our property. They only have to sell two drinks each night for 30 days to pay that. Two drinks. You know they're selling at least two drinks in an hour. That's a cheap rent.

So in summary, the lease should accurately reflect, and identify the terms of the lease and the kitchen, whether they're going to have foods or not. We recommend, then, that it read that there's no requirement for restaurant dining. It's not fully prepared food with ten different entries and doesn't have to a qualified kitchen. Number two, the lease agreement is five years or less. Number three, we recommend a continuation to allow them to review the comparables again. I'm told that Dos

Gringos sold for \$700 per square foot. COGS is very confident that the revenue stream for the city will be much higher. Thank you.

Mayor Lane: Thank you. Next will be Kevin Maxwell.

[Time: 01:44:50]

Kevin Maxwell: Mr. Mayor and members of Council. Thank you for allowing me to speak tonight. My name is Kevin Maxwell. I saw this was taken off of Consent a couple weeks ago and I was wondering why that was. I think listening to the previous testimony, it's pretty clear why that was. And also I present myself to as an undesirable element because I frequent this location quite a bit. If I'm an undesirable element, I apologize to the other citizens of Scottsdale. As far as fine dining goes, is Rockbar a fine dining? Absolutely not. Just because they have table tops, you sit up in high chairs and sit up at the bar that serves food outside, it's perfectly fine to me. I think that's a restaurant every day of the week. Almost all the places I eat dine, has that type of seating situation. So to me, it's very much a restaurant.

If you want to scrutinize the equipment and talk about is that the biggest kitchen in the city? Absolutely not. But they serve delicious food. I know that. Because I'm there all the time. And so, yeah, you could probably stalk the place for a while and find a time when the patio is vacant and take a quick picture of that and present it as evidence of being a restaurant. I know when I'm, there everybody is eating much they come borrow my food. I know other people are eating all the time there. This is very much a restaurant to me. Not only is it a restaurant, but it's a good restaurant.

Mr. Mundy has been a really good person who has been involved and he wants to know what is going to need to be a good neighbor. He's always talked to me about being a good neighbor and what he can do to be better. That's the kind of people we want down there. We talk about tourism. We want people to go to the restaurants and have a great time O.T. To me the Rockbar is the epitome. You sit outside and enjoy our beautiful weather and have some food and drinks and enjoy each other's company. It's very much a great establishment. Now I understand why this was pulled off and the decision that's ahead of you. I understand it's probably a difficult one. I'm here to advocate and say this is an amenity for our downtown that you should advocate for. We need more place. When the tourists come here, this is the kind of place they're looking to go. I know that. I hope you'll vote for this. Thank you.

Mayor Lane: Thank you, Mr. Maxwell. Next is Steve Johnson who has donated time from Jason Alexander. Steve, it will be four minutes.

[Time: 01:47:34]

Steve Johnson: Good evening, Mayor, Councilmembers. I'm Steve Johnson. I run my business and own the property directly across from Rockbar. I want City Council to have a full understanding of the patios on Craftsman Court before they make their decision. About 16 years ago, several businesses on the street banded together and they wanted to make Craftsman Court have more of a European feel to it. They wanted to take up parking spots and put these outdoor patios in, and have umbrellas and a lot of landscape, and so they could expand their business into it. And several years into it, it was a

complete failure much two out of the three have already been closed and sat there empty for several years contrary to what was discussed earlier. And it took a lot of work on a couple of us part to just waste our time fighting the situation of lost parking spots. We had a major tree taken down off the street. It's never been replaced. And they were just used as an extension to the bars.

There were people out there smoke. They brought out big-screen TVs and brought out sofas. It looked like the front porch of a frat house. That's discouraging. This is the last patio that's left out of the three that were built, and I think the city had to pay to literally remove those other parking, remove those patios and put the street back. They didn't even have the businesses pay for that. So it's just discouraging to see that other business owners have to waste our time fighting for something that is city property, and it's benefitting basically just the one business on the street.

[Time: 01:49:24]

Acme Bar was there before. And they had a full-service kitchen. So they had a restaurant out there. They were open at noon and serving lunches, that doesn't happen at Rockbar right now. And the discussion of what is food prepared, and that is, they don't have a chef on staff. They don't actually make all that food. I think it's all bar food that's frozen. I don't think they have a walk-in refrigeration. I think they showed us just one freezer probably. All of that food is frozen and brought in. It's not as defined as in where it says the business has in operation a full-service preparation preparing and cooperating and not just warming and heating much that's all they do. And it's very discouraging that they don't present facts like that. And you know, come up and see somebody say this is the truth. It's very vague, and it's not the full picture for you guys to make a wise and informed decision.

And again, with the maintenance of it, I could take pictures every single day of how the area is trashed with cigarette butts out there. I don't even walk my dog past the alley any longer because people are constantly smoke, and it's a public space. We should have full access to it. We're leasing it to this business for just an expansion of their own bar space. And it does nothing to add to the value of our adjacent properties. And mainly, I want to say by the city not enforcing its own rules and regulations and stipulations, it forces the neighbors to act as I watchdog which just promotes animosity between the neighbors. Most people lay low and just want to put up with the inconvenience and nuisance that this creates, and as Rockbar bends and breaks the rules. I've been very vocal in the past and up here discussing other situations with it. Personally me and my businesses have been, we paid the price for speaking up. Three years ago, the head of security at Rockbar vandalized my building, and you can Google Scottsdale urinator to see what actually happened. The gentleman was arrested and paid a substantial fine.

But that does not mean they don't live in fear that my property or myself is going to be hurt again, just because of this situation that the city promotes. I don't like being the only person. They proclaim there's not been any violations or complaints. I haven't complained at all since my building has been violated and I fear from my life from that person, and there are many violations that I could call several days a week with the city. I don't want to spend my time, I have a business I have to run myself. I don't want to spend a time watching over a business that is always pushing the rules and bending them and have my business vandalized.

Mayor Lane: You could wrap up quickly.

Steve Johnson: I want the city to make a wise decision and not put it on the neighbors to have to defend this all the time. Thank you.

Mayor Lane: Thank you, Mr. Johnson. Next is Philip Carpenter who has donated time from Paula Ruddnick. Four minutes, Mr. Carpenter.

[Time: 01:52:59]

Philip Carpenter: Good evening. Greetings, Mayor and Scottsdale City Councilmembers. Thank you for allowing me to speak this evening. I'm the Executive Director for Arizonans Concerned About Smoking. My home address is 1351 Chandler, Arizona. Our founder Betty Karns lived in Scottsdale and is credited with the neighborly request of quote, thank you for not smoking. End quote.

Although Scottsdale has made significant tobacco control progress in the past, like doing away with cigarette vending machines, much more still needs and can be done thanks to the smoke-free Arizona act and with what it allows. This became law on May 1, 2007. I have been asked to speak about the outdoor dining patio Rockbar. Before I provide a recommendation, I would like to take a minute to explain what the smoke-free Arizona act knows. Paragraph B in the statute states the following. Smoking is prohibited in fall public places and places of employment within the state of Arizona except the following. Six, outdoor patios so long as tobacco smoke does not enter areas where smoking is prohibited through doors, windows: Look at this picture and its 29 two 9-foot window openings much it's designed to allow secondhand smoke to gift in all directions, inside and outside and therefore affect workers, patrons and nearby walkers' health in a very negative manner. Secondhand smoke kills.

Here's what is noted on the Arizona department of health services smoke-free Arizona business compliance comply with the law web page. Secondhand smoke has been proven to cause lung cancer and heart disease and has been linked to asthma and other serious respiratory problems. Secondhand smoke contains more than 60 cancer-causing compounds. Working a shift in a smokey restaurant or bar is equivalent to actively smoking nearly a pack of cigarettes. A person standing 2 feet away from a burning cigarette may inhale ten times the cancer-causing chemicals than the person actually smoking the cigarette because the smoke inhaled by the active smoker is filtered by the smoke by the nonsmoking bystander is not. If penalties are found, the business owner will receive a warning notice is and subject to fines of \$100 to \$500 per violation per day or up to \$5,000 for violation per day if a superior court determines there's a pattern of noncompliance. An individual who smokes where prohibited is guilty of a petty offense and may be fined between \$50 to \$300.

Paragraph D in the statute states the following: Notwithstanding any other provision of this section an owner, operator, manager or other person or entity in control of an establishment facility or outdoor area may declare that entire establishment facility or outdoor area as a nonsmoking place. Regarding the Rockbar, we would hope we have educated the Rockbar manager and owners and City Council that smoke-free Arizona is a floor standard and you're encouraged and permitted to aim higher regarding secondhand smoke health protections for all visitors and guests in Scottsdale. This is evidenced by more and more sports bars who have outdoor patio who is have decided that smoke-free is the way to go. The Zips Sports Grill Tempe has an outdoor patio that is smoke-free, at all times. We encourage

Scottsdale to aim for a smoke-free patio as well.

Mayor Lane: Thank you, Mr. Carpenter. That completes the testimony on this particular item. Would you like to follow up, then, please?

[Time: 01:57:21]

Court Rich: Thank you, Mayor, Council members. Just a couple of things from what I heard that I wanted to have an opportunity to respond to. First of all, in some of those pictures you saw, there were lights across the top of the alleyway. And if you know, that alleyway is the main thoroughfare for those parking in the city garage to come out to Craftsman Court. Those lights are brought to you by Rockbar. They like that alleyway that I would submit makes it a safer and more inviting place to be in the evening.

They have a walk-in freezer in the back of the building. So again, that's another thing that I wanted to set the record straight about. With regard to smoke, there is no smoking allowed at that outdoor bar. They also don't allow any smoking in the establishment. That would be illegal. They don't allow that anyway. To my knowledge, there are no other of these leases in the downtown area that have any requirements with regards to smoking.

I want to remind you, and we showed the petition and some of the folks on the street that have voiced support for Rockbar. We heard from two folks on the street that are not supportive. There are far more individual who is signed a petition in favor of this in the neighborhood. There was some talk about the defined terms. And there was a lot of reference to the state law about liquor license. We actually have defined terms in this case. It's what's in the contract. The contract requires Mr. Mundy to operate a kitchen, and it describes what needs to be there. And he meets that definition. So the idea that he doesn't sell a certain percentage of food or does sell a certain percentage of food is entirely irrelevant to the question that's in front of you.

And I think I would close with, I think what we heard was largely not about this patio. I think the first speaker really talked about how she thought this establishment that's been there for roughly 23 years with a series 6 liquor license. Mr. Mundy has been there for seven years. That they really shouldn't be there at all and they should be somewhere else, not on this street. I don't think that's a reason to hurt their business, you know. They don't want to go anywhere. You've heard some from people that go there that are Scottsdale residents and really appreciate it and what it does for the community. I respectfully ask you that approve this and don't hold them to a standard that no one else is. There's been no reason to hold them out and treat them differently. I'm happy to answer any questions. I don't know if I have addressed all the questions. But hopefully I have answered the questions you might have been thinking.

Mayor Lane: Thank you. That does complete the testimony on all sides and appreciate comments from the public as well. Councilman Smith.

[Time: 02:00:19]

Councilman Smith: Thank you, Mayor. I think the, when we discussed this issue back in 2016, the

question we had was not over whether the rent was adequate or we were trying to deter outdoor smoke or anything like that. The purpose of the outdoor dining arrangement that we have in the city, I think, was years ago, to improve in a sense the quality of life, to improve the attractiveness of our area, and all of us had a vision of what outdoor dining would be like. Someone described the French café kind of setting, having dinner, and drinks. And so when we talked about this before, and by the way, the reason they were quote/unquote picked on before is because they didn't have a kitchen. The kitchen had been taken out, and so it was hard for a lot of us to understand how it could be a restaurant if it didn't have a kitchen. And so they did put in the facilities that you have seen here.

But also staff put together the supplement that goes with each of these outdoor dining arrangements, defining what a restaurant is as best they could. And that's odd that we would feel necessary to do that, because I think all of us in layman's terms, we know what a restaurant is. We know a restaurant normally has an oven. We know a restaurant normally has a stove top, a grill, and has dishwashers and dishes, all kinds of things that we don't see here. What we see here is a pizza oven and a microwave and a small sink. And also in defining what a restaurant was, we felt compelled to say that it had to be a facility that served ten entrees. We don't really know what an entree is, because it's not defined.

[Time: 02:02:36]

But I think in most of us, in our minds, it would not be, you know, a pizza crust with ten different toppings. We have in mind what we want to promote as the image of outdoor dining in the city. And that's the only reason we talked about this facility, as to some of us, it didn't fit the image. In terms of on-site food preparation, we demanded in the new ordinance it had to be on-site food preparation. And then that begs the question of what does preparation mean? Is that pulling it out of the freezer and sticking it into the microwave? Or is it something a bit more complicated that we all normally associate with a restaurant? And we specifically said no heating and warming, which seems to be a lot of what goes on in this particular facility. So why is it happening now?

In my mind, it's happening because nothing has really changed from when we last discussed this. And because many of us still think that this is not the image of outdoor dining that we want to create and try to impress all the visitors with. A comment was made that 25 licensees are in the downtown area here. I think even the staff report talks about the ones located on the canal, and Scottsdale Road. Most of those 25, and I know this, because I've asked staff what the 25 were. The majority of them are class 12 restaurants. We in the city have a way to define what a restaurant licensee must be in order to operate. And it's a class 12, and a certain portion of their revenue is generated from food, and even among the ones that are not operating as a restaurant, one of the 25 is actually a hotel. Some of them are bars, and so actually went and looked up each bar, one of which is a holder of the license but now defunct. Now we're down to a smaller number. 2 or 3 of them are actually full-service menu. You can go on and find entrees like steak and chicken and all kinds of stuff. Appetizers. So from my point of view, I see, I'm not trying to disparage their business at all. I'm sure it's run honorably. They maybe not with violations. That's not the issue. The issue is am I as the custodian of the city property on behalf of the citizens, am I feeling comfortable with the fact that this is what I've, the image I want to promote for the city? And maybe I'm peculiar in what my image of outdoor dining is. Maybe other people have a different image, but this doesn't fit my image. This kind of food preparation doesn't fit my definition of a full-service kitchen. And I didn't vote for this in 2016, and I won't tonight. Thank you.

[Time: 02:06:04]

Mayor Lane: Thank you, Councilman. You know, there is a long history as was demonstrated by Mr. Worth, as far as what has been going on, on this particular site, and it's been a bar, and a bar-restaurant through many, many years. And even before the great recession, one of the I think so this that we were wrestling with 14 years ago was what could we do to activate a lot of abandoned spaces. We talk about it now. It pales in comparison if you think about what's empty now versus 14 years ago. This is in the highest time in the artificial economy that we went through before the crash. And there was a desire to activate our streets somehow to get people to be coming down. Our tourist avoided the place like a plague.

Frankly, if we promoted it to have them to come downtown and there was nothing going on, not only did they not come back, but they told at least a hundred other people there was no reason to go downtown. Was there some adaptation and some desire, whatever we might have been think being activating the street with outdoor cafés or even an outdoor patio just as this is in a very similar sense. Yeah. There was. But what we're deciding right now, and tonight, is an owner who is operating within, by all indications within the indications of our ordinances, our laws and frankly our stipulations. I haven't heard anything really to the contrary other than some pictures where somebody wasn't eating. But nevertheless, I think it's important for us to remember whether I like it or whether we collectively here decide, you know what, we don't like to do that anymore, so now we're going to do something to harm that business person who has otherwise abided by the law. That's just to what we're in the business of doing. That's it in a nutshell. I certainly will support this lease agreement.
Councilwoman Milhaven.

[Time: 02:08:10]

Councilwoman Milhaven: I'd like to move to adopt Resolution 11282.

Councilwoman Klapp: Second.

Mayor Lane: Motion has been made by Councilwoman Milhaven and seconded by Councilwoman Klapp. Would you like to speak?

[Time: 02:08:30]

Councilwoman Klapp: I have talked to several people who have contacted me or sent me e-mails about this, and I think some of the remarks that the Mayor made are relevant. They just don't want the Rockbar. It's pretty much that. It's not anything other than they'd like to see the Rockbar go away, we as Councilmen and as a city in particular are here to regulate business, not to dictate to businesses. So it's my feeling that they have followed the rules and regulations of the ordinances that we have in the city. It's been proven that there is smoking outside, and it is not illegal, unfortunately. I think it's been portrayed as something else.

I'd like to note with mention of a French café, everyone I've ever been to has had smoking if you want to take a French café as your point of reference, this is otherwise a European street. My feeling is that

the kitchen was added. That was a big thing for us two years ago that we required it in order for this dining license to be continued. It was added. This is just a renewal of the license for another 15 years. There's been an agreement that the license will be reviewed and considered for changes in the rate based on escalating rates, and I think that's a good improvement to the lease over the previous lease agreement, and you know, I believe that the owner has been attempting to provide a better atmosphere than was provided there a few years ago.

We don't, maybe Mr. Johnson doesn't comply. We don't get other complaint as we used to in the past related to the Rockbar. So it's my feeling that they deserve to get a renewal of their dining license. Dining is subjective, and it seems to me that we need to provide a variety of food to a variety of people. Everything from fine dining to sports bars need to be provided because everyone wants something different. And we cannot, as I said, dictate what people will eat. We say this is an outdoor dining patio, and the kind of food that is provided is stipulated in the laws and ordinances that we have, and they're complying, so it seems to me that Mr. Mundy and the owner of the building do deserve to get another 15-year license. That's why I seconded the motion.

Mayor Lane: Thank you, Councilwoman. Councilwoman Littlefield. The motion has been made and seconded. Councilwoman Littlefield.

[Time: 02:11:34]

Councilwoman Littlefield: Thank you. First of all I'd like to make it clear that the Rockbar itself not under discussion. It's only about the lease agreement for the outdoor patio located in the city-owned back alley, our property. So Rockbar, it will continue to exist. This has nothing to do with the Rockbar itself, restaurant, bar, whatever you call it. This area is defined in the lease, and I'm talking about the patio, with the city as an outdoor dining patio.

However, clearly the area is used as a smoking and drinking area, with finger food on the side. It has bar chairs, ashtrays and drinking tables appropriate for the drinking area, but not for sitting down and eating a full meal. If we grant this license tonight, and there are several other things that I looked at as far as the stipes, we de facto approve all of the uses that are currently happening and going on on this patio, and agree to ignore any of our own regulations and stipes that are not being adhered to. These are the rules upon which we approved the patio in the first place.

We could basically be condoning violations to our own stipes by make them meaningless and telling other restaurants they don't have to abide by the rules because we don't enforce them. The real question is not about the Rockbar itself. The real question is do we want to continue to have small outdoor smoking and drinking patios along the back alley of Craftsman Court and in our downtown? If we allow one, we'll allow another. And make those regulations, do we want to make them enforceable and enforced? Is this the look and feel that we're looking to achieve in our downtown in one of our biggest business districts and gallery areas of our city? That we're spending in our downtown area millions of dollars to try to upgrade and make a top-notch area for people to come to and see? Is this in line with our plan? And I have to agree with Councilman Smith, I don't see that it is.

So for me, I cannot support renewing the lease. The Rockbar can stay. That's not under

consideration. But I can't consider renewing this lease when I don't see that it is under our stipes, and I don't see that it is appropriate for this area of town. So I can't in good conscious approve a continuation of the patio lease, and I'm very sorry. Thank you.

Mayor Lane: Thank you, Councilwoman Littlefield. Vice Mayor Phillips.

[Time: 02:14:41]

Vice Mayor Phillips: I feel like I have agreed with everybody who has talked which makes it really hard. I think at end of the day, this Rockbar has done what we've told them to do, and if we're going to sit up here and judge, we can't judge any more than we've told them what to do and we did it. We can't say, well we'd rather see more food or we'd rather have this. It's not part of it. We gave them what they should be doing, and they did it. So to me, I feel like for one, I would approve it because they've had no violations in the last two years. They've done everything we have asked them to do. If we don't like it, if we want to ban smoking, if we want more food, as a Council, we have to get together and make this new ordinance that this is what it has to be. I feel like we've done everything we told them to do. I'm going to have to be in favor for it.

Mayor Lane: Thank you, Vice Mayor. Councilwoman Milhaven.

[Time: 02:15:47]

Councilwoman Milhaven: Vice Mayor just made the point I was going to make. It's unfair to say they're in violation of their agreement when staff has made it clear they complied in everything with the city and the police have not had any calls or concerns for their operations. I wanted to make that point. But Vice Mayor beat me to it.

Mayor Lane: Thank you, Councilwoman Milhaven. Seeing we have no further comments from the Council, I think we are then ready to vote. All those in favor register your vote by aye. Motion passes 5-2 with Councilwoman Littlefield dissents and Councilman Smith dissenting. Thank you very much, everyone, for your input, and for the conversation. All right.

ITEM 8 - DESERT EDGE PROJECT TERMINATION

[Time: 02:17:12]

Mayor Lane: Moving along, our next item on the Regular Agenda and last item on the Regular Agenda is item 8 which is a Desert Edge Project Termination and our presenter, our City Manager Jim Thompson.

[Time: 02:17:32]

City Manager Jim Thompson: Thank you. This evening, you have before you a request that was made from Council to consider bringing the Desert Discovery Center or Desert Edge to conclusion, and asked staff to prepare responsiveness to that. We have done so, which is before you this evening. So if you have any questions, I'm happy to entertain or respond to those. However, I believe that it's Council's

direct was to bring this back so we can bring this matter to closure. We can speak to the history or any other matters associated with that. I'll leave that to questions to Council.

Mayor Lane: Thank you, City Manager. And I would say that the item itself is a Desert Edge Project Termination and request here is an action item. To adopt Resolution 11339, directing the City Manager to terminate activities pertaining to the Desert Edge Project. First to speak or question or otherwise, Councilwoman Korte.

[Time: 02:18:36]

Councilmember Korte: Thank you, Mayor, since I brought this agenda item to this agenda several, well, about a month ago, I would, I'm going to make a motion to approve with one slight change, that terminate activities pertaining to the Desert Edge project or other similar projects such as the nature education center to make it more broad for, shall we say make it more broad and clear for our citizens. So with that, I move to adopt Resolution number 11339 directing the City Manager to terminate activities pertaining to the Desert Edge Project and any other nature education center.

Mayor Lane: I'll second that. I don't have any further comment on it than has already been said. I see there's a couple other members who would like to speak to it starting with the Vice Mayor.

Vice Mayor Phillips: Thank you, Mayor. One thing I wanted to make clear as part of this Desert Edge project termination is any leftover money as you say, I believe, it's somewhere around \$175,000 goes back to, I think, the Preserve. Is that correct?

Jim Thompson: Mayor, members of Council, Vice Mayor Phillips, that is correct.

Vice Mayor Phillips: The second thing, I think I need more clarification as far as the addition when Councilwoman Korte says Desert Edge project and any other educational project. I don't think we want to say we're not going to have any more projects from now on. I think we're kind of far reaching. Desert project is already set and defined if we want to terminate that, that's fine. I don't want to say that we're going to never have any other projects ever. I'm not sure if that's what you meant by that.

Councilmember Korte: Yes. Let me clarify that. This would be on the Preserve. So that's the clarifying point. Also I bring that up, because I received feedback from individuals concerned that perhaps just stipulating Desert Edge project was a potential loophole in the future, and so I wanted to make it more broad. So this isn't just any education center in the city. This is referring to a project or nature education center in the Preserve. And that's the issue.

Vice Mayor Phillips: Okay. I can go ahead and approve of that, but kind of makes the prop 420 a moot point at this point, then. The public will never have nothing to vote on if we're never going to build anything on the Preserve. Kind of made that entire thing a moot point. I'll go ahead and go along with it.

Mayor Lane: Thank you, Vice Mayor. Councilwoman Littlefield

[Time: 02:23:27]

Councilwoman Littlefield: Thank you, Mayor. I had a couple of concerns and would like to amend the Resolution 11339 and add the following to section.

Mayor Lane: Would you like an alternative motion then?

Councilwoman Littlefield: I'd like to amend this one I'd like to have an alternative Resolution 11339 and adding to make no further payments as was suggested of taxpayers' funds to contract number 2015-234-COS with the Desert Discovery Center Scottsdale Inc., and on contract number 2016-053-COS with the partners PLLC. Also the term Desert Edge as it is used in this resolution shall include any projects that involve building in the Preserve anything other than the trails and the trail heads. I think that's what Councilmember Korte was getting to. One final issue, the current issue of the Discovery Desert Center as the city capital project shall be terminated from our capital list. Thank you.

Mayor Lane: As an alternative motion, there's a couple of items that you've mentioned that are in the original motion. Just to make the distinction. The idea of removing it from capital projects is definitely part of this motion. And the other one was the component of, I think the differences were the specific contracts you were talking about. Right?

Councilwoman Littlefield: Yes, Mayor and also I wanted it known that to include the motion that was set by Councilmember Korte too.

Mayor Lane: Okay. And then like I say, some of those things that you mentioned were in that original one.

Councilwoman Littlefield: Uh-huh.

Mayor Lane: Is everyone clear with regard to the motion and the items that, yes, Councilmember Korte.

Councilmember Korte: Mayor, I believe the motion is redundant. Everything that Councilwoman Littlefield pointed out is in the analysis section particularly D of cease all use of city resources for contribution are implementation of Desert Edge and C is terminate any bed tax funds that have been made in relation to Desert Edge. Those are statements that really encapsulate everything we need to do, and your alternative motion.

[Time: 02:25:02]

Mayor Lane: All right. Well, if it is redundant, I'm going to ask the City Manager as you understand it, is that covered by the original motion, or are we talking about redundant motion, or is it covered in the original motion?

Jim Thompson: Mr. Mayor, members of Council, I believe that it would be covered, because it was and any and all contracts. We've already closed out those contracts. We'll be happy to insure they're still closed out. We have resolved both of those sometime past when we had previous discussions associated with it. I want to state one clarifying point much the funds in question were tourism moneys and the amount remaining was \$271,196 to be exact from what was originally budgeted for this

project and what was spent. There was a savings of inherently \$271,196 that was not spent prior to the conclusion, and although we left open the contract for a period of time, during that period of time, we did not spend any of those funds, and we closed that contract subsequent. Short answer is yes. Long answer is the one I just gave. Thank you.

Mayor Lane: And Mr. City manager, if I might, as far as the original motion, since Resolution 11339 directs the City Manager or designee with such assistance as may be needed from the city's other charter officers or designees to take the following actions. Even though the motion was more concisely worded and specifically to Desert Edge, A, B, C, and D are included in the motion. I would presume that to be correct.

Jim Thompson: I would concur, Mr. Mayor.

Mayor Lane: That would make it I think, all-inclusive.

[Time: 02:27:00]

Councilwoman Littlefield: Yes, it would with Councilmember's change of that. I just wanted to make sure, also, a final question. Is the current listing of the Desert Edge discovery center removed from our list?

Jim Thompson: Mr. Mayor and members of Council. Councilwoman Littlefield, yes.

Councilwoman Littlefield: Then I withdraw it.

Mayor Lane: Can't you expand on that a little bit, Mr. City Manager? Obviously the answer is no.

Jim Thompson: I'd be happy to make it clear, and I think that between the vote that occurred and the community, and I think the position taken as well as what you're doing this evening, we from a staff perspective will not be spending any more time or energy on this project. And so we considered this matter closed. So based on the reaction this evening, and based on previous actions. Beyond the discussion. So we consider the matter done and closed and will not appear in any bond questions or any finance or the CIP. Thank you.

Mayor Lane: Okay. Thank you Mr. Thompson. And to that end, then the alternative motion has been withdrawn. It wasn't seconded in any case.

Councilwoman Littlefield: Yes, Mayor, all of my concerns have been addressed. Thank you.

Mayor Lane: Thank you. And then just by specific inclusion, A through D as indicated here with the qualification over the clarification that it would not just include the Desert Edge, but any similar-type project in the Preserve. I think that, I hope everybody's comfortable with that motion or at least if there's any other questions, please say so. Otherwise we're then ready to vote. All those in favor, please indicate by aye and register your vote aye. It's unanimous then. That motion carries. Thank you very much. Thank you, Mr. Thompson. And all who participated in that conversation. And that completes our Regular Agenda items.

CITIZEN PETITIONS

[Time: 02:29:36]

Mayor Lane: And there's no further Public Comment and Citizen Petitions item we have in front of us. It was discussed by Mr. Seipel. Any desire to either direct the City Manager to take action and to report back to us or take no action?

Vice Mayor Phillips: Mayor, was that the gentleman that wanted that new trailhead? I'll make that motion to have the city look into it.

Mayor Lane: In a very real sense what, what we have just done and by the proposition that just passed, this becomes very problematic as to whether it can be accomplished under any circumstance.

Mayor Lane: It has to be planned trailhead.

Vice Mayor Phillips: Isn't it a trailhead?

City Attorney Bruce Washburn: Mr. Mayor, could we interject something?

Mayor Lane: Sorry.

Bruce Washburn: It might simplify things. The gentleman who presented the petition stated he's not a resident of Scottsdale. Only citizens are allowed to present citizens to the Council.

Vice Mayor Phillips: Never mind.

Mayor Lane: Thanks very much. Appreciate that. Okay. Councilwoman Littlefield, you still...

Councilwoman Littlefield: No.

Mayor Lane: Okay. All right. With that, then, petition item is cleared. No other Mayor or Council items.

ADJOURNMENT

[Time: 02:31:01]

Mayor Lane: And hearing none, I'd ask for a motion to adjourn.

Councilmember Korte: So moved.

Councilwoman Klapp: Second.

Mayor Lane: Motion made and seconded. All those in favor indicate by aye. Before you get out of your chair. We are adjourned. Thank you very much.