

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 5R
Amend No. _____

Date prepared: August 11, 2008

Council Meeting Date: August 26, 2008

TO: Carl Swenson, City Manager

FROM: Steve Prokopek, Economic Development Director 

SUBJECT: Ground lease amendment with Grand Avenue Peoria Holdings, L.L.C.

RECOMMENDATION: Authorize the City Manager to enter into an amendment to the Ground Lease Agreement with Grand Avenue Peoria Holdings, L.L.C. for the Old Town redevelopment project at 83rd Avenue and Washington Street.

SUMMARY:

This Item is a carry-over from the July 1, 2008 meeting.

On July 5, 2005, the City Council approved a lease agreement with Grand Avenue Peoria Holdings, L.L.C (MS Holdings) for two redevelopment projects within Old Town. These projects include:

- The redevelopment of approximately .5 acres at the west of the southwest corner of 83rd Avenue and Washington Street into approximately 30,000 square feet of mixed-use development. The property is composed of the former Fire Station #1, a parking lot, Fire Administration, and the Lighthouse Church building.
- The redevelopment of the properties adjacent to Osuna Park, which includes the vacant Exxon-Mobil station, the Bank of America building, the property formerly used by the Women's Club and the adjacent easements, into a development of approximately 10,000 square feet.

The base terms for the lease agreement include:

- MS Holdings conveyed the Gas Station Site to the City free of any ground lease tenant obligation (They had a lease with a fast food tenant).
- The City of Peoria paid MS Holdings \$250,000 cash for the purchase of the Gas Station Site.
- The City of Peoria leased MS Holdings the Gas Station Site, Bank Site, PEDG Site and Washington Street Site. The following outlines the terms for this lease:

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# 07905A LIC. # _____
Action Date: _____

- Unsubordinated Ground Lease
- Initial Term of 25 years
- Two 10-year option renewal terms
- Annual Per Square Foot Base Rental Rate
 - Years 1-15 \$0.00
 - Years 15-45 Agreed upon rent formula

City Obligations under the lease include:

- Removing or relocating the Women's Club (Completed)
- Complete the Performing Arts Center (Completed)
- Complete the adjacent ADOT pedestrian improvements (Completed)
- Rezone the Site (Completed)

Developer obligations include:

- Demolish existing buildings
- Start construction on Osuna Park project by December 2008 and complete within 12 months
- Start construction on Washington Street project by December 2010 and complete within 12 months

SUMMARY:

In December 2008, the project was rezoned by the City. As part of this zoning a restriction on office uses was placed upon the project parcels. The developer indicated that this restriction, along with the downturn in the economy, placed a significant burden on the project. In lieu of seeking a zoning amendment, staff agreed to amend the lease to assist with the successful completion of this project. The lease amendments include:

- Extending the construction start date for Osuna Park Retail project to July 1, 2009.
- Changing the construction start date for the Washington Street Retail Project to be 1 year from 90% occupancy of Osuna Park Retail Project.
- Staff will seek a zoning amendment in the event the project has failed to lease due to the current zoning restrictions. The developer will submit a marketing plan, and no amendment will be requested until 6 months after the project is open.
- The no rent period will be extended by 2.5 years.
- Developer will commence demolition no later than September 1, 2008.
- Developer will submit the site Plan for the Osuna Park Retail project no later than September 30, 2008.
- Submit revised conceptual site plan.

Attachment:

Lease Amendment

Current Lease

FIRST AMENDMENT TO GROUND LEASE AGREEMENT

THIS FIRST AMENDMENT TO GROUND LEASE AGREEMENT (the "Amendment") is made as of _____, 2008 by and between the CITY OF PEORIA, ARIZONA, an Arizona charter municipality ("Lessor"), and GRAND AVENUE PEORIA HOLDINGS L.L.C., an Arizona limited liability company ("Tenant").

Recitals

A. Lessor and Tenant entered into a Ground Lease Agreement dated November 7, 2005 (the "Lease") under which Lessor leased to Tenant, and Tenant leased from Lessor, the Demised Premises as described in the Agreement.

B. Lessor and Tenant now desire to amend the Lease.

THEREFORE, in consideration of the following covenants, Lessor and Tenant agree:

Amendments

1. Capitalized terms used in this Amendment but not defined are used in the manner as defined in the Lease.

2. The "Effective Date" of the Lease shall be April 1, 2008.

3. The "Term" of the Lease shall commence on the Effective Date.

4. The Lease Acquisition Rent paid by Tenant to Lessor in connection with Lessor's acquisition from Tenant of the Mobil Parcel shall be the only rent due during the first (1st) seventeen and one-half (17 ½) years of the Term rather than only the first (1st) fifteen (15) years of the Term, and accordingly, Section 5.1.2 of the Lease is amended and restated in full as follows (i) to reflect that the Lease Acquisition Rent Period covers the first (1st) seventeen and one-half (17 ½) years of the Term and (ii) to clarify the determination of Market Value as of each Anniversary Date:

"5.1.2. Ordinary Rent. Except for Default Rent, the Lease Acquisition Rent is the only rent due during the first (1st) seventeen and one-half (17 ½) years of the Term commencing on April 1, 2008 and ending September 30, 2025 ("Lease Acquisition Rent Period"). After such first (1st) seventeen and one-half (17 ½) years of the Term, Ordinary Rent will be due monthly on the first (1st) day of each calendar month and continuing until the final month of the Term. The Per Square Foot Market Value of the Demised Premises (excepting the Park Parcel) (the "Market Value") will be determined by professional appraisal by a mutually acceptable appraiser as of October 1, 2025 and re-determined as of each fifth (5th) anniversary of such day, assuming an at-market sale of

the Demised Premises (excepting the Park Parcel) as a whole, as is, as of the Anniversary Date. The monthly amount of the Ordinary Rent will be the product of: (a) the Market Value; multiplied by (b) the Multiplier; divided by (c) twelve (12). For purposes of determining Market Value, the Demised Premises shall be considered to be comprised of the land only and not the improvements constructed thereon, regardless of whether for taxation purposes under Section 9.5 of the Lease the improvements are owned by Lessor or by Tenant. In addition, in the event separate ground leases have been entered into in accordance with Sections 7.2.5, 7.4.1 or otherwise under this Lease, then for each such separate lease agreement the Demised Premises for which the Market Value is to be determined as of each Anniversary Date shall be considered to be comprised of only the land covered by the particular separate lease for which Market Value is being determined.”

5. To reflect the change from 15 years to 17½ years in the Lease Acquisition Rent, the column titled “Period” in the “Multiplier” table in Section 5.1.4 of the Lease is changed from the following:

| <i>Period</i> |
|---|
| 16 th through 20 th years of Term |
| 21 st through 25 th years of Term |
| 26 th year of Term and thereafter |

to the following:

| <i>Period</i> |
|--|
| From end of 17 ½ through 22 ½ years of the Term |
| From end of 22 ½ through 27 ½ years of the Term |
| From end of the 27 ½ year of the Term and thereafter |

6. The legal descriptions of those portions of the Demised Premises referred to as the “Mobil Parcel”, the “Bank Parcel” and the “Park Parcel” as set forth on *Exhibits A-1, A-2 and A-5* of the Lease are replaced by *Exhibit A-1* attached to this Amendment. The Bank Parcel and the Mobil Parcel are hereinafter referred to in this Amendment together as the “Bank/Mobil Parcel”.

7. Section 3.2.1.1.3 of the Lease is corrected by amendment and restated in full as follows:

“3.2.1.1.3. Park Parcel. Landlord, at its sole expense, shall construct and install the public improvements for Osuna Park on the Park Parcel (including the driveway and parking improvements as shown on new *Exhibit E* [Site Plan Option C] attached to this Amendment).”

8. Tenant shall promptly make application to the City for permits to demolish the bank building and service station presently on the Bank/Mobil Parcel, and conditioned upon the City's issuance of such permits, Tenant shall commence such demolition work by no later than September 1, 2008 and thereafter diligently pursue the demolition work to completion. In the event that Tenant does not substantially complete the demolition work by October 1, 2008, it is agreed that the City may thereafter, at its option, enter upon the Demised Premises and cause the demolition work to be completed, and it is further agreed that the City may charge any and all demolition costs incurred in doing so to Tenant. In such event, Tenant shall promptly pay the City upon receipt of an itemized billing statement from the City.

9. Tenant shall submit to the City by September 30, 2008 Tenant's proposed site plan for the Required Improvements to be constructed by Tenant on the Bank/Mobil Parcel.

10. With respect to commencement of construction of Tenant's Required Improvements on the Bank/Mobil Parcel and the Washington Street Parcel:

(a) Section 3.2.1.2.2.1 is deleted, and instead, conditioned on the City's issuance of all required approvals and permits, Tenant shall commence construction of the Required Improvements on the Bank/Mobil Parcel by no later than July 1, 2009, subject to the condition that Tenant shall not be obligated to commence construction of the Required Improvements on the Bank/Mobil Parcel until Lessor begins construction of the public improvements for Osuna Park on the Park Parcel so that parking on and access over the Park Parcel will be available to the Bank/Mobil Parcel.

(b) Section 3.2.1.2.2.2 is deleted, and instead, Tenant shall commence construction of the Required Improvements on the Washington Street Parcel no later than one (1) year after 90% (ninety percent) of the leaseable space in the buildings constructed by Tenant on the Bank/Mobil Parcel is occupied by tenants who have opened for business to the public. Tenant shall submit to Landlord and the City within sixty (60) days after the foregoing leased space condition occurs a proposed site plan for the Required Improvements to be constructed by Tenant on the Washington Street parcel.

11. Landlord and Tenant intend that the Bank/Mobil Parcel be developed first in conjunction with the Park Parcel, and in accordance with such intent and to facilitate such development, the following modifications are made to Sections 7.4.1 and 7.2.5 of the Lease:

(a) Tenant's right to mortgage under Section 7.4.1 of the Lease shall be applicable to the Bank/Mobil Parcel and Park Parcel as a whole without regard to any other parcels. The foregoing modification does not change any of the other restrictions and obligations of Section 7.4.1 and does not limit Tenant's right under Section 7.4.1 to mortgage other portions of the Demised Premises in accordance with the terms and conditions of the Lease.

(b) Tenant's right of sale and assignment under Section 7.2.5 of the Lease shall be applicable to the Bank/Mobil Parcel and the Park Parcel as a whole without regard to any other parcels or the status of construction of improvements on such other parcels. The foregoing modification does not change any of the other restrictions and obligations of Section 7.2.5 and does not limit Tenant's right under Section 7.2.5 to sell or assign other portions of the Demised Premises in accordance with the terms and conditions of the Lease.

12. The parties acknowledge and agree that the requirement in Section 3.2.1.2.1 of the Lease that the Demised Premises be rezoned to Planned Area Development (PAD) has been fully satisfied. The parties further acknowledge and agree that it may become necessary to modify the PAD zoning for the Demised Premises to remove the current restrictions on office use if Tenant is unable despite its best efforts (which shall include, but not be limited to, developing a marketing plan acceptable to Landlord) to lease 75% (seventy-five percent) or more of the tenant space of the Bank/Mobil Parcel within six (6) months after substantial completion of the shell retail and site improvements on the Bank/Mobil Parcel. In such event, Tenant shall so advise Landlord and the parties shall work cooperatively to agree upon a jointly recommended zoning amendment to be presented to the Peoria Planning and Zoning Commission and City Council for consideration.

13. To clarify Section 3.3.1 of the Lease, Tenant is not obligated by the "Operating Covenant" to itself occupy and use space in the Required Improvements on the Demised Premises and Tenant shall not be in violation of Tenant's "Operating Covenant" (which provides that Tenant will continuously and without interruption, except as otherwise provided in Section 3.3.1, cause those portions of the Demised Premises improved with buildings to be operated for retail or commercial uses pursuant to the Permitted Uses under the provisions of the Lease) so long as Tenant is using commercially reasonable efforts as described in Section 3.3.2 of the Lease to lease space in the improved portions of the Demised Premised.

14. Lessor and Tenant shall within thirty (30) days after execution of this Amendment enter into and record an Amendment to the recorded Memorandum of Lease Agreement and Declaration of Use Restrictions to give record notice of this Amendment, including without limitation, the changes to the legal descriptions of the Bank Parcel, the Mobil Parcel and the Park Parcel.

15. The address in Section 9.7 of the Lease for Tenant is changed to the following:

Grand Avenue Peoria Holdings L.L.C.
4808 N. 24th Street, Suite 227
Phoenix, AZ 85016
Attn: Marc Makebakken, Manager

16. In the event of a conflict between any term or provision of this Amendment with any term or provision of the Lease, the terms and provisions of this Amendment shall prevail and supercede the Lease. Except as amended in this Amendment, all other terms and conditions of the Lease remain in full force and effect without modification.

Lessor:

CITY OF PEORIA, ARIZONA,
an Arizona chartered municipality

By: _____

City Manager

Attest:

By: _____
City Clerk

Approved as to Form:

By: _____
City Attorney

Tenant:

GRAND AVENUE PEORIA HOLDINGS L.L.C.,
an Arizona limited liability company

By: _____
Mark Makebakken, its Manager

When recorded mail to:

City Clerk
City of Peoria
8401 W. Monroe
Peoria, AZ 85345

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

20060278612,03/01/2006 11:37,030161-47-1-1-,N

ELECTRONIC RECORDING

CAPTION HEADING: Ground Lease Agreement – LCON07905

DO NOT REMOVE

This is part of the official document.

GROUND LEASE AGREEMENT

This Ground Lease Agreement (the "Lease Agreement") is made as of the 7th calendar day of November 2005, by and between the City of Peoria, Arizona, an Arizona charter municipality ("Lessor"), and Grand Avenue Peoria Holdings L.L.C., an Arizona limited liability company ("Tenant").

1. Demised Premises. For good and valuable consideration – the receipt and sufficiency of which is hereby acknowledged – and subject to the promises, terms and conditions contained in this Lease Agreement, Lessor hereby leases the Demised Premises to Tenant.

1.1 Definition. The "Demised Premises" collectively consists of the following parcels of real property situated in Peoria, Arizona consisting of approximately two and nineteen hundredths (2.19) acres at the SWC of Peoria Avenue and Grand Avenue:

1.1.1 Mobil Parcel. The "Mobil Parcel" consists of that certain parcel of real property situated in Peoria, Arizona commonly known as 8401 West Grand Avenue, consisting of approximately fifty-seven one-hundredths (0.57) acres at the SWC of Peoria Avenue and Grand Avenue, as further identified at *Exhibit A-1* attached hereto and incorporated herein by this reference.

1.1.2 Bank Parcel. The "Bank Parcel" collectively consists of Bank Parcel 1 and Bank Parcel 2, as further identified at *Exhibit A-2* attached hereto and incorporated herein by this reference.

1.1.2.1 "Bank Parcel 1" consists of that certain parcel of real property situated in Peoria, Arizona consisting of approximately sixteen one-hundredths (0.16) acres south of the SWC of Peoria Avenue and Grand Avenue.

1.1.2.2 "Bank Parcel 2" consists of that certain parcel of real property situated in Peoria, Arizona commonly known as 8303 West Grand Avenue, consisting of approximately forty-four one-hundredths (0.44) acres south of the SWC of Peoria Avenue and Grand Avenue.

1.1.3 PEDG Parcel. The "PEDG Parcel" collectively consists of PEDG Parcel 1 and PEDG Parcel 2, as further identified at *Exhibit A-3* attached hereto and incorporated herein by this reference.

1.1.3.1 "PEDG Parcel 1" consists of that certain parcel of real property situated in Peoria, Arizona consisting of approximately twenty-six one-hundredths (0.26) acres south of the SEC of Peoria Avenue and Olive Street (83rd Drive alignment).

1.1.3.2 "PEDG Parcel 2" consists of that certain parcel of real property situated in Peoria, Arizona consisting of approximately twenty-three one-hundredths (0.23) acres at the SEC of Peoria Avenue and Olive Street (83rd Drive alignment).

1.1.4 Washington Street Parcel. The "Washington Street Parcel" collectively consists of Washington Street Parcels 1, 2, 3, 4, 5, and 6, as further

SCANNED

identified at **Exhibit A-4** attached hereto and incorporated herein by this reference.

1.1.4.1 "Washington Street Parcel 1" consists of that certain parcel of real property situated in Peoria, Arizona commonly known as 8307 West Washington Street, consisting of approximately sixteen one-hundredths (0.16) acres west of the SWC of Washington Street and 83rd Avenue.

1.1.4.2 "Washington Street Parcel 2" consists of that certain parcel of real property situated in Peoria, Arizona consisting of approximately eight one-hundredths (0.08) acres west of the SWC of Washington Street and 83rd Avenue.

1.1.4.3 "Washington Street Parcel 3" consists of that certain parcel of real property situated in Peoria, Arizona consisting of approximately eight one-hundredths (0.08) acres west of the SWC of Washington Street and 83rd Avenue.

1.1.4.4 "Washington Street Parcel 4" consists of that certain parcel of real property situated in Peoria, Arizona commonly known as 8325 West Washington Street, consisting of approximately seven one-hundredths (0.07) acres west of the SWC of Washington Street and 83rd Avenue.

1.1.4.5 "Washington Street Parcel 5" consists of that certain parcel of real property situated in Peoria, Arizona consisting of approximately six one-hundredths (0.06) acres west of the SWC of Washington Street and 83rd Avenue.

1.1.4.6 "Washington Street Parcel 6" consists of that certain parcel of real property situated in Peoria, Arizona consisting of approximately eight one-hundredths (0.08) acres west of the SWC of Washington Street and 83rd Avenue.

1.1.4.7 "Park Parcel" of that certain parcel of real property situated in Peoria, Arizona commonly known as 10510 North 83rd Avenue, consisting of approximately one and six one-hundredths (1.06) acres at the NWC of Washington Street and 83rd Avenue, to be further identified at **Exhibit A-5** to be attached to this Lease Agreement. **Notwithstanding any provisions to the contrary in this Lease Agreement, Lessor and Tenant acknowledge that (i) the Park Parcel is included as part of the Demised Premises solely to provide Tenant and Tenant's sublessees and their customers and vendors with the right to use the parking areas on the Park Parcel and (ii) Lessor, at Lessor's sole cost, is responsible and liable for the construction of all public improvements on the Park Parcel and all other duties and obligations relating in any manner to such public improvements, including without limitation, maintenance, repair, replacement, insurance, casualty and operating expenses.**

1.2 Condition.

1.2.1 Except as provided in Section 1.2.2 below or elsewhere in this Lease Agreement, Tenant acknowledges and covenants to Lessor that it has made a complete investigation of the real property included within the Demised

Premises, the surface and sub-surface conditions thereof, the present and proposed uses thereof, and agrees to accept all the same "as is" and Tenant further agrees that, except as expressly provided herein, no representation or warranty, expressed or implied, in fact or by law, has been made by Lessor or anyone else, as to any matter, fact, condition, prospect or anything else of any kind or nature.

1.2.2 Lessor at Lessor's sole expense shall be responsible for (i) razing or relocating to property other than the Demised Premises, as Lessor may elect, the jail and the women's club (including related underground structures) currently situated on a portion of the Demised Property and (ii) remediating any existing Hazardous Materials (as defined in Section 6.2.2.1 below) contamination existing as of the date of this Lease Agreement on any portion of the Demised Premises except the Mobil Parcel.

1.3 Quiet Possession. Upon Tenant performing all covenants of this Lease Agreement to be performed by Tenant, Tenant shall have quiet possession of the Demised Premises, without hindrance or ejection by any person lawfully claiming by, through or under Lessor. This right to quiet possession is subject, however, to the provisions of this Lease Agreement and to the provisions of any covenants, conditions and restrictions of record as of the date of this Lease Agreement.

1.4 Unsubordinated Ground Lease. This is an unsubordinated ground lease agreement. Lessor is not and shall not be obligated to subordinate its rights and ownership interest in the real property included within the Demised Premises to any loan or money encumbrance that Tenant shall place against Tenant's leasehold interest.

1.5 Net Lease. As long as the City of Peoria shall remain the Lessor, it is the intention of the parties hereto that, except as otherwise provided in this Lease Agreement, this Lease Agreement shall be a net lease and that Lessor shall receive the rents herein reserved and all sums which shall or may become payable hereunder by Tenant free from all taxes, charges, expenses, damages and deductions of every kind or sort whatsoever and that Tenant shall and will and hereby expressly agrees to pay all such sums which, except for the execution and delivery of this Lease Agreement, would have been chargeable against the Demised Premises and payable by Lessor. Tenant, however, shall not be under any obligation to pay any principal or interest on any mortgage or mortgages which may be placed by Lessor on the real property included within the Demised Premises, nor shall Tenant be under any obligation to pay any income taxes which may become payable by Lessor by reason of the income derived hereunder, nor shall this Lease Agreement be subordinated to any such Lessor's mortgage.

2. Mobil Parcel Acquisition. As a condition precedent to this Lease Agreement, the parties will complete the actions described in Section 2.1 through 2.6 on or before the sixtieth (60th) calendar day following the Effective Date (as defined in Section 4.1 below) of this Lease Agreement. Failure to complete the following does not constitute a breach of this Lease Agreement, but makes the Lease

Agreement cancelable by either party at any time by written notice given to the other before the satisfaction of the condition.

2.1 Tenant will establish an escrow (the "Escrow") with First American Title Insurance Company for the conveyance of the Mobil Parcel by Tenant to Lessor consistent with the terms of this Lease Agreement and will obtain for Lessor a title report for an owner's standard coverage policy of title insurance. At the time of conveyance of title of the Mobil Parcel to Lessor, the condition of title as shown on the title report Schedule B may only be subject to current taxes and assessments, reservation in patents, easements, rights of way and other standard title company exclusions and exceptions. The Mobil Parcel must be free of any ground leases at the time of conveyance and the title report must indicate that the Mobil Parcel is free of any ground leases at the time of conveyance.

2.2 Tenant will execute the Special Warranty Deed attached hereto as *Exhibit B* (the "Mobil Deed") and deposit it into the Escrow.

2.3 Tenant will deliver to Lessor the "Phase 1 Baseline Condition Report from Exxon/Mobil" and all, if any, other reports and data obtained by Tenant regarding the environmental condition of the Mobil Parcel and allow Lessor every access necessary to inspect the Mobil Parcel in order to assess any environmental liability associated with the parcel. Lessor acknowledges that this condition has been satisfied. Tenant will do all acts necessary for Lessor to perfect an Innocent Owner defense under the Comprehensive Environmental Responsibility, Compensation, and Liability Act of 1980 and the Bona Fide Purchaser defense under the Small Business Liability Relief and Brownfields Revitalization Act.

2.4 Tenant will deliver to Lessor Tenant's existing survey of the Mobil Parcel. This condition has been satisfied.

2.5 Tenant will assign the indemnity obtained by Tenant from the previous owner of the Mobil Parcel to Lessor and if required under the terms of the indemnity, obtain the consent of the indemnitor to the assignment.

2.6 Lessor will pay into Escrow two hundred fifty thousand dollars (\$250,000) (the "Mobil Parcel Payment").

2.7 Upon (i) execution and delivery of this Lease Agreement by both Lessor and Tenant, (ii) execution and delivery of a Declaration of Use Restrictions setting forth the specific uses to which the Demised Premises may not be put and (iii) satisfaction of the conditions Sections 2.1 through 2.6 above, the parties will cause the Escrow to be closed by having the escrow agent record the Mobil Deed and disburse the Mobil Parcel Payment to Tenant.

3. Use of Premises.

3.1 Permitted Uses. Tenant shall use the Demised Premises only for those uses permitted under applicable zoning ordinances, including, e.g., the Old Town Mixed-Use zoning district, as such zoning district exists as of the date of this lease agreement. Nothing in this Lease Agreement obligates the

legislative body of Lessor to or prevents the legislative body of Lessor from pursuing, adopting, or denying zoning changes on the Demised Premises.

3.1.1 Terms. Tenant shall use the Demised Premises solely for the Permitted Uses and not for any other purpose without the prior written consent of Lessor. Tenant shall not use or permit the Demised Premises to be used in violation of the laws, ordinances, regulations and requirements of the United States of America, the State of Arizona, the County of Maricopa, the City of Peoria, Arizona or any subdivision or department thereof or any other authority or agency having jurisdiction over the Demised Premises. Lessor agrees to cooperate with Tenant to insure that the zoning for the Demised Premises will permit uses consistent with a mixed-use commercial/retail/office development. Tenant agrees, at its sole expense, to comply with and conform to all requirements of any governmental entity having jurisdiction over the Demised Premises, throughout the entire term, including any applicable extensions, of this Lease Agreement. Use of the Demised Premises in violation of the terms hereof shall cause Tenant to be in default hereunder; however, Tenant shall have the right to cure said default pursuant to the provisions of this Lease Agreement.

3.1.2 Limits. Tenant shall not use or allow to be used the Demised Premises to operate an adult movie theatre, an adult live cabaret or any other form of adult use as that term is defined in Chapter 11 of the Peoria City Code (1992) and shall not permit performances containing specified sexual activities or exhibiting specified anatomical areas as those terms are defined in Chapter 11 of the Peoria City Code (1992). Tenant will use its best efforts in the marketing and subleasing of the Demised Premises to meet the City's goals of creating a mixed-use entertainment and retail center but with consideration given to market conditions as they exist from time to time during the term .

3.2 Construction of Buildings and Improvements.

3.2.1 Construction Obligations.

3.2.1.1 Parcel Obligations. Tenant, at its sole expense, hereby covenants and agrees to cause to be constructed and installed all of the following improvements (except the public improvements for "Osuna Park" on the Park Parcel) and, except with respect to the jail and the women's club as provided in Section 1.2.2(i), shall demolish and remove any existing structures (collectively, the "Required Improvements"). Tenant shall complete all such construction in compliance with all local, state, and federal law (including, e.g., design review and open space requirements), and shall assist Lessor in any audit of compliance with such laws or with this Lease Agreement. In order to qualify under A.R.S. §§ 42-6201 et seq., Tenant shall transfer title of record to any improvements to Lessor immediately following the issuance of a certificate of occupancy to an improvement; provided, however, the Demised Premises shall be deemed to include the improvements.

3.2.1.1.1. Mobil, Bank, PEDG and Park Parcels. Tenant must construct a minimum of eight thousand (8,000) square feet of retail space with a minimum investment (soft and hard costs) of eight hundred thousand dollars

(\$800,000) for the buildings and related on-site and off-site improvements comprising or related to such retail space on the Mobil, Bank, PEDG and Park Parcels. The Mobil Parcel will be improved with a parking lot and/or landscape buffer, the Bank Parcel will be improved for commercial use (with Lessor to provide Tenant with such approvals as may be requested by Tenant for up to the maximum building square footage presently allowed by the Old Town Mixed Use zoning district), and the PEDG Parcel will be improved for commercial use (with Lessor to provide Tenant with such approvals as may be requested by Tenant for up to the maximum allowable building square footage).

3.2.1.1.2. Washington Street Parcel. Tenant must construct a minimum of fifteen thousand (15,000) square feet of mixed-use space (including at least seven thousand (7,000) square feet of retail space) with a minimum investment (soft and hard costs) of one million eight hundred thousand dollars (\$1,800,000) for the buildings and related on-site and off-site improvements comprising or related to such mixed-use space on the Washington Street Parcel. The Washington Street Parcel must meet the requirements of the City's Request for Proposals for Washington Street as awarded to Tenant.

3.2.1.1.3. Park Parcel. Tenant must construct a minimum of eight thousand (8,000) square feet of retail space, but Landlord, at its sole expense, shall construct and install the public improvements for Osuna Park on the Park Parcel.

3.2.1.1.4. Regulatory Authority. Whenever in this Lease Agreement the Lessor is required to act, it is required to act solely in its good faith capacity as Lessor: the City of Peoria retains its constitutional and independent authority as regulator exercising its police and other powers.

3.2.1.2 Construction Timing.

3.2.1.2.1 Lessor Rezoning. The administrative staff of Lessor will apply to and diligently attempt to rezone the Demised Premises (with such other parcels as Lessor determines are appropriate) to Planned Area Development (PAD) consistent with this Lease Agreement, including without limitation, the provisions of Section 3.2 above (the "Rezoning"). Tenant acknowledges and accepts that the PAD Zoning will exclude any fast food drive through uses (except as may be specifically approved by Lessor). Lessor shall use its best efforts to have the Rezoning complete (with the applicable appeal period expired and any appeals resolved in favor of the Rezoning) within six (6) months of the Effective Date, but in the event this does not occur within such six (6) month period (whether by reason of referendum or other cause), then the Effective Date shall be extended by the number of months elapsed between (i) six (6) months after the original Effective Date and (ii) the month in which the appeal period for the Rezoning ends or any appeal is resolved in favor of the Rezoning.

Construction Commencement. Tenant shall not be required to commence construction of the Required Improvements until the sooner of: (i) the Arizona Department of Transportation has completed its Grand Avenue street and pedestrian improvements along Grand Avenue; (ii) Lessor has

commenced construction (as evidenced by the issuance of a building permit) of the theatre planned by Lessor as part of Lessor's Redevelopment District improvements; or (iii) the 1st day of December 2006. Subject to the foregoing, Tenant shall commence construction of the Required Improvements as follows:

3.2.1.2.2.1 Mobil, Bank and Park Parcels. No later than eighteen (18) months after the Effective Date, except that Lessor shall not be obligated to commence construction of the Required Improvements on the Mobil, Bank and Park Parcels until Lessor begins construction of the public improvements for Osuna Park on the Park Parcel.

3.2.1.2.2.2 Washington Street Parcel. No later than twenty-four (24) months after the Effective Date.

3.2.1.2.2.3 PEDG Parcel. There shall be no required commencement of construction date for the PEDG Parcel.

3.2.1.2.3 Construction Completion. Tenant shall complete each of the specific Required Improvements diligently, but, in any case, Tenant must perform all work necessary in order to obtain a certificate of occupancy, subject to punch list conditions, for the particular Required Improvements not later than twelve (12) months after the commencement of construction of such Required Improvement, as evidenced by the issuance of a temporary or permanent certificate of occupancy or the certification of a licensed architect that all work has been performed which is necessary for the issuance thereof.

3.2.2 Construction Plans and Lessor's Representative. Lessor and Tenant agree that Tenant's Required Improvements shall conform to the "Concept Plans" attached to this Lease Agreement as *Exhibit C*. The final construction plans for the Required Improvements (the "Final Plans"), as well as any subsequent construction or any additions or alterations which affect the exterior of any buildings, structures or improvements included within the Demised Premises, shall be subject to the prior written approval of Lessor, through its designated representative, the City Manager or his designee ("Lessor's Representative"), which shall include, but not be limited to, approval by Lessor's Representative of such conformity and compliance of all site plans, grading, landscaping and building materials. Notwithstanding the foregoing, Lessor's changes from the Concept Plans to the Final Plans shall not increase Tenant's costs (soft and hard) by more than ten percent (10%) over the cost of the improvements if constructed in accordance with the Concept Plans.

3.2.3 Ancillary Improvements. Tenant shall be allowed to landscape and utilize moveable property in and on the Demised Premises subject to complying with City regulations and obtaining City approval as required hereby. Except as otherwise provided in this Lease Agreement with respect to the public improvements on the Park Parcel, Tenant shall be responsible, at its sole expense, for all maintenance and repair of the landscape during the term of this Lease Agreement. Prior to completion of the construction required hereby, Tenant shall install the landscaping for which Tenant is responsible after first

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obtaining written approval from Lessor's Representative of Tenant's landscape plans.

3.2.4 Alterations. Subject to the provisions hereof, Tenant shall have the right to make alterations and additions to any buildings, structures or improvements included within the Demised Premises, provided that (a) whether in connection with alterations and additions or otherwise, no substantial portion of any buildings, structures or improvements may be demolished or removed without the prior written approval of Lessor's Representative; and (b) the general character of the Demised Premises shall not be changed nor the fair market value and fair rental value reduced below their value immediately before such alterations or additions without the prior written approval of Lessor's Representative. Said approval of Lessor's representative shall not be unreasonably withheld, delayed or conditioned.

3.2.5 Licenses. Tenant, or its designated contractors, subcontractors and employees, shall perform the construction and installation of Tenant's Required Improvements on the Demised Premises in a good and workmanlike manner and in all respects in accordance with all applicable legal requirements, permits or approvals, as the case may be.

3.3 Operating Covenant.

3.3.1 Continuous Operation. Tenant covenants and agrees that after completion of the improvements contemplated by this Lease Agreement and thereafter during the term of this Lease Agreement, Tenant will continuously and without interruption (except as provided below) cause those portions of the Demised Premises improved with buildings to be operated for retail or commercial uses pursuant to the Permitted Uses under the provisions of this Lease Agreement, except while the Demised Premises are vacant by reason of fire or other casualty, eminent domain, remodeling, renovations for re-leasing, labor strikes or other causes beyond the reasonable control of Tenant ("Operating Covenant"). Tenant shall at all times, except for weekends and holidays, have available to the Demised Premises competent personnel to service and supply the ordinary demands and requirements of its sublessees to the level of availability which conforms to commercially reasonable management practices for comparable facilities.

3.3.2 Breach. If Tenant fails to use commercially reasonable efforts (including at least listing the unoccupied portions of the Demised Premises with a licensed Arizona real estate broker and bringing the condition of the building shells up to market comparable condition that a tenant may occupy the property with reasonable tenant improvements to be installed in accordance with the terms of tenant subleases) to maximize occupancy on commercially reasonable terms, then, as Lessor's exclusive remedy for such failure, Lessor may terminate this Lease Agreement upon one hundred twenty (120) calendar days prior written notice to Tenant after which, if Tenant has not cured the noticed breaches in the meantime, all obligations of Tenant and Lessor under this Lease Agreement shall terminate and be of no further force and effect.

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4. Term.

4.1 Effective Date. The "Effective Date" shall mean the date that the last of either Lessor or Tenant sign this Lease Agreement as such date may be extended under Section 3.2.1.2.1 above.

4.2 Term. The lease term shall commence on the Effective Date and continue thereafter for a period of **twenty five (25) years** (the "Initial Term"), unless such lease term shall be sooner terminated as hereinafter provided. In the final two (2) years of the Term, Tenant may request in writing a **ten (10) year extension** upon the terms contained herein for such extension (unless then in default under this Lease Agreement). In the final two (2) years of the extended Term, Tenant may request in writing a **ten (10) year extension** upon the terms contained herein for such extension (unless then in default under this Lease Agreement). In the final two (2) years of the second extended Term, Tenant may request in writing a **five (5) year extension** upon the terms contained herein for such extension (unless then in default under this Lease Agreement). The Initial Term as it may be extended by exercise of the foregoing extension rights is defined as the "Term".

4.3 Conditions Precedent.

4.3.1 Execution and recordation of a Memorandum of Lease and Declaration of Use Restrictions, in recordable form evidencing the existence of this Lease Agreement substantially in the form attached hereto as *Exhibit D* (the "Memorandum of Lease and Declaration of Use Restrictions"), setting forth certain specified uses restrictions for the Demised Premises is a condition precedent to the effectiveness of this Lease Agreement.

4.3.2 Closing of the Mobil Parcel Acquisition is a condition precedent to this Lease Agreement.

5. Lease Charges.

5.1 Rent. Rent includes Lease Acquisition Rent, Ordinary Rent, and Default Rent.

5.1.1 Lease Acquisition Rent. The Lease Acquisition Rent is the consideration derived by the City from the Mobil Parcel Acquisition and is deemed paid in full upon recordation of the Mobil Deed.

5.1.2 Ordinary Rent. Except for Default Rent, the Lease Acquisition Rent is the only rent due during the first (1st) fifteen (15) years of the Term. After such first (1st) fifteen (15) years of the Term, Ordinary Rent will be due monthly on the first (1st) day of each calendar month and continuing until the final month of the Term. The Per Square Foot Market Value of the Demised Premises (excepting the Park Parcel) (the "Market Value") will be determined by professional appraisal by a mutually acceptable appraiser as of the first (1st) day of the sixteenth (16th) year of the Initial Term and re-determined as of each fifth (5th) anniversary of such day, assuming an at-market sale of the Demised Premises (excepting the Park Parcel) as a whole, as is, as of the Anniversary Date. The

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monthly amount of the Ordinary Rent will be the product of: (a) the Market Value; multiplied by (b) the Multiplier; divided by (c) twelve (12).

5.1.3 **Default Rent.** During any period of Default, the monthly Rent will be due on the first (1st) day of the month, beginning in the month immediately following the Notice of Default and continuing until the Default is cured or this Lease Agreement is terminated (the "Default Rent"). The monthly amount of the Default Rent will be the product of: (a) the Market Value; multiplied by (b) one-fifth (0.2); divided by (c) twelve (12). If the Default occurs prior to the 1st day of the sixteenth (16th) year of the Initial Term, the Default Rent will be forty cents (\$0.40) per square foot per month.

5.1.4 **Multiplier.** The "Multiplier" is as follows:

| <i>Period</i> | <i>Multiplier</i> |
|---|-------------------|
| 16 th through 20 th years of Term | 0.05 |
| 21 st through 25 th years of Term | 0.07 |
| 26 th year of Term and thereafter | 0.08 |

5.2 **Additional Charges.** All taxes, including the City transaction privilege tax, assessments, insurance premiums, charges, costs and expenses which Tenant assumes, agrees or is obligated by law to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay the same as herein provided, and all other damages, costs and expenses which Lessor may suffer or incur, and any and all other sums which may become due, by reason of any default of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this Lease Agreement on Tenant's part to be performed, shall be referred to herein as "Additional Charges" and, in the event of their nonpayment, Lessor shall have, with respect thereto, all rights and remedies herein provided and available in law or equity in the event of nonpayment of Rent. All Rent and Additional Charges due Lessor shall accrue interest at ten percent (10%) per annum from their due date until paid.

5.3 **Taxes, Assessments and Utilities.**

5.3.1 **Tenant's Obligation.** It is the intention of the parties hereto that, insofar as the same may be lawfully done, Lessor shall be free from all costs, expenses, obligations and all such taxes, assessments and all such other governmental impositions and charges, and that this Lease Agreement shall yield net to Lessor not less than the Rent reserved hereunder, throughout the term of this Lease Agreement (except as elsewhere provided in this Lease Agreement with respect to the public improvements on the Park Parcel). Among other taxes, the Government Property Lease Excise Tax (the "GPLET") is due pursuant to A.R.S. Title 42 Chapter 6 Article 5 (A.R.S. §§ 42-6201 *et seq.*). Failure by the Tenant to pay the GPLET after notice and an opportunity to cure is an event of default that could result in divesting the Tenant of any interest in or right of occupancy of the Demised Premises. Tenant shall pay and discharge, as and when the same shall become due and payable without penalty, all real estate, personal property, business, transaction privilege, occupation and occupational license taxes, assessments (but not assessments for any presently existing

public improvements or benefits); and all other governmental taxes, impositions and charges of every kind and nature, general or special, unforeseen or foreseen, whether similar or dissimilar to any of the foregoing, which at any time during the term of the Lease Agreement shall be or become due and payable by Lessor or Tenant and which shall be levied, assessed or imposed:

5.3.1.1 Upon, with respect to, shall be, or may become liens upon, the Demised Premises (except with respect to the public improvements on the Park Parcel), or any portion thereof or any interest of Lessor or Tenant therein or under this Lease Agreement;

5.3.1.2 Upon or with respect to the possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy of the Demised Premises (except with respect to the public improvements on the Park Parcel), or any portion thereof; and

5.3.1.3 Upon this transaction or any document to which Tenant is a party or is bound, creating or transferring an interest or an estate in the Demised Premises (except with respect to the public improvements on the Park Parcel), under or by virtue of any present or future law, statute, charter, ordinance, regulation, or other requirement of any governmental authority.

5.3.2 Limitation. Notwithstanding the foregoing, Tenant's obligation to pay real estate taxes on the Demised Premises and any improvements located thereon (except with respect to the public improvements on the Park Parcel) shall be limited to the real estate taxes owed as long as the City of Peoria, Arizona remains the owner of the Demised Premises. Should a sale of the Demised Premises result in any increase in real estate taxes from that which may otherwise be owed if the City of Peoria, Arizona remained the owner, such increase in real estate taxes shall be paid by the successor Lessor, and Tenant may deduct such additional taxes from the Rent payments provided herein.

5.3.3 Certification. Tenant, upon Lessor's written request, shall furnish to Lessor, within twenty (20) calendar days thereafter, proof of the payment of any taxes, impositions or charges which Tenant and not Lessor shall have the obligation to pay under these provisions.

5.3.4 Utilities. Except with respect to the public improvements on the Park Parcel, Tenant shall be solely responsible for, and shall pay the cost of, constructing or installing utility hookups from existing utility installations to the Demised Premises and shall be solely responsible for, and shall pay the cost of, all utility services consumed by Tenant on the Demised Premises.

5.3.5 Payment of Costs and Expenses. Whenever, in this Lease Agreement, anything is to be done or performed by Tenant or Lessor, unless otherwise expressly provided to the contrary (for example, with respect to the public improvements on the Park Parcel), it shall be done or performed at the sole cost and expense of Tenant.

6. Preservation of the Property.

6.1 Maintenance and Repairs.

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6.1.1 Primary Improvements. Tenant at all times during the term of the Lease Agreement shall keep and maintain in good order and repair and in a clean and sanitary condition the real property, buildings, structures and improvements included within the Demised Premises (except with respect to the public improvements on the Park Parcel), and all equipment and appurtenances, both interior and exterior, structural and non-structural, ordinary or extraordinary, howsoever the necessity or desirability of repairs may occur. All repairs, replacements and renewals shall be made promptly and be equal in quality and class to the original work. Tenant waives any right created by any legal requirement (now or hereafter in force) to make repairs to the Demised Premises at Lessor's expense, it being understood that Lessor shall in no event be required to make any alterations, improvements or repairs during the Term other than keep and maintain in good order and repair and in a clean and sanitary condition the public improvements on the Park Parcel) and except that if any damage to the buildings, structures, or improvements on the Demised Premises, or to any equipment or appurtenances located thereon, shall have been as a result of Lessor's negligent or intentional actions, Lessor shall pay the cost therefor to Tenant.

6.1.2 Ancillary Improvements. Tenant at all times during the Term shall (a) keep and maintain in good order and repair all landscaped areas and the exterior painted surfaces of all buildings, structures and improvements included within the Demised Premises (except with respect to the public improvements on the Park Parcel);, and (b) keep and maintain in good order and repair any parking lot or driveway constructed by the Tenant on the real property included within the Demised Premises.

6.1.3 Dumpsters. Except with respect to the public improvements on the Park Parcel, Tenant shall provide and maintain trash dumpsters, with covers thereon, about the Demised Premises in which to place any trash, and cause such trash to be removed as often as is required to maintain a sanitary condition. Tenant (and any subtenants) is (are) obligated to utilize City of Peoria commercial solid waste services at rates established by the City Council, for so long as the City is willing to continue to provide such services.

6.2 Regulatory Requirements.

6.2.1 Tenant Obligation. Tenant shall promptly observe and comply with all present and future laws, ordinances, requirements, rules and regulations of all governmental authorities having or claiming jurisdiction over the Demised Premises or any part thereof and (upon receiving written notice of the terms thereof) of all insurance companies writing policies covering the Demised Premises or any part thereof. Without limiting the generality of the foregoing, Tenant shall also procure each and every permit, license, certificate or other authorization required in connection with the lawful and proper use of the Demised Premises or required in connection with any building, structure or improvement now or hereafter erected thereon. Notwithstanding the foregoing, nothing contained herein shall be deemed to (i) grant either Lessor or Tenant the right to alter the terms of the Lease Agreement without the express written

consent of both parties or (ii) impose any obligations on Tenant with respect to the public improvements on the Park Parcel.

6.2.2 Hazardous Materials. Tenant covenants and agrees not to use, generate, release, manage, treat, manufacture, store, or dispose of, on, under or about, or transport to or from (any of the foregoing hereinafter described as "Use") the Demised Premises any Hazardous Materials (other than De Minimis Amounts). Tenant further covenants and agrees to pay all costs and expenses associated with enforcement, removal, remedial or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to use of any Hazardous Materials in any amount by Tenant, its employees, agents, invitees, subtenants, licensees, assignees or contractors. For purposes of this Lease Agreement:

6.2.2.1 "Hazardous Materials" includes but is not be limited to asbestos, urea formaldehyde, polychlorinated biphenyls, oil, petroleum products, pesticides, radioactive materials, hazardous wastes, toxic substances and any other related or dangerous, toxic or hazardous chemical, material or substance defined as hazardous or regulated or as a pollutant or contaminant in, or the Use of or exposure to which is prohibited, limited, governed or regulated by, any Hazardous Materials Laws;

6.2.2.2 "De Minimis Amounts" means, with respect to any given level of Hazardous Materials, that such level or quantity of Hazardous Materials in any form or combination of form (a) does not constitute a violation of any Hazardous Materials Laws and (b) is customarily employed in, or associated with, suburban commercial/retail/office mixed-use projects in Maricopa County, Arizona; and

6.2.2.3 "Hazardous Materials Laws" means any federal, state, county, municipal, local or other statute, law, ordinance or regulation now or hereafter enacted which may relate to or deal with the protection of human health or the environment, including but not be limited to the Comprehensive Environment Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*; the Toxic Substances Control Act of 1976, 15 U.S.C. Section 2601 *et seq.*; Ariz. Rev. Stat. Ann., Title 49 (the "Arizona Environmental Quality Act of 1986"); and any rules, regulations or guidelines adopted or promulgated pursuant to any of the foregoing as they may be amended or replaced from time to time.

6.2.3 Cooperation. Lessor agrees to join in the execution of any instruments which may reasonably be required in order for Tenant to procure the issuance of any licenses, occupational permits, building permits or other government approvals required by Tenant in its use, occupancy or construction of the Demised Premises. Tenant shall indemnify and save Lessor harmless from any expense or loss whatsoever occasioned by Lessor's presence as a party to any such instrument, application or permit. Furthermore, Tenant shall do

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all acts necessary for the Lessor to enforce its indemnification rights regarding the Mobil Parcel.

6.3 Liens.

6.3.1 No Liens. Tenant shall have no authority to do any act or make any contract that may create or be the basis for any lien, mortgage or other encumbrance upon any interest of Lessor in the real property included within the Demised Premises, provided however that Tenant shall not be prohibited from entering into any contracts (such as but not limited to occupancy or other subleases) in Tenant's capacity as a ground lessee of, rather than as the holder of fee simple title to, said real property. Should Tenant cause any construction, alterations, rebuildings, restorations, replacements, changes, additions, improvements or repairs to be made on the Demised Premises, or cause any labor to be performed or material to be furnished thereon, therein or thereto, neither Lessor nor the real property included within the Demised Premises shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, and Tenant shall be solely and wholly responsible to contractors, laborers and materialmen performing such labor and furnishing such material.

6.3.2 Release. If, because of any error, act, or omission (or alleged error, act or omission) of either Tenant or Lessor, any mechanics', materialmen's or other lien, charge or order for the payment of money shall be filed or recorded against the real property included within the Demised Premises or against Lessor (whether or not such lien, charge or order is valid or enforceable as such), Tenant or Lessor, as the case may be, shall, at its own expense, either cause the same to be discharged of record pursuant to A.R.S. § 33-1004, or otherwise cause such discharge or provide reasonable security against same, within sixty (60) calendar days after either shall have received from the other a written notice requesting such discharge. Thereafter, the responsible party shall take such action as may be necessary or desirable to contest or resolve the lien dispute.

6.4 Property and Public Liability Insurance. The insurance obligations imposed on Tenant by this Section 6.4 do not include the public improvement areas of the Park Parcel and the improvements thereon. Tenant shall at all times, throughout the Term of this Lease Agreement, keep the Demised Premises insured against perils and shall ensure that all insurance policies in effect for the Demised Premises name the City of Peoria as an additional insured.

6.4.1 General. The insurance policies required by this section shall be written by insurance companies with an A.M. Best's Key Rating Guide of A- or better, authorized to do business in the State of Arizona, and shall be written on an occurrence basis or in a form satisfactory to Lessor.

6.4.1.1 As often as any such policy shall expire or otherwise terminate, renewal or additional policies shall be procured and maintained by Tenant and its contractor(s) to provide uninterrupted coverage. Tenant agrees and shall cause its contractor(s) to agree to provide Lessor with certificates of

insurance evidencing such insurance policies providing coverage for the Demised Premises upon Lessor's request.

6.4.1.2 Certificates of insurance evidencing all of the coverages required in this section shall be delivered to Lessor prior to the start of construction of any buildings, structures or improvements on or in the Demised Premises and renewal certificates of insurance shall be delivered to Lessor at least thirty (30) calendar days prior to the expiration dates of the respective policies. Such certificates shall also provide that Lessor will receive written notice at least ten (10) calendar days prior to any cancellation, non-renewal or reduction in coverage. Lessor reserves the right to require Tenant to furnish proof, satisfactory to Lessor, that any and all insurance policies for the Demised Premises remain in full force and effect.

6.4.1.3 At Tenant's election, the insurance required under Section 6.4 may be provided under a blanket policy or by subtenants.

6.4.1.4 Tenant further covenants and agrees to increase the required insurance hereunder to such additional commercially reasonable and available amounts as Lessor may from time to time require in conformance with that customarily required for comparable projects in the metropolitan Phoenix, Arizona area.

6.4.1.5 In the event of loss or destruction under any such policy or policies, Tenant shall promptly proceed with the repair and restoration of the damaged or destroyed buildings, structures or improvements in accordance with and subject to the provisions hereof. The insurance proceeds, if less than One Hundred Thousand Dollars (\$100,000), may be paid directly to Tenant for application to such repair and restoration but if in excess of One Hundred Thousand Dollars (\$100,000), shall be held by Tenant's mortgagee to be paid out during restoration, as restoration is performed, upon architect's certificates and contractors', subcontractors' and materialmen's waivers of lien for the cost and expense of repairing or restoring the buildings, structures or improvements damaged or destroyed; provided, however, that in the event that such insurance proceeds shall be insufficient to pay fully the cost of completion of such repair or restoration, Tenant shall provide Lessor reasonable assurances of the availability of sufficient funds to complete before any such repair and restoration are commenced so that it shall appear to the reasonable satisfaction of Lessor that the amount of insurance money available shall at all times be sufficient to pay for the completion of said repairs or restoration free and clear of liens. Upon the completion of said repair or restoration, free and clear of all liens, any surplus of insurance monies shall be paid to Tenant, provided that Tenant is not then in default under this Lease Agreement. In the event that this Lease Agreement shall have been terminated for any default of Tenant under any of the terms and provisions contained in this Lease Agreement, subject to the rights of any Tenant's mortgagee, all insurance proceeds and all claims against insurers shall be and become the absolute property of Lessor.

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or pressure boilers and similar apparatus located on the Demised Premises in an amount not less than one million dollars (\$1,000,000) combined single limit per occurrence and not less than three million dollars (\$3,000,000) general aggregate and insurance against such other hazards and in such amounts as Lessor may reasonably require for its protection.

6.4.3 Contractor Insurance. During the entire term of this Lease Agreement, except in the case of usual and customary maintenance, repair and replacement of the Demises Premises, Tenant shall require the general contractor performing work or services to the Demised Premises with Tenant's consent or approval, to provide, secure, pay for and maintain the following insurance coverage, indemnification and waivers as set forth in §§ 6.4.3.1 through 6.4.3.5 (inclusive) immediately below.

6.4.3.1 Statutory workers' compensation insurance, with limits of not less than one hundred thousand dollars (\$100,000) on an occurrence basis, one hundred thousand dollars (\$100,000) disease for each employee, five hundred thousand dollars (\$500,000) disease policy limit and any and all insurance required by any employee benefit acts or other statutes applicable where the work is to be performed as will protect Tenant's employees, contractors and subcontractors from any and all liability under the aforementioned acts and statutes.

6.4.3.2 Commercial general liability insurance in an amount not less than three million dollar (\$3,000,000) combined single limit per occurrence and not less than five million dollar (\$5,000,000) general aggregate, including but not limited to coverage for explosion, collapse, and underground work as well as contractual liability coverage and including Lessor as an additional insured on a primary non-contributory basis with respect to any other insurance available to Lessor.

6.4.3.3 Comprehensive automobile liability insurance, including coverage for the ownership, maintenance and operation of any automobile equipment owned, hired or non-owned, which is assigned to or used by the contractor) in the performance of work on, or services provided to, the Demised Premises, in an amount not less than one million dollar (\$1,000,000) combined single limit per accident.

6.4.3.4 Either of the following: (a) owner's and contractor's protective liability insurance with limits of not less than one million dollar (\$1,000,000) combined single limit per occurrence and not less than five million dollar (\$5,000,000) general aggregate as will insure Lessor as named insured against any and all claims for bodily injury, including death resulting therefrom, personal injury or damage to the property of others, arising from or in any way connected to Tenant's contractor(s) performance of work on, or services provided to, the Demised Premises or (b) in lieu of the foregoing owner's and contractor's protective liability insurance specified herein, an endorsement to the commercial general liability insurance specified above providing for a separate

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general aggregate limit of insurance of not less than five million dollar (\$5,000,000) on an occurrence basis.

6.4.3.5 Tenant shall cause the above-referenced contractor(s) and sub-contractor(s) (and their respective insurers) to: (a) provide waivers of liability in favor of Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death resulting therefrom, personal injury and loss of or damage to property (including also any and all loss of use resulting therefrom); (b) require the above-referenced contractor(s) and sub-contractor(s) to name the Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees as Additional Insureds in all insurance policies required hereunder; and, (c) require that the contractor(s), sub-contractor(s) and all insurers providing policies of insurance hereunder waive their rights of subrogation against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees. The above-referenced waivers of liability and subrogation shall not apply to Lessor's negligent or intentional acts but shall be applicable to any negligence imputed to Lessor, its agents, representatives, officers, directors, elected officials and employees by operation of law as a result of the action or non-action of Tenant's contractor(s), sub-contractor(s) and their respective insurers for work performed on, or services provided to, the Demised Premises.

6.4.3.6 Subcontractors. Tenant shall cause the general contractor to cause all subcontractors to provide insurance coverage as is generally provided in comparable projects in the metropolitan Phoenix area.

6.5 Indemnification.

6.5.1 Tenant Obligation. Tenant shall protect, indemnify and hold Lessor, its agents, representatives, officers, directors, elected and appointed officials and employees harmless from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) imposed upon or asserted against Lessor, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of: (a) any use, nonuse or condition of the Demised Premises or any part thereof (except with respect to the public improvements area of the Park Parcel); (b) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Demised Premises or any part thereof (except with respect to the public improvements area of the Park Parcel); (c) any failure on the part of Tenant to perform or comply with any of the terms of this Lease Agreement to be performed or complied with by Tenant; (d) performance of any labor or services or the furnishing of any materials or other property by Tenant or its contractors with respect to the Demised Premises or any part thereof; or (e) any failure on the part of Tenant to comply with any of the matters set forth herein, including but not limited to any failure by Tenant to clean up any Hazardous Materials for which Tenant is responsible under this lease Agreement.

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6.5.1.1 Duty to Defend. In the event Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees should be made a defendant in any action, suit or proceeding brought by reason of any such occurrence, Tenant shall at its own expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by Lessor. Except for the negligence of Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees, if any such action, suit or proceeding should result in a final judgment against Lessor, Tenant shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged. The obligations of Tenant under this section arising by reason of any such occurrence taking place while this Lease Agreement is in effect shall survive any termination or other form of cancellation of this Lease Agreement.

6.5.1.2 Continuing Duty to Defend. Notwithstanding the terms and conditions contained herein, Tenant shall be required to protect, defend, indemnify, satisfy or hold harmless Lessor, its agents, representatives, officers, directors, elected and appointed official, and employees in the event negligence is imputed by operation of law against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees as a result of the actions or non-action of Tenant, its agents, servants, employees, directors, representatives, officials, customers, vendors, guests, licensees or invitees on the Demised Premises.

6.5.2 Lessor Obligation. Except for any responsibility alleged or allocated to Lessor by reason of its failure to enforce the terms of this Lease Agreement, Lessor shall protect, indemnify and hold Tenant harmless from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorney's fees and expenses) imposed upon or asserted against Tenant related to the public improvements area of the Park parcel or by reason of (a) the negligence of Lessor, its agents, representatives, officers, directors, elected and appointed officials, or employees; or (b) any failure on the part of Lessor to perform or comply with any of the terms of this Lease Agreement to be performed or complied with by Lessor.

6.5.2.1 Duty to Defend. In the event Tenant should be made a defendant in any action, suit or proceeding brought by reason of Lessor's, its agents', representatives', officers', directors', elected and appointed officials', and employees' negligence, Lessor shall at its own expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Lessor and reasonably approved by Tenant. Except to the extent of Tenant's negligence, if any such action, suit or proceeding should result in a final judgment against Tenant, Lessor shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged. The obligations of Lessor under this section arising by reason of

any such occurrence taking place while this Lease Agreement is in effect shall survive any termination or other form of cancellation of this Lease Agreement.

6.5.2.2 Continuing Duty to Defend: Limitation. Notwithstanding the terms and conditions contained herein, Lessor shall be required to protect, defend, indemnify, satisfy or hold harmless Tenant, its agents, representatives, officers, directors, members and employees in the event negligence is imputed by operation of law against Tenant, its agents, representatives, officers, directors, members, and employees as a result of the actions or non-action of Lessor, its agents, representatives, officers, directors, elected and appointed officials and employees on the Demised Premises; provided however, Lessor, Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees shall not be required to protect, defend, indemnify, satisfy any judgment or hold Tenant harmless for any negligence imputed against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees by operation of law as a result of the action or non-action of Tenant, its agents, servants, employees, directors, representatives, officials, customers, vendors, guests, licensees or invitees on the Demised Premises.

6.6 Damage or Destruction.

6.6.1 Notice. In the event of damage to or destruction of any of the buildings, structures or improvements included within the Demised Premises by fire or other insured casualty, Tenant shall give Lessor and any mortgagee immediate notice thereof and shall at its own expense and whether or not the insurance proceeds are sufficient for the purpose, promptly commence and thereafter diligently pursue completion of the repair, restoration or rebuilding of the same so that upon completion of such repairs, restoration or rebuilding, the value and rental value of the buildings, structures or improvements shall be substantially equal to the value and rental value thereof immediately prior to the occurrence of such fire or other casualty.

6.6.2 Termination. Notwithstanding anything to the contrary contained herein, if the buildings, structures or improvements included within the Demised Premises should be the subject of any proposed or contemplated eminent domain proceeding, or rendered untenable by fire or other casualty during the last five (5) years of the Lease Agreement, or the last two (2) years of any extension, to the extent of a loss of fifty percent (50%) or more of the replacement cost of said buildings, structures or improvements, Tenant may, at Tenant's option, terminate this Lease Agreement; provided, however, that Tenant shall pay over to Lessor all casualty insurance or eminent domain proceeds received or receivable by reason of the destruction of said buildings, structures or improvements. Tenant's option to terminate shall be evidenced by a written notice given to Lessor within ninety (90) calendar days after the occurrence of such damage or destruction.

6.6.3 Option. Notwithstanding anything to the contrary contained herein, if the buildings, structures or improvements included within the Demised Premises should be the subject of any proposed or contemplated eminent

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domain proceeding, or rendered untenable by fire or other casualty, to the extent of a loss of fifty percent (50%) or more of the replacement cost of said buildings, structures or improvements, during a lease year other than those referred to above, Tenant and Lessor, subject to the approval of the Peoria City Council if the City is still the Lessor, may mutually agree in writing that Tenant is relieved of any obligation to rebuild on the real property included within the Demised Premises and is further relieved of all obligations under the Lease Agreement. In such event, Tenant shall pay over to Lessor all eminent domain or casualty proceeds received or receivable by reason of the destruction of said buildings, structures or improvements under this provision.

6.7 Key Acts.

6.7.1 Memorandum for Recording. Within ten (10) calendar days after execution and delivery of the Lease Agreement, Lessor and Tenant shall execute and cause to be placed of record with the Maricopa County Recorder's Office, the Memorandum of Lease and Declaration of Use Restrictions.

6.7.2 Estoppel Certificate. Lessor or Tenant, as the case may be, will execute, acknowledge and deliver to the other within fifteen (15) calendar days following request therefor, a certificate certifying (a) that this Lease Agreement is unmodified and in full force (or, if there have been modifications, that the Lease Agreement is in full force and effect, as modified, and stating the modifications), and (b) the dates, if any, to which Rent, Additional Charges and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in said certificate and (d) such other matters as may at the time be customary and usual for lenders or purchasers to require in estoppel certificates for ground leases such as this lease Agreement. Any prospective purchaser or encumbrancer of the Demised Premises or any part may rely upon any such certificate thereof. Either party's failure to deliver such certificate within the time permitted hereby shall be conclusive upon such party that this Lease Agreement is in full force and affect, except to the extent any modification has been represented by the requesting party, and that there are no uncured defaults in such party's performance, and that not more than one month's rent has been paid in advance.

7. Changes in Leasehold Control.

7.1 Parties Bound. This Lease Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto, their personal representatives, their respective successors in office and permitted assigns of the parties hereto for the entire term of this Lease Agreement.

7.2 Assignment and Subletting.

7.2.1 Consent Required. Except as provided below in this Section 7.2, Tenant shall not transfer or assign this Lease Agreement or any interest in this Lease Agreement or sublet the Demised Premises or any portion thereof without first obtaining the written consent of Lessor, which consent shall not be

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unreasonably withheld. Any attempted transfer, assignment or subletting, including any involuntary transfers or assignments by operation of law without such written consent shall be void and confer no rights upon any third person, and at the option of Lessor, shall cause a termination of this Lease Agreement, in which event said third person shall occupy the Demised Premises as a tenant at sufferance. No such prohibited transfer, assignment or subletting shall relieve Tenant of its liability for the full performance of all of the terms, agreements, covenants and conditions of this Lease Agreement. Consent by Lessor to one transfer, assignment or subletting shall not operate as a waiver of this section as to any future transfer, assignment or subletting, and this section shall apply to any transferee, assignee or subtenant. The provisions of this Section 7.2, however, shall not apply to: (i) Tenant's mortgaging or otherwise hypothecating its leasehold estate in accordance herewith, (ii) Tenant's subleasing portions of the Demised Premises as provided in Section 7.2.4 below, (iii) Tenant's sale or assignment of all or part of its leasehold interest to an entity that is owned or managed by Tenant or Tenant's principal, or (iv) Tenant's sale and assignment of all or part of its leasehold interest as provided in Section 7.2.5 below.

7.2.2 Technical Requirements. Each transfer, assignment, and subletting to which Lessor's consent is required shall be by an instrument in writing in a form reasonably satisfactory to Lessor, and shall be executed by the transferor/assignor/sublessor and the transferee/assignee/sublessee,; and the transferee,/assignee/sublessee shall agree in writing, for the benefit of Lessor, to assume, be bound by, and to perform the terms, covenants and conditions of this Lease Agreement to be done, kept and performed by Tenant from and after the effective date of the transfer, assignment or sublease . One executed copy of such written instrument shall be delivered to Lessor. A consent to any transfer, assignment or subletting shall not constitute a waiver or discharge of the provisions of this section with respect to a subsequent transfer, assignment or subletting from becoming effective. The acceptance of Rent or Additional Charges from any other person shall not be deemed to be a waiver of any of the provisions of this Lease Agreement or consent to the transfer or assignment of the Demised Premises.

7.2.3 Costs. Tenant agrees to reimburse Lessor for Lessor's reasonable costs (including but not limited to attorneys' fees) in conjunction with the processing of any request for consent under this section, not to exceed one thousand dollars (\$1,000) per consent.

7.2.4 Occupancy Subleases. Tenant may sublease portions of the Demised Premises in the normal course of Tenant's business for occupancy by subtenants consistent with the Permitted Uses and neither the consent of Lessor nor the assumption of this Lease Agreement shall be required in connection with any such renting or subleasing.

7.2.5 Sale or Assignment by Tenant. After issuance of the final certificate of occupancy for Tenant's Required Improvements (excluding certificates of occupancy for individual spaces) and so long as no event of default exists on the part of Tenant, Tenant may sell and assign all or any portion of its

leasehold interest, but without releasing Tenant from its obligations under this Lease Agreement unless Lessor approves the sale and assignment, to a person(s) or entity(ties) meeting the following requirements: (i) a net worth (defined as the then current market of assets less liabilities) of not less than \$1 million, (ii) at least five (5) years experiencing in the management and operation of properties similar to the Demised Premises (or having a designated property manager possessing such experience) and (iii) possesses a good reputation within its community. Notwithstanding any provisions to the contrary in this Lease Agreement, Tenant may only sell and assign its leasehold interest (i) in its entirety, (ii) in the Mobil, Bank, PEDG and Park Parcels as a whole and/or (iii) in the Washington Street Parcel as a whole. In the event of a partial sale and assignment, Lessor shall cooperate with Tenant in preparing and entering into separate ground leases for the separate parcels on the same terms and conditions as this Lease Agreement and Tenant shall reimburse Lessor for all costs and expenses incurred by Lessor.

7.3 Assignment of Rents, Income and Profits. Tenant hereby absolutely and irrevocably assigns to Lessor all rents, income and profits accruing to Tenant from permitted subtenants of all or a portion of the Demised Premises and the buildings, structures or improvements thereon, together with the right to collect and receive the same; provided that so long as Tenant is not in default hereunder, Tenant shall have the right to collect and retain such rents, income and profits. Lessor shall apply to Rent and other monies due hereunder the net amount (after deducting all costs and expenses incident to the collection thereof and the operation and maintenance, including repairs, of the Demised Premises) of any rents, income and profits so collected and received by it. Notwithstanding the foregoing, if Tenant mortgages its leasehold interest pursuant to § 7.4 and the mortgagee requires an assignment of rents, income and profits as part of its security, then during the Term of the Lease Agreement, the assignment herein shall be junior to the assignment in favor of the mortgagee.

7.4 Hypothecation of Leasehold Estate.

7.4.1 Right to Mortgage. Tenant shall have the right to mortgage its interest in this Lease Agreement (but in no event the fee interest of the real property included within the Demised Premises, which may be assigned, encumbered and mortgaged only by Lessor) to a bank, insurance company or other bona fide lender; provided that any leasehold mortgage shall be subject and subordinate to the rights of Lessor hereunder. In the event Tenant obtains separate mortgages on (i) the Mobil, Bank, PEDG and Park Parcels as a whole and (ii) the Washington Street Parcel as a whole; then, in such event, upon written request of Tenant, Lessor shall cooperate with Tenant in preparing and entering into separate ground leases for the separate mortgaged parcels on the same terms and conditions as this Lease Agreement and Tenant shall reimburse Lessor for all costs and expenses incurred by Lessor. As used herein, the noun "mortgage" includes a deed of trust, the verb "mortgage" includes the creation of a deed of trust, and the word "mortgagee" includes the beneficiary under a deed of trust.

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7.4.2 Notice. If Tenant shall mortgage this Lease Agreement in accordance with this section and shall have furnished Lessor the name and mailing address of the mortgagee, then Lessor shall give the mortgagee under such leasehold mortgage a copy of each notice of breach or default given by Lessor to Tenant.

7.4.3 Right to Remedy. The leasehold mortgagee shall have the right to remedy any default under this Lease Agreement and Lessor shall accept such performance by or at the instance of such leasehold mortgagee as if Tenant had made the same.

7.4.4 Mortgagee Cure. Lessor shall not take any action to effect a termination of this Lease Agreement by reason of any Tenant default without first providing mortgagee a reasonable time within which either: (i) to obtain possession of the Demised Premises (including possession by a receiver) and thereafter to cure such noticed default if the default is one that can be cured with the exercise of reasonable diligence by mortgagee, or (ii) to institute foreclosure proceedings and to complete such foreclosure, or otherwise to acquire Tenant's interest under this Lease Agreement, with diligence and without unreasonable delay in the case of a default that cannot be cured with the exercise of reasonable diligence by mortgagee. In either case, however, mortgagee shall remedy within thirty (30) days after receipt from Lessor of Lessor's notice of default to Tenant any default in the payment of Rent, Additional Charges or other monetary payments due Lessor under this Agreement (except Default Rent) and mortgagee shall then continue to pay such amounts during the pendency of mortgagee's proceedings to obtain possession and/or foreclose.

7.4.5 Status of Mortgagee. The leasehold mortgagee may become the legal owner and holder of the leasehold estate under this Lease Agreement by foreclosure of its leasehold mortgage or as a result of the assignment of this Lease Agreement in lieu of foreclosure. Upon a leasehold mortgagee becoming the owner and holder of the leasehold estate: (i) Lessor shall upon written request of the leasehold mortgagee enter into a new ground lease with such mortgagee for the remainder of the Term upon the same terms and conditions as in this Lease Agreement and (ii) leasehold mortgagee shall have all rights, privileges, obligations and liabilities of the original Tenant, except that leasehold mortgagee shall have the right to assign its interest under this Lease Agreement without the consent of Lessor provided the assignee shall assume and agree to perform and be bound by all of the terms hereof, and upon any such assignment, the mortgagee shall be released from any further liability hereunder.

7.4.6 Insurance. Lessor agrees that the name of the leasehold mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease Agreement, and the mortgagee may receive and hold insurance proceeds thereunder on the condition that the insurance proceeds be applied in the manner specified in this Lease Agreement.

7.5 Conveyance by Lessor.

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7.5.1 Effect. In the event that Lessor (or any successor Lessor) shall intend to list or market for sale, or shall otherwise intend to sell, convey or dispose of the real property included within the Demised Premises, Tenant shall be given prompt written notice of such intent with respect to the real property included within the Demised Premises. Tenant, within ninety (90) calendar days after receipt of the written notice from Lessor (or successor Lessor), shall have first right to offer to purchase the real property included within the Demised Premises at the prevailing market rate for the real property. If Tenant is unable or unwilling to purchase the real property included within the Demised Premises, or if Lessor and Tenant are unable to agree on the prevailing market rate within the ninety (90) calendar day time period, Lessor (or any successor Lessor) may proceed to solicit and accept other offer(s) to purchase the real property included within the Demised Premises or otherwise sell, convey or dispose of the real property included within the Demised Premises; provided, however, in such event Tenant shall have a right of first refusal to purchase such real estate on the same terms and conditions contained in any such offer, which right shall be exercised by Tenant in writing within thirty (30) calendar days of receipt from Lessor of a copy of such offer. In the event Lessor or any successor Lessor shall accept an offer to purchase or otherwise sell, convey or dispose of the real property included within the Demised Premises, after the expiration of said thirty (30) calendar days and provided Tenant has failed to exercise such right of first refusal, it shall thereupon be released from all liabilities and obligations imposed upon Lessor under this Lease Agreement (except those accruing prior to such conveyance or other disposition) and such liabilities and obligations shall be binding solely on the then owner of the real property included within the Demised Premises, which owner shall be deemed to have assumed the same.

7.5.2 Definition. The word "Lessor" shall include not only the original Lessor but also any person or entity hereafter acquiring the Lessor's interest in this Lease Agreement.

8. Defaults by Tenant.

8.1 Events. Each of the following occurrences shall be an event of default hereunder:

8.1.1 If Tenant shall fail to pay any Rent or Additional Charges or any sum due hereunder promptly when due and such failure shall continue for ten (10) calendar days after notice thereof in writing to Tenant.

8.1.2 Subject to Section 8.10 below, if default shall be made by Tenant in any of the other covenants, agreements, conditions or undertakings herein to be kept, observed and performed by Tenant and such default shall continue for thirty (30) calendar days after notice thereof in writing to Tenant.

8.1.3 If Tenant shall voluntarily file any petition, or have an involuntary petition filed on its behalf not dismissed within ninety (90) days of filing, under any chapter or section of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or shall file an answer admitting insolvency or inability to pay its debts; provided however, that Tenant shall not

remain in default if Tenant shall continue to pay all Rent and Additional Charges and comply with all other terms and conditions of the Lease Agreement.

8.1.4 If a trustee or receiver shall be appointed for Tenant or for a major portion of its property or for any portion of the Demised Premises.

8.1.5 If any court shall have taken jurisdiction of a major portion of the property of Tenant or any portion of the Demised Premises in any involuntary proceeding for dissolution, liquidation or winding up of Tenant and such jurisdiction shall not be relinquished or vacated within sixty (60) calendar days.

8.1.6 If Tenant shall make an assignment for the benefit of its creditors.

8.2 Right of Reentry. Upon the occurrence of any default that is not cured within the applicable cure period, and at any time after the expiration of the applicable cure period, Lessor shall have the right, at its election, to reenter the Demised Premises and the buildings, structures and improvements then situated thereon, or any part thereof, and to expel, remove and put out Tenant and all persons occupying or upon the same under Tenant (except for permitted sub lessees), using such force as may be necessary in so doing, and again to possess the premises and enjoy the same as in their former estate and to take full possession of and control over the Demised Premises and the buildings, structures and improvements thereon and to have, hold and enjoy the same and to receive all rental income of and from the same. No reentry by Lessor shall be deemed an acceptance of a surrender of this Lease Agreement, nor shall it absolve or discharge Tenant from any liability under this Lease Agreement. Upon such reentry, all rights of Tenant to occupy or possess the Demised Premises shall cease and terminate.

8.3 Right to Terminate. Upon the occurrence of any default and at any time thereafter, Lessor shall have the right, at its election, with or without reentry, to give written notice to Tenant stating that this Lease Agreement and the real property hereby demised shall terminate on the date specified by such notice, and upon the date specified in such notice this Lease Agreement and the real property hereby demised and all rights of Tenant hereunder shall terminate. Upon such termination, Tenant shall quit and peacefully surrender to Lessor the Demised Premises and the buildings, structures and improvements then situated thereon.

8.4 Right to Relet. At any time and from time to time after such reentry, Lessor may relet the Demised Premises and the buildings, structures and improvements thereon, or any part thereof, in the name of Lessor or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease Agreement), and on such conditions (which may include concessions or free rental) as Lessor, in its reasonable discretion, may determine and may collect and receive the rental therefor. However, in no event shall Lessor be under any obligation to relet the Demised Premises and the buildings, structures and improvements thereon, or any part thereof, and Lessor shall in no way be responsible or liable for any failure to relet or for any failure to collect any rental due upon any such

reletting; provided, however, that Lessor's failure to mitigate its damage in a commercially reasonable manner shall discharge Tenant from liability for the damages that could have been mitigated. Even though it may relet the Demised Premises, Lessor shall have the right thereafter to terminate this Lease Agreement and all of the rights of Tenant in or to the Demised Premises.

8.5 Damages. In addition to any Default Rent, Tenant shall pay damages resulting from Tenant's Default to Lessor monthly on the first calendar day of each month, and Lessor shall be entitled to recover from Tenant monthly, as the same shall arise. Tenant shall be liable for such damages on a monthly basis, whether or not in any prior month or months the net proceeds described below shall have exceeded the Rent and Additional Charges described below. Unless Lessor shall have notified Tenant in writing that it has elected to terminate this Lease Agreement, no such reentry or action in lawful detainer or otherwise to obtain possession of the Demised Premises shall relieve Tenant of its liability and obligations under this Lease Agreement; and all such liability and obligations shall survive any such reentry. In the event of any such reentry, whether or not the Demised Premises and the buildings, structures and improvements thereon, or any part thereof, shall have been relet, Tenant shall pay to Lessor the entire Rent and all other Additional Charges required to be paid by Tenant up to the time of such reentry under this Lease Agreement, and thereafter Tenant, until the end of what would have been the term of this Lease Agreement in the absence of such reentry, shall be liable to Lessor and shall pay to Lessor, as and for liquidated and agreed damages for Tenant's default:

8.5.1 The amount of Rent and Additional Charges which would be payable under this Lease Agreement by Tenant if this Lease Agreement were still in effect discounted to present value (based on an 8% discount rate), less

8.5.2 The net proceeds of any reletting, after deducting all of Lessor's reasonable expenses in connection with such reletting, including without limitation all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees, alteration costs and expenses of preparation for such reletting.

8.6 Other Rights. In the event of any breach by Tenant of any of the terms, covenants or agreements contained in this Lease Agreement, Lessor shall have, in addition to any specific remedies provided in this Lease Agreement, the right to invoke any right or remedy allowed by law or in equity or by statute or otherwise, including the right to enjoin such breach.

8.7 Rights Cumulative. Each right and remedy of Lessor provided for in this Lease Agreement shall be cumulative and in addition to every other right or remedy provided for in this Lease Agreement now or hereafter existing at law or in equity or by statute or otherwise; and the exercise or beginning of the exercise by Lessor of any one or more of such rights or remedies shall not preclude the simultaneous or later exercise by Lessor of any or all other rights or remedies provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

8.8 Subtenant Breach. Any violation of any covenant or provision of this Lease Agreement, whether by act or omission, by any subtenant or any other persons occupying any portion of the Demised Premises or any buildings, structures or improvements thereon under the rights of Tenant shall be deemed a violation of such provision by Tenant and a default under this Lease Agreement. Any such violation shall not be deemed to be a default hereunder if and so long as Tenant in good faith and at its own expense takes and diligently pursues any and all steps it is entitled to take and which steps if completed will cure said default.

8.9 Incurable Default. If in any one period of twelve (12) consecutive months, Tenant shall have been in default in the payment of Rent or Additional Charges herein more than three (3) times and Lessor, because of such defaults, shall have served upon Tenant within said twelve (12) month period three (3) or more notices, then the fourth default shall be deemed to be an incurable default and Lessor shall be entitled to immediate possession of the Demised Premises.

8.10 Diligent Commencement. Notwithstanding any other provision, Lessor agrees that if the default complained of, other than for the payment of monies, is of such a nature that the same cannot be rectified or cured within the thirty (30) calendar day period for rectification or curing as specified in the written notice relating thereto, then such default shall be deemed to be rectified or cured if Tenant, within such period of thirty (30) calendar days, shall have commenced the rectification and curing thereof and shall continue thereafter with all due diligence to effect such rectification and curing and does so complete the same with the use of such diligence as aforesaid.

8.11 Disputes. Notwithstanding any other provision, any dispute by Tenant, during the time that the City of Peoria remains the Lessor regarding a default under this Lease Agreement or Lessor's Representative's failure to provide approval as may be required herein shall, first before any other legal action is commenced, be submitted in writing to Lessor's Representative within fifteen (15) business days of Lessor's written notification to Tenant of the event giving rise to the default under this Lease Agreement. After receipt of such written notice of dispute from Tenant, Lessor shall schedule a formal or informal hearing to allow Tenant and tenant's legal counsel, if Tenant so elects, the opportunity to explain the nature of the dispute and seek resolution. If Lessor's Representative, after the hearing with Tenant, issues a decision upholding the default, Tenant may, within fifteen (15) business days after Tenant's receipt of the written decision, file a written appeal of the decision to the Mayor and City Council for the City of Peoria. If however, Tenant shall fail to give Lessor's Representative written notice of the disputed default within the required time frame or fail to file a written appeal of the decision of Lessor's Representative to the Mayor and City Council within the required time frame, the default shall be deemed admitted by Tenant. Tenant shall retain the right after timely appealing to the Mayor and City Council to commence legal proceedings to contest any such noticed defaults.

8.12 Right to Cure Tenant's Defaults. Except with respect to Tenant's failure to operate its business, in the event Tenant shall be in default of this

Lease Agreement, which default remains uncured during any applicable cure period provided herein, Lessor may at any time, without further notice, cure such breach for the account and at the expense of Tenant. If Lessor at any time, by reason of such breach, is compelled to pay or elects to pay any sum of money or to do any act that will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees, in instituting, prosecuting or defending any actions or proceedings to enforce Lessor's rights under this Lease Agreement or otherwise, the sum or sums so paid by Lessor, with all interest, costs and damages, shall be deemed to be Additional Charges and shall be due from Tenant to Lessor on the first calendar day of the month following the incurring of such expenses or the payment of such sums.

8.13 Delay of Performance. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to rental and other monies to be paid by Tenant pursuant to this Lease Agreement.

8.14 Agreement for Non-Disturbance of Subtenants. Lessor covenants and agrees, for the benefit of any subtenant, that Lessor shall recognize the subtenant as the direct tenant of Lessor upon any termination of this Lease Agreement by Lessor under Section 8 or otherwise. So long as (i) the subtenant is not then in default under its sublease and (ii) subtenant attorns to Lessor.

9. Miscellaneous.

9.1 Status of Tenant. Tenant covenants that it is a valid and existing limited liability company under the laws of the State of Arizona, that it is duly qualified and licensed to do business in the State of Arizona, that it is or will be duly qualified and licensed to do business in City of Peoria prior to construction commencement, and that it has full right and authority to enter into this Lease Agreement.

9.2 Tenant's Statutory Rights. In the event of any termination of the Term of this Lease Agreement (or any repossession of the Demised Premises) Tenant, so far as permitted by law, waives any notice of reentry with or without the institution of legal proceedings to that end.

9.3 Waiver of Performance. No failure by Lessor or Tenant to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Tenant or acceptance by Lessor of full or partial Rent or Additional Charges during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease Agreement, which shall continue in full force and effect, nor the respective

rights of Lessor or Tenant with respect to any other then existing or subsequent breach.

9.4 Remedies Cumulative. Each right, power and remedy provided for in this Lease Agreement or now or hereafter existing at law, in equity or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease Agreement or now or hereafter existing at law, in equity or otherwise; and the exercise or beginning of the exercise of any one or more of the rights, powers or remedies provided in this Lease Agreement shall not preclude the simultaneous or later exercise of any or all such other rights, powers or remedies.

9.5 Title to Buildings and Improvements.

9.5.1 If, prior to the termination of Tenant's leasehold interest, the City of Peoria transfers ownership of the real property included within the Demised Premises to an entity that does not qualify to assess and collect the GPLET, then title to the Required Improvements heretofore transferred to the City pursuant to § 3.2.1 hereof shall be reconveyed to Tenant, and then upon the expiration or sooner termination of the Lease Agreement and provided that Tenant is not in default of this Lease Agreement, title to all such property on the real property included within the Demised Premises, except for the real property, shall automatically pass to, vest in and belong to Tenant without further action on the part of either party, without cost or charge to Lessor, and without further conveyance or transfer by Lessor; provided, however, that the buildings, structures and improvements erected, constructed installed or placed upon the real property included within the Demised Premises during the Term of the Lease Agreement, including all extensions thereto, shall become the property of the successor Lessor upon termination of Tenant's leasehold interest. Lessor agrees that in the event of any transfer of its interest hereunder during the first eight (8) years of the Term to any third party that does not qualify to assess and collect the GPLET, then, in such event, upon the effective date of said transfer, Lessor shall pay to Tenant an amount equal to the net present value of the difference (based on an 8% discount rate) between the projected real estate excise taxes for the period from the effective date of said transfer to the eighth (8th) anniversary of the Effective Date and the projected GPLET for such period. However, in the event that the GPLET statute is extinguished or amended to deprive the Tenant of the benefit of the GPLET prior to such a sale, then no payment will be due to Tenant.

9.5.2 If requested by Lessor, Tenant shall execute any instruments or documents reasonably required by Lessor to evidence the vesting of title to such property in Lessor. While this Lease Agreement remains in effect, Tenant alone shall be entitled to claim depreciation on the buildings, structures, improvements, additions and alterations therein included within the Demised Premises, and all renewals and replacements thereof, for all taxation purposes.

9.5.3 If requested by Tenant, Lessor shall not unreasonably withhold, delay or condition its consent to any Declaration of Easements, Covenants, and

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Restrictions among the parcels that comprise the Demised Premises that establishes rights and obligations among the respective owners, lessees and sublessees thereof with respect to the use and operation of said properties. However, in no case will Lessor become obligated to convey an interest in land without adequate, commercially reasonable consideration, except for such easements, including utility easements, as may be reasonably necessary for the development of the Demised Premises as contemplated by this Lease Agreement.

9.6 Attorneys Fees. In the event Lessor should bring suit for possession of the Demised Premises, for the recovery of any sum due hereunder, or for any other relief against Tenant, declaratory or otherwise, arising out of a breach of any term or condition of this Lease Agreement, or in the event Tenant should bring any action for any relief against Lessor, declaratory or otherwise, arising out of this Lease Agreement, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

9.7 Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given within three (3) calendar days after the same has been mailed by registered or certified mail, postage prepaid, or within two (2) calendar days after delivery by a nationally recognized overnight courier service (e.g., UPS, Federal Express) or on the day of delivery if hand-delivered to the respective party, at the address shown below:

To Tenant: Grand Avenue Peoria Holdings L.L.C.
2031 Elevado Road
Vista, CA 92084
Attention: Marc Makebakken, Manager

To Lessor: City Manager
City of Peoria, AZ
8401 W. Monroe St.
Peoria, Arizona 85345

With a Copy to: City Attorney
City of Peoria, AZ
8401 W. Monroe St.
Peoria, Arizona 85345

or at such other address as either party shall from time to time designate in writing to the other.

9.8 Time of Essence. Time is declared to be of the essence of this Lease Agreement.

9.9 Section Headings; References; Interpretation. The section headings contained in this Lease Agreement are for purposes of convenience and reference only and shall not limit, describe or define the meaning, scope or intent

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of any of the terms or provisions hereof. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the last calendar day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday in the State of Arizona, then the duration of such time period shall be extended to the next succeeding calendar day which is not a Saturday, Sunday or legal holiday in the State of Arizona.

9.10 Severability. If any provision of this Lease Agreement is declared void, unenforceable or against public policy, such provision shall be deemed stricken and severed from this Lease Agreement, with the remainder of the Lease Agreement remain in full force and effect.

9.11 Provisions Subject to Applicable Law. All rights, powers and remedies provided herein shall be exercised only to the extent that the exercise thereof shall not violate any applicable law and are intended to be limited to the extent necessary so that they shall not render this Lease Agreement invalid or unenforceable under any applicable law. If any term or condition of this Lease Agreement shall be held to be invalid, illegal or unenforceable or against public policy, such provision shall be deemed stricken from this Lease Agreement and the validity of the other terms of this Lease Agreement shall in no way be affected thereby and this Lease Agreement, absent the stricken provision, shall otherwise remain in full force and effect.

9.12 Governing Law and Choice of Forum. This Lease Agreement shall be governed by and construed in accordance with the substantive laws of the State of Arizona without giving effect to the principles of conflict of laws. Any action brought to interpret, enforce or construe any provision of this Lease Agreement shall be commenced and maintained in the Superior Court of Maricopa County, Arizona (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona if, and only if, the Maricopa County Superior Court lacks or declines jurisdiction over such action.)

9.13 Brokers or Agents. Tenant represents and warrants to Lessor that Tenant has had no dealings or discussions with any broker or agent (licensed or otherwise) in connection with this Lease Agreement that could result in a claim against Lessor for a brokerage or other fee, and Tenant covenants to pay, hold harmless and indemnify Lessor from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any breach of this representation and warranty. Lessor represents and warrants to Tenant that Lessor has had no dealings or discussions with any broker or agent (licensed or otherwise) in connection with this Lease Agreement that could result in a claim against Tenant for a brokerage or other fee, and Lessor covenants to pay, hold harmless and indemnify Tenant from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any breach of this representation and warranty.

9.14 Consent or Approval. Except as otherwise expressly provided herein, any consent or approval required in this Lease Agreement shall not be

unreasonably withheld, delayed or conditioned. The requesting party shall be entitled to seek specific performance at law and shall have such other remedies as are reserved to it under the Lease Agreement, but in no event shall Lessor or Tenant be responsible for damages to anyone for such failure to give consent or approval.

9.15 Relationship. This is a ground lease agreement. This Lease Agreement shall not be construed as creating a joint venture, partnership or any other cooperative or joint arrangement between Lessor and Tenant, and it shall be construed strictly in accordance with its terms and conditions. Nothing contained herein is intended to confer a benefit upon any third parties.

9.16 Further Instruments and Documents. Lessor and Tenant shall, upon request from the other, promptly acknowledge and deliver to the other any and all further documents, instruments or assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Lease Agreement.

9.17 Intended Agreement. This Lease Agreement is the result of arms-length negotiations between parties of roughly equivalent bargaining power and expresses the complete, actual and intended agreement of the parties. This Lease Agreement shall not be construed for or against either party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Lease Agreement or of any exhibits or documents prepared to carry out the intent of this Lease Agreement.

9.18 Integration Clause; No Oral Modification. This Lease Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Lease Agreement are hereby revoked and superseded by this Lease Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Lease Agreement. This Lease Agreement may not be changed, modified or rescinded, except as provided for herein, absent a written agreement signed by Lessor and Tenant. Any attempt at oral modification of this Lease Agreement shall be void and of no effect.

9.19 Conflict of Interest. This Lease Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

9.20 Amendment. No change or additions may be made to this Lease Agreement except by a written amendment executed by the Parties. Upon the request of Lessor or Tenant, Lessor staff, with the written consent of the Tenant, may administratively adjust the time frames of required Tenant or Lessor performance without amending this Lease Agreement, unless such adjustment (or such adjustments in aggregate) grants a delay of greater than six (6) months or unless such delays were primarily within the control of the party requesting the amendment.

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9.21 Enforced Delay in Performance for Causes Beyond Control of Party.

Whether stated or not, all periods of time in this Lease Agreement are subject to this Section. Neither the Lessor nor Tenant, as the case may be, shall be considered in Default of its obligations under this Lease Agreement in the event of enforced delay (an "Enforced Delay") due to Force Majeure, or the delays of subcontractors or materialmen due to Force Majeure. Collectively, "Force Majeure" means: acts of God; acts of public enemy; acts of the Federal, state or local government, except in the lawful exercise of its powers in response to a Party's actions; acts of the other Party (except the Lessor when acting in good faith in its capacity as regulator); fires; floods; epidemics; quarantine; war; terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism); unusual nuclear radiation; declaration of national emergency or national alert, Office of Homeland Security (or equivalent) Advisory alert higher than grade "yellow", but only if the governmental action resulting from such alert directly (and not indirectly by, e.g., higher interest rates or other financial penalties) forces such delay; blockade; insurrection; riot; or declaration of moratorium or similar hiatus directly affecting the Demised Premises (whether permanent or temporary) by any public, quasi-public or private entity. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this section shall, within fifteen (15) days after such Party knows of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that either Party's failure to notify the other of an event constituting an Enforced Delay shall not alter, detract from or negate its character as an Enforced Delay if such event of enforced delay was not known or reasonably discoverable by such Party.

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IN WITNESS WHEREOF, the parties have executed this Lease Agreement on the date listed below.

City of Peoria, Arizona, an Arizona charter municipality (Lessor)

By: *Terrence L. Ellis*
Terrence L. Ellis
City Manager

Grand Avenue Peoria Holdings L.L.C., an Arizona limited liability company (Tenant)

By: *Marc Makenbakken*
Marc Makenbakken
Manager

ATTEST:

By: *Mandy Kief*
City Clerk



Date of Signing: 11/7/05, 2005

APPROVED AS TO FORM:

By: *Steph Jones*
City Attorney

Date of Signing: July 27, 2005

Exhibit "A-1"
Mobil Parcel

8401 W GRAND AVE

PT SE4 BEG SE COR SEC N 41.57' TO SLY R/W LN H/W TH NW ALG R/W LN
169.92' TO TR POB TH S 55: 22' W 123.58' N 43: 40' W 184.95' TO PT TH N 51:
29' E 139.50' TO SLY R/W LN H/W S 44: 17' E 43.05' TH S 37: 04' E ALG H/W
149.55' TO TR POB 0.57 AC

Section Township Range: 22 3N 1E (APN#: 142-42-041K)

Exhibit "A-2"
Bank Parcel 1

PT E2 SE4 BEG SE COR SEC N 41.57' TO S R/W LN H/W TH NW 111.92' TO
TR POB TH S 78: 54' W 134.86' S 18' W 150' N 20' E 145.69' N 55: 22' E 123.58'
TO R/W LN H/W S 37: 04' E 58' TO POB 0.16 AC

Section Township Range: 22 3N 1E (APN#: 142-42-041G)

Bank Parcel 2

8303 W GRAND AVE

PT SE4 SE4 BEG 12.48' W & 12' N OF SE COR SEC N 46.01' N 37:04' W 91.32'
ALG SLY R/W U S H/W 60-70 TH S 78:54' W 134.86' S 93' E 188.41' TO POB
0.44 AC

Section Township Range: 22 3N 1E (APN#: 142-42-041C)

Exhibit "A-3"
PEDG Parcel 1

THAT PT SE4 SE4 BEG 350.78' W & 12' N OF SE COR SEC N 75' E 150' S 75'
W 150' TO POB 0.26 AC

Section Township Range: 22 3N 1E (APN#: 142-42-041B)

PEDG Parcel 2

PT SE4 BEG SE COR SEC N 41.57' TO SLY R/W LN H/W TH NW ALG R/W LN
169.92' TO PT TH S 55: 22' W 123.58' TO TR POB TH W 145.69' TH N 99.95'
TO PT TH NELY ALG CURVE 38.9' TO PT TH S 43: 40' E 184.95' TO TR POB
0.23 AC

Section Township Range: 22 3N 1E (APN#: 142-42-041L)

Exhibit "A-4"
Washington Street Parcel 1

8307 W WASHINGTON ST

PEORIA BLK 35/PEORIA LOTS 4-5 BLK 24 0.16 AC

Section Township Range: 27 3N 1E (APN#: 142-41-022)

Washington Street Parcel 2

PEORIA BLK 35/ Lot 6 0.08 AC

Section Township Range: 27 3N 1E (APN#: 142-41-023)

Washington Street Parcel 3

PEORIA BLK 35/ Lot 7 0.08 AC

Section Township Range: 27 3N 1E (APN#: 142-41-024)

Washington Street Parcel 4

8325 W WASHINGTON ST

PEORIA BLK 35/Lot 8 BLK 24 EX W 4' 0.07 AC

Section Township Range: 27 3N 1E (APN#: 142-41-025A)

Washington Street Parcel 5

PEORIA BLK 35/Lot 9 BLK 24 E 16' & W 4' OF LOT 8 0.06 AC

Section Township Range: 27 3N 1E (APN#: 142-41-026A)

Washington Street Parcel 6

9 W WASHINGTON ST

PEORIA BLK 35/Lot 10 PEORIA W 9' OF LOT 9 & ALL LOT 10 BLK 24 0.08 AC

Section Township Range: 27 3N 1E (APN#: 142-41-027)

Exhibit "A-5"

Park Parcel

PEORIA BLK 17 WASHINGTON PARK

Section Township Range: 27 3N 1E (APN#: 142-41-018A)

Exhibit "B"
Special Warranty Deed
(Mobile Station)

L CON 07905

When recorded, return to:

Office of the City Attorney
City of Peoria
8401 West Monroe, Ste. 340
Peoria, Arizona 85345

SPECIAL WARRANTY DEED

For the consideration of TEN DOLLARS (\$10.00), and other valuable considerations, Grand Avenue Peoria Holdings L.L.C., an Arizona limited liability company ("Grantor") does hereby convey to the City of Peoria, Arizona, an Arizona municipal corporation ("Grantee"), the following described real property (the "Property") situated in Maricopa County, Arizona, and commonly known as "8401 West Grand Avenue":

PT SE4 BEG SE COR SEC N 41.57' TO SLY RW LN H/W
TH NW ALG RW LN 169.92' TO TR POB TH S 55: 22' W
123.58' N 43: 40' W 184.95' TO PT TH N 51: 29' E 139.50'
TO SLY RW LN H/W S 44: 17' E 43.05' TH S 37: 04' E ALG
H/W 149.55' TO TR POB 0.57 AC

Section Township Range: 22 3N 1E

SUBJECT ONLY TO: current taxes, assessments, reservation in patents and all easements and rights of way.

And Grantor hereby binds itself and its successors to warrant and defend the title to the Property. Grantor warrants that there are no leases of any portion of the Property.

EXEMPT FROM AFFIDAVIT AND FEES PURSUANT TO A.R.S. § 11-1134, A.3.

Grantor:
Grand Avenue Peoria Holdings L.L.C.,
an Arizona limited liability company
(Tenant)

Marc Makebakken
Manager

Dated: _____

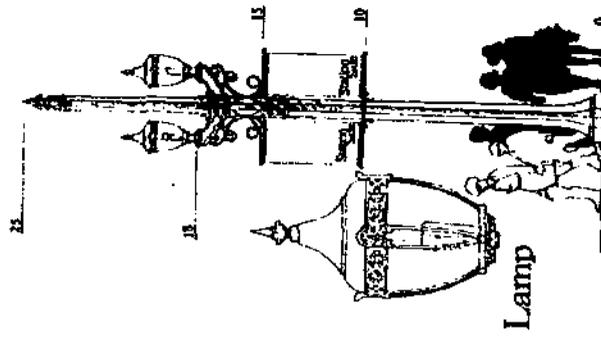
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**EXHIBIT C
CONCEPT PLANS**

IS ON FILE IN THE

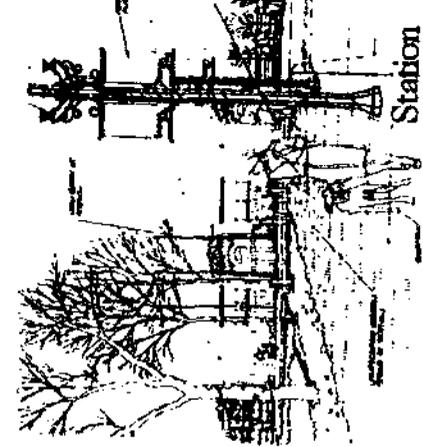
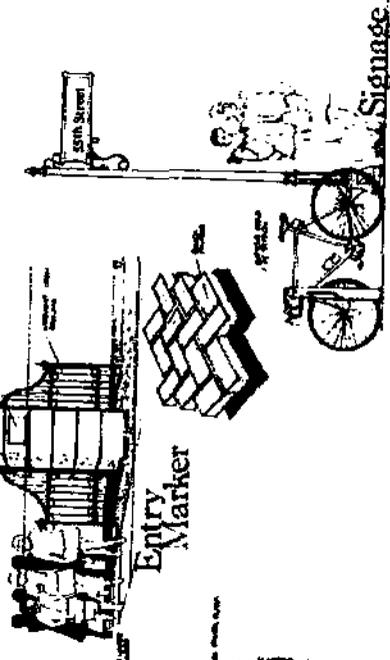
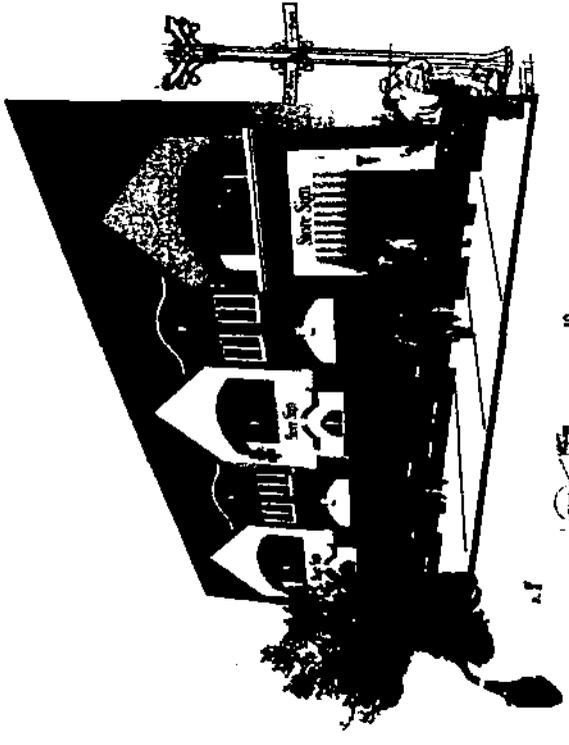
CITY OF PEORIA

CITY CLERK'S OFFICE



Lamp

| | | |
|--|------------------|--|
| | Tree Criss | |
| | Tree Circle | |
| | Light Pole | |
| | Bellard | |
| | Trash Receptacle | |
| | Street Bench | |
| | Tree | |
| | Shrub | |
| | Terraced Planter | |



Station

OSUNA PARK STATION

ROBERT REICHERT
Architect and Associates, Inc.



Photo One PEORIA, ILL.

MS Development, having a desire to be sensitive to the rich character and history of Peoria engaged a multi-talented design team to create a design that would come full circle with the historic town center.

Through research, visits to the Peoria museum, and an overview of past council actions regarding the Washington Street Redevelopment our journey starts at Peoria, Illinois downtown and town center. Both towns had the same roots and many ties during the early town startup.

Photo Three COLOREMEY

The design team combines all the elements of its past research and work to reflect this timeless design, a more relaxed quality of life that past Peorians have enjoyed. The architectural character is representative of current contemporary commercial design with a hint of rural Arizona vernacular. The existing structures adjoining the property, both commercial and residential are the reference context from which this project draws its design theme.

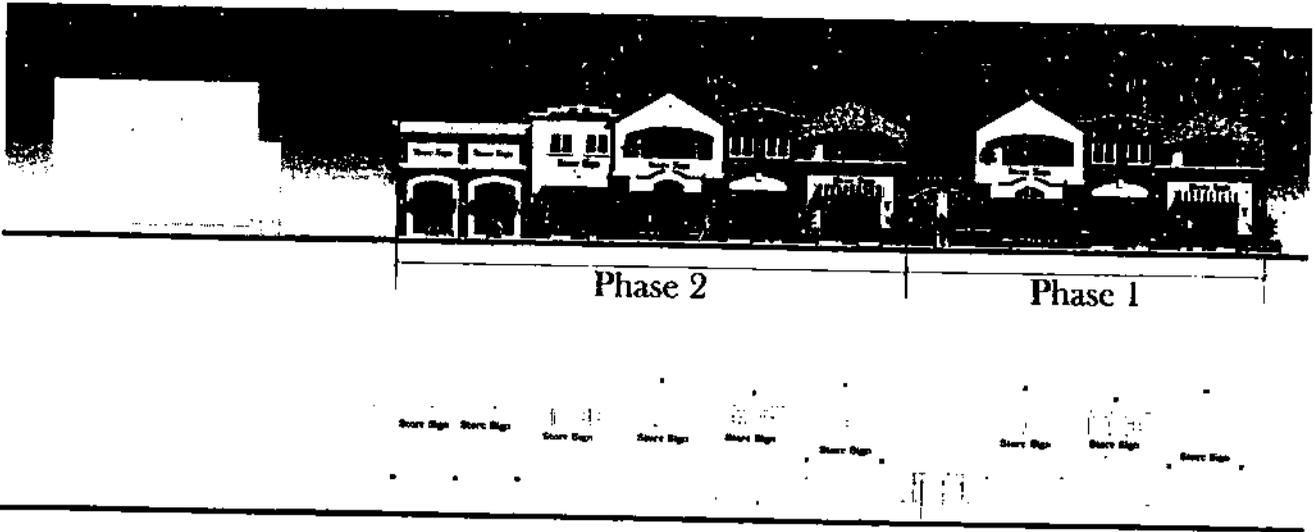
Forms, colors and materials are both consistent and aesthetically compatible with the neighboring architecture. Its visual elements draw on a vocabulary of simplified detail and traditional forms. A theme of blended forms and integrated materials with soft natural tones provides a relaxed flavor. The facade of the building are proportioned to provide a comfortable human scale. Each of the entrance facade is further articulated with the addition of a combination of hip roof elements alternating with curved roofs. Protected cornices at the hip roof elements provide decorative relief as well interesting shadow lines. The combination of natural colored stone, textured stucco, split face decorative masonry pocked roofs hint of a residential reference. Further interest is enhanced by decorative "Architectural Detail" that provides both focal interest and a sense of place.



Photo Two PEORIA, AZ

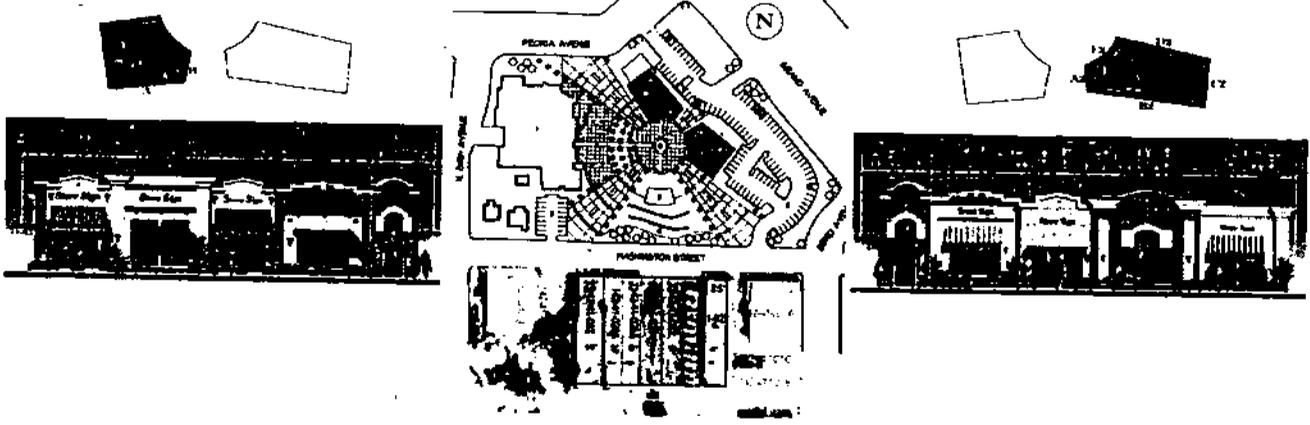
The each downtown of Peoria, Arizona has the same design lines and architecture as its sister city and a feeling of a beginning and end start to emerge. It was a more simple life and quality of life that remains unchanged with time.





ROBERT SCRIBER
Architect and Associates, Inc.

USEN PARK STATION



Elevation A2

Elevation B2

Elevation C2

Elevation D2

Elevation E2



ROBERT SCRIBER
Architect and Associates, Inc.

USEN PARK STATION

L CON 07905

Exhibit D
Memorandum of Lease and Declaration of Use Restrictions

L CON 07905

WHEN RECORDED RETURN TO:
OFFICE OF THE CITY ATTORNEY
8401 W. Monroe, Suite 340
Peoria, Arizona 85345

**MEMORANDUM OF LEASE AGREEMENT AND DECLARATION OF USE
RESTRICTIONS**

This is a Memorandum of that certain Ground Lease dated the ___ calendar day of _____ 2005, wherein the City of Peoria, Arizona, an Arizona municipal corporation ("Lessor"), demised and leased to Grand Avenue Peoria Holdings L.L.C., an Arizona limited liability company ("Tenant"), the real property described on *Exhibit "A"* attached hereto (the "Demised Premises") for a term of twenty-five (25) Years, with two (2) ten (10)-year options to renew and one (1) five (5)-year option to renew. Tenant shall use the Demised Premises only for those uses permitted under applicable zoning ordinances, including, e.g., the City of Peoria Old Town Mixed-Use zoning district, as such zoning district exists as of the date of this Lease agreement. Tenant shall not use or allow to be used the Demised Premises to operate an adult movie theatre, an adult live cabaret or any other form of adult use as that term is defined in Chapter 11 of the Peoria City Code (1992) and shall not permit performances containing specified sexual activities or exhibiting specified anatomical areas as those terms are defined in Chapter 11 of the Peoria City Code (1992). Tenant will use its best efforts in the marketing and subleasing of the Demised Premises to meet the City's goals of creating a mixed-use entertainment and retail center but with consideration given to market conditions as they exist from time to time during the Term.

The offices of Lessor and Tenant are as follows:

| | |
|---|---|
| Lessor: City of Peoria, Arizona 8401 W. Monroe St. Peoria, Arizona 85345 | Tenant: Grand Avenue Peoria Holdings L.L.C. 2031 Elevado Road Vista, California 92084 Attention: Marc Makebakken, Manager |
|---|---|

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Lease Agreement effective as of the ___ calendar day of _____ 2005.

City of Peoria, Arizona, an Arizona
municipal corporation

By: _____
Terrence L. Ellis, City Manager

Grand Avenue Peoria Holdings L.L.C., an
Arizona limited liability company

By: _____
Marc Makebakken, Manager

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STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Memorandum of Lease Agreement was acknowledged before me this
___ calendar day of July 2005, by Terrence L. Ellis, City Manager for the City of Peoria,
Arizona, an Arizona municipal corporation.

MY COMMISSION EXPIRES: _____
Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Memorandum of Lease Agreement was acknowledged before me this
___ calendar day of July 2005, by Marc Makebakken, the Manager of MS Development
Holdings, L.L.C., an Arizona limited liability company d/b/a Grand Avenue Peoria
Holdings L.L.C.

MY COMMISSION EXPIRES: _____
Notary Public

ATTEST:
By: _____
City Clerk

APPROVED AS TO FORM:
By: Steph J. Brown
City Attorney

Exhibit "A"
Memorandum of Lease Legal Description
Mobil Parcel

8401 W GRAND AVE

PT SE4 BEG SE COR SEC N 41.57' TO SLY R/W LN H/W TH NW ALG R/W LN 169.92' TO TR POB TH S 55: 22' W 123.58' N 43: 40' W 184.95' TO PT TH N 51: 29' E 139.50' TO SLY R/W LN H/W S 44: 17' E 43.05' TH S 37: 04' E ALG H/W 149.55' TO TR POB 0.57 AC

Section Township Range: 22 3N 1E (APN#: 142-42-041K)

Bank Parcel 1

PT E2 SE4 BEG SE COR SEC N 41.57' TO S R/W LN H/W TH NW 111.92' TO TR POB TH S 78: 54' W 134.86' S 18' W 150' N 20' E 145.69' N 55: 22' E 123.58' TO R/W LN H/W S 37: 04' E 58' TO POB 0.16 AC

Section Township Range: 22 3N 1E (APN#: 142-42-041G)

Bank Parcel 2

8303 W GRAND AVE

PT SE4 SE4 BEG 12.48' W & 12' N OF SE COR SEC N 46.01' N 37:04' W 91.32' ALG SLY R/W U S H/W 60-70 TH S 78:54' W 134.86' S 93' E 188.41' TO POB 0.44 AC

Section Township Range: 22 3N 1E (APN#: 142-42-041C)

PEDG Parcel 1

THAT PT SE4 SE4 BEG 350.78' W & 12' N OF SE COR SEC N 75' E 150' S 75' W 150' TO POB 0.26 AC

Section Township Range: 22 3N 1E (APN#: 142-42-041B)

PEDG Parcel 2

PT SE4 BEG SE COR SEC N 41.57' TO SLY R/W LN H/W TH NW ALG R/W LN 169.92' TO PT TH S 55: 22' W 123.58' TO TR POB TH W 145.69' TH N 99.95' TO PT TH NELY ALG CURVE 38.9' TO PT TH S 43: 40' E 184.95' TO TR POB 0.23 AC

Section Township Range: 22 3N 1E (APN#: 142-42-041L)

Washington Street Parcel 1

8307 W WASHINGTON ST

PEORIA BLK 35/PEORIA LOTS 4-5 BLK 24 0.16 AC

Section Township Range: 27 3N 1E (APN#: 142-41-022)

Washington Street Parcel 2

PEORIA BLK 35/ Lot 6 0.08 AC

Section Township Range: 27 3N 1E (APN#: 142-41-023)

Washington Street Parcel 3

PEORIA BLK 35/ Lot 7 0.08 AC

Section Township Range: 27 3N 1E (APN#: 142-41-024)

Washington Street Parcel 4

8325 W WASHINGTON ST

PEORIA BLK 35/Lot 8 BLK 24 EX W 4' 0.07 AC

Section Township Range: 27 3N 1E (APN#: 142-41-025A)

Washington Street Parcel 5

PEORIA BLK 35/Lot 9 BLK 24 E 16' & W 4' OF LOT 8 0.06 AC

Section Township Range: 27 3N 1E (APN#: 142-41-026A)

Washington Street Parcel 6

9 W WASHINGTON ST

PEORIA BLK 35/Lot 10 PEORIA W 9' OF LOT 9 & ALL LOT 10 BLK 24 0.08 AC

Section Township Range: 27 3N 1E (APN#: 142-41-027)

Park Parcel

PEORIA BLK 17 WASHINGTON PARK

Section Township Range: 27 3N 1E (APN#: 142-41-018A)