CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS

CC: 10C
Amend No. _____

Date prepared: November 26, 2008 **Council Meeting Date:** December 16, 2008

TO: Carl Swenson, City Manager

THROUGH: Susan Daluddung, Deputy City Manager

FROM: Grady Miller, Communications and Public Affairs Director

SUBJECT: **Easement Agreement for Old Town Mural**

RECOMMENDATION:

That the Mayor and City Council approve an easement agreement between S & M Old Town Properties and the City of Peoria.

SUMMARY:

At the City Council meeting on November 18, 2008, the City Council approved a mural project in Old Town Peoria. The project consists of a 30 foot by 12 foot mural to be painted by artist Emanuel Martinez on the wall of the Bikers Edge located on 83rd Avenue, south of Washington Street. The cost of the mural project is $30,000 and will be paid from the City's Percent for the Arts Fund.

The owners of the Bikers Edge, S & M Old Town Properties, have agreed to an easement on their property for the mural. The attached easement agreement grants permission to the city for the mural to be painted on the wall of the Bikers Edge. The easement agreement also requires the City of Peoria to be responsible for maintaining the mural. The initial term of the agreement is for 15 years. The agreement also contains a provision that allows an extension of the agreement by an additional 10 years with consent and approval by both parties.

Following approval of the easement agreement, artist Emanuel Martinez will begin the mural in January of 2009. The project should be completed by the end of March 2009.

ATTACHMENT:

1. Easement agreement

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# 20508 **LIC. #**_____
Action Date:

When recorded, please return to:

City Clerk's Office
City of Peoria, AZ
8401 W. Monroe St.
Peoria, AZ 85345

PUBLIC ART EASEMENT AGREEMENT

This Public Art Easement Agreement ("Agreement") is made and entered into as of the ___ day of _____, 2008, by and between S & M Old Town Properties, LLC, an Arizona limited liability company (the "Owner"), and the City of Peoria, Arizona, an Arizona charter municipality (the "City").

RECITALS

A. The Owner is the owner of a commercial building located at the southeast corner of Washington Street and 83rd Avenue currently being used as a bicycle shop depicted on ***Exhibit A*** (the "Bicycle Shop").

B. The City desires, and the Owner agrees, to cause to be placed on part of the exterior wall of the Bicycle Shop fronting 83rd Avenue a public mural of approximately 360 square feet to be created by an artist to be chosen and paid by the City. This public art will be placed within the easement area depicted on ***Exhibit A*** and legally described on ***Exhibit B*** ("Mural Easement"). The City and the Owner also desire to permit the City, the selected artist, and necessary City personnel to be able to freely access and enter upon the Mural Easement for purposes of maintaining the mural.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Grant of Easement. The Owner hereby grants to the City, its successors, assigns, selected artist, agents, and employees the non-exclusive right for the Term of this Agreement to access and enter upon the Mural Easement for purposes of placing public art in the form of a mural on the defined exterior wall of the Bicycle Shop, and access for construction, creation, maintenance, and replacements associated therewith. This Grant of Easement is subject to the following:

a. The Owner hereby covenants that it is lawfully seized and possessed of all rights necessary to enter into this Agreement, and that it will warrant the title and quiet possession thereto against the lawful claim of all persons.

b. The Owner agrees that it will not cause any modifications, changes, or additions to be made to the Mural Easement without first obtaining the written consent of the City.

c. The Owner also agrees that it will advise the City promptly upon discovery of any damage to the Mural Easement. The City agrees that it will bear the cost of repairing any damage caused to the Mural Easement.

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d. The City agrees that if it or any of its agents, employees, or contractors causes damage to the Bicycle Shop during the placement or maintenance of the Mural Easement that it will promptly reimburse the Owner for the cost of making necessary repairs or replacements upon receiving written notice of same from the Owner.

e. The Owner and the City acknowledge that they have mutually agreed upon the content of the public art to be placed within the Mural Easement and that any changes to, removal, or replacement of the public art will also be effected upon mutual agreement of the parties, except for any removal that should occur within the 90 days preceding termination of this Agreement.

f. The City may install signage within the Mural Easement identifying the artist and title of the public art along with any other information deemed necessary or desirable by the City.

g. The City shall have no responsibility to maintain any portion of the Bicycle Shop building or property except for the Mural Easement.

2. Term and Termination. The initial term of this Agreement shall be for fifteen (15) years from the date of execution, and it may not be terminated during this initial term except upon mutual written agreement of the parties. This Agreement may be renewed under the same terms and conditions thereafter for additional terms of ten (10) years each upon mutual written agreement of the parties fully executed at least ninety (90) days before expiration of the initial term or any subsequent renewal term. Either party may, during any renewal period, provide the other with ninety (90) days written notice of its desire to terminate this Agreement, provided the notice is given at least ninety (90) days in advance of the otherwise scheduled termination date. As soon as practicable after termination of this Agreement, the City shall remove the public art from the Mural Easement and any related signage and restore the Mural Easement area to its original condition as reasonably as possible.

3. Runs with the Land. This Agreement shall run with the land and shall be binding upon the City, the Owner, and their respective heirs, successors and assigns.

4. Miscellaneous. This Agreement (a) may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument; and (b) shall be governed by and construed in accordance with the laws of the State of Arizona. Notices shall be sent by U.S. Mail to the following addresses or such other address as the parties may designate in writing. If to the City: City of Peoria, AZ, Attn: Communications and Public Affairs Department, 8401 W. Monroe St., Peoria, AZ 85345. If to the Owner: S & M Old Town Properties, LLC, Attn: Shayne McQuay or Robert Scalf, 10545 N. 83rd Ave., Peoria, AZ, 85345.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first set forth above.

Owner:

S & M Old Town Properties, LLC, an Arizona limited liability company

By: _____
Shayne McQuay, Member

City:

City of Peoria, Arizona, an Arizona charter municipality

By: _____
Carl Swenson, its Manager

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by Shayne McQuay, Member of S & M Old Town Properties, LLC, an Arizona limited liability company, on behalf thereof.

My Commission Expires: _____
Notary Public

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by Carl Swenson, the Manager of the City of Peoria, Arizona, an Arizona charter municipality, on behalf thereof.

My Commission Expires: _____
Notary Public

EXHIBIT A

RESERVING unto the City of Peoria, its successors and assigns, a perpetual, non exclusive visibility easement over and across the following described tract of land:

That portion of Lot 11, Block 23, as shown and recorded on Amended Plat of Peoria, according to Book 3 of Maps, Page 62, MCR, and being located in the Northwest Quarter of Section 26, Township 3 North, Range 1 East, Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the Northwest corner of said Lot 11;

Thence southerly South 0° 04' 18" West along the west line of said Lot 11 a distance of 35.30 feet to the True Point of Beginning;

Thence easterly North 89° 55' 42" East a distance of 1.00 feet;

Thence southerly South 0° 04' 18" West and parallel to the west line of said Lot 11 a distance of 28.60 feet;

Thence westerly South 89° 55' 42" West to the west line of said Lot 11 a distance of 1.00 feet;

Thence northerly North 0° 04' 18" East along the west line of said Lot 11 a distance of 28.60 feet to the true point of beginning.

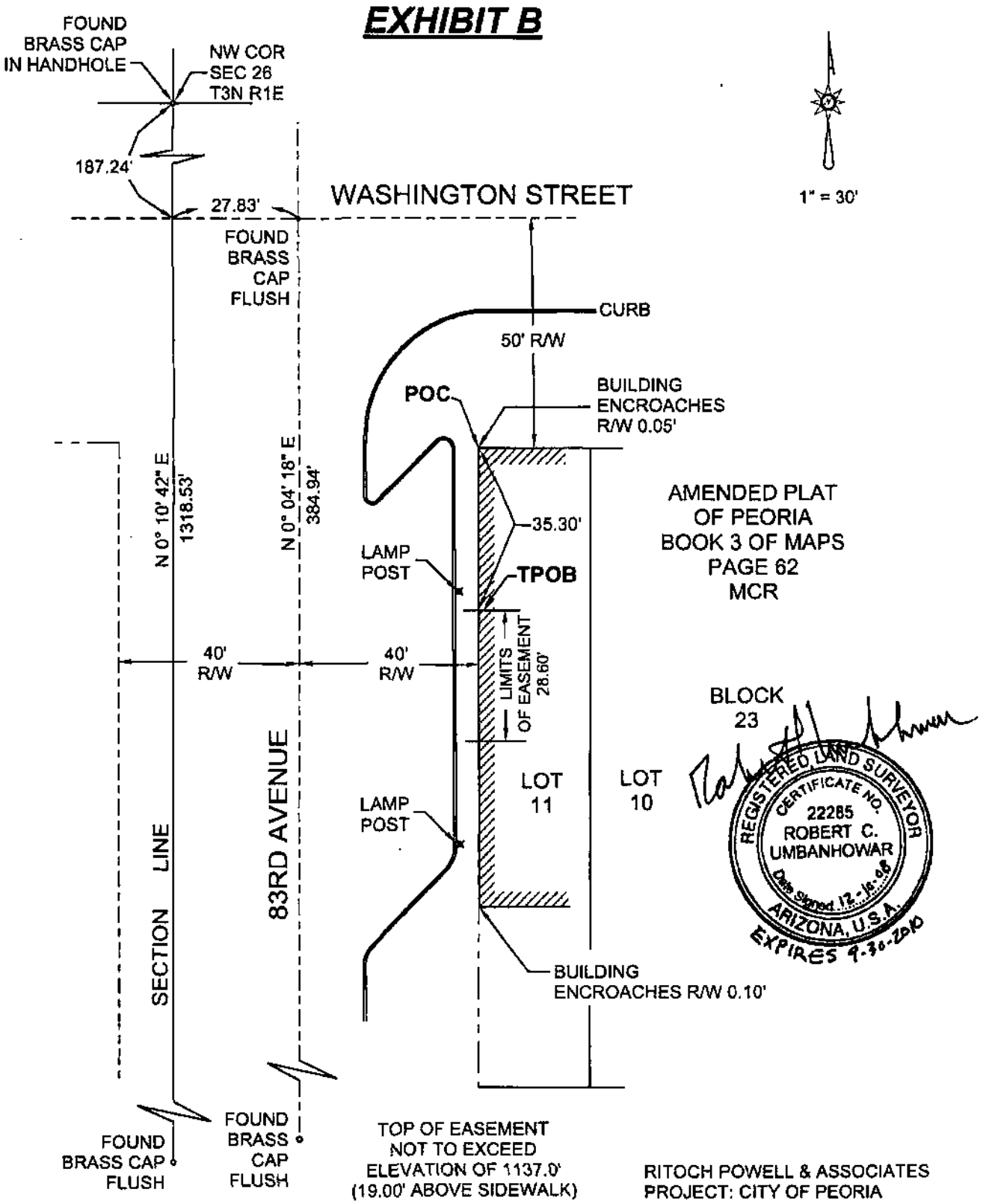
Easement not to exceed a height of 19.0 feet above sidewalk elevation (1137.0 feet above sea level, NAVD 88 Datum) and to be consistent with Exhibit B and proposed mural Exhibit C.

Grantee shall not place obstructions of any kind in the easement area or take any action inconsistent with the use for which this easement is granted. Grantor is not required to perform any maintenance in the easement area.

There shall be no right or easement of access to, from, or between the parcel of land described above and 83rd Avenue.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
22285
ROBERT C.
UMBANHOWAR
Date Signed 12-16-08
ARIZONA, U.S.A.
EXPIRES 9-30-2010

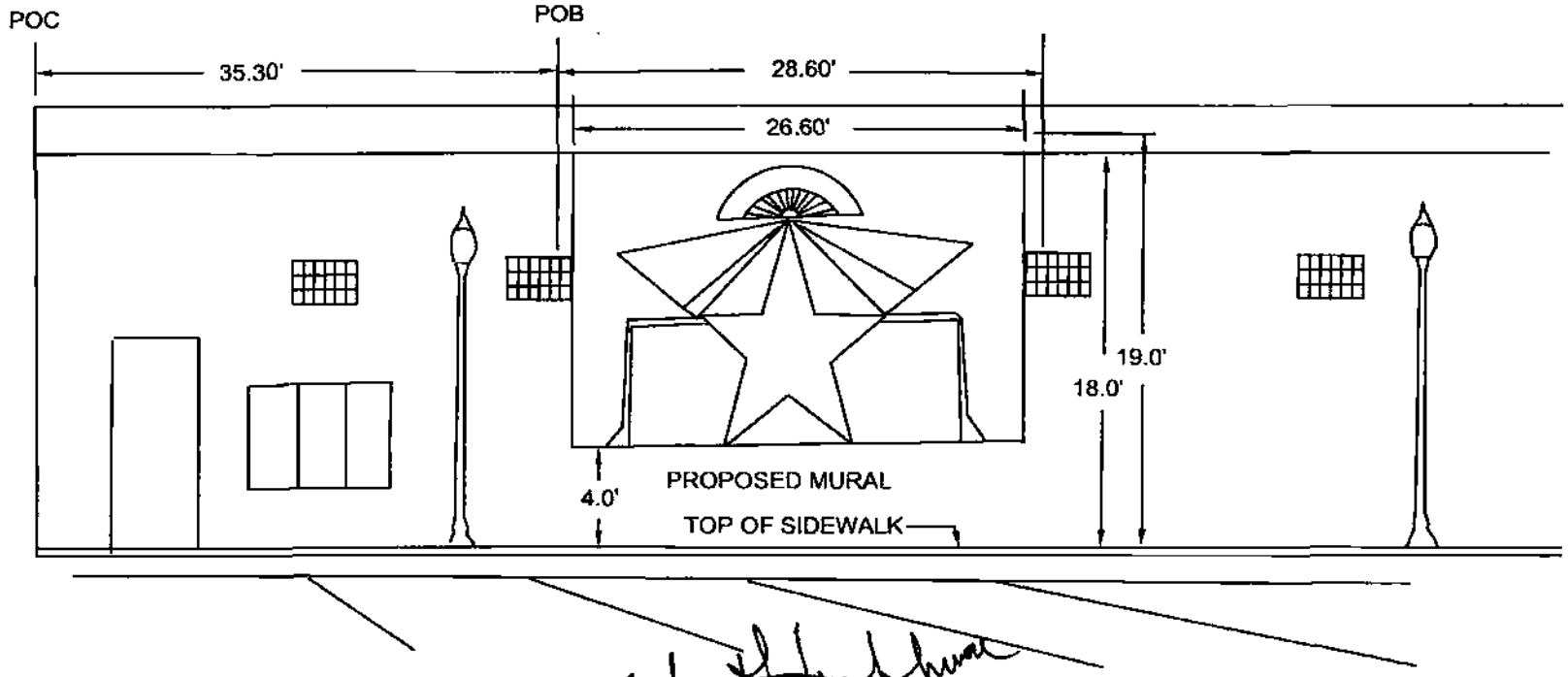
EXHIBIT B



RITOCH POWELL & ASSOCIATES
PROJECT: CITY OF PEORIA
WALL MURAL EASEMENT
PROJECT NO: 28033
DWN BY: RCU
DATE: 12-9-08

EXHIBIT C

PROPOSED MURAL
ELEVATION
NTS



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UMBANHOWAR
Date Signed 12-10-08
ARIZONA, U.S.A.
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