

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATIONS**

CC: \_\_\_\_\_  
Amend No. \_\_\_\_\_

Date prepared: November 22, 2010      Council Meeting Date: December 7, 2010

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**TO:** Carl Swenson, City Manager  
**THROUGH:** Susan Thorpe, Deputy City Manager *ST*  
**FROM:** Brent D. Mattingly, Finance Director *BDM*  
**SUBJECT:** Amended Lease – Arizona Broadway Theatre

**RECOMMENDATION:** Discussion and possible action to authorize the City of Peoria to enter into an amended lease with KLOS Enterprises, LLC (Arizona Broadway Theatre) for the approximately four acres of real property owned by the City located at 7701 West Paradise Lane and authorize the City Manager to execute the lease documents.

**SUMMARY:**

The City entered into a 25 year ground lease with KLOS Enterprises, LLC (Arizona Broadway Theatre) in May 2003. The lease provides for 3 five year extensions for a possible total lease term of 40 years. The project is a 40,000 square foot facility on approximately four acres of land. The use is a quality dinner theatre with ancillary meeting and conference room space. Arizona Broadway Theatre is current in all sales tax payments to the city.

The proposed amendment would be the fifth amendment to the lease agreement. The first two amendments clarified language to facilitate financing of the property and waived certain excess insurance requirements. The third and fourth amendments deferred the initial lease payments during the theatre's early years of operation. This fifth amendment further defers the lease payments due in the first six months of 2011 under the current lease and reflects interest earnings to the city. During the next six months, staff will develop a policy for council consideration regarding the funding of not-for-profit entities in the city.

The deferral of the lease payments to future years is in the city's financial and economic development interests. Based upon the above, staff is recommending an amendment to the existing lease incorporating the following.

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**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# \_\_\_\_\_ LIC. # \_\_\_\_\_  
Action Date: \_\_\_\_\_

- The net present value of the revised lease payments will reflect interest earnings to the city.
- Amend the lease agreement to reflect the deferral of the monthly rent through 6/30/2011 as follows:

25 year term of lease

- 2008 thru 6/30/2011 - no lease payments due
- 7/1/2011 thru 12/31/2011 – \$ 3,950 per month
- 2012 - \$4,095 per month
- 2013 thru 2017 – \$ 5,250 per month
- 2018 thru 2022 – \$ 5,750 per month
- 2023 thru 2027 – \$ 6,550 per month
- 2028 thru 2032 – \$ 7,400 per month

Possible 3 five year extensions

- 2033 thru 2037 – \$ 7,700 per month
- 2038 thru 2042 – \$ 8,500 per month
- 2043 thru 2047 – \$ 9,100 per month

**ATTACHMENT:** Lease Amendment

When recorded return to:

City of Peoria, Arizona  
Office of the City Clerk  
8401 West Monroe Street  
Peoria, Arizona 85345

## **FIRST AMENDMENT TO RESTATED LEASE AGREEMENT**

**THIS** First Amendment to Restated Lease Agreement dated January 19, 2010 (ACON17903D) ("Restated Lease") is made on the \_\_\_\_\_ day of December 2010 by and between the City of Peoria, Arizona, an Arizona municipal corporation ("Lessor"), and KLOS Enterprises, LLC, an Arizona limited liability company ("Tenant").

### **RECITALS**

A. Lessor believes that Tenant's business activities significantly improve the welfare and quality of life of the City.

B. Lessor also believes that it would be beneficial for the City to develop a City Council policy regarding the funding of not-for-profit entities in Peoria.

C. Given the above-mentioned, Lessor, in the best interest of the City is willing to defer the lease payments due in 2011 for six months and Tenant agrees to fully comply with all of its obligations under the Restated Lease

D. Lessor's deferral of the lease payments includes interest earnings to Lessor on the deferred payments.

NOW, THEREFORE, the parties agree to amend the Restated Lease as follows:

### **AGREEMENT**

#### **1. SECTION 4-RENT**

Section 4.1 is hereby amended as follows:

4.1 Rent. Tenant shall pay Rent to Lessor during each Lease Year, payable in twelve (12) equal monthly installments, in advance, on the first day of each calendar month, commencing on the Commencement Date of the lease agreement, in accordance with the following schedule:

<i>Lease Year</i>	<i>Rent due per month</i>
Effective Date thru 2007	As provided in the Restated Lease
2008 thru June 30, 2011	No lease payments due
July 1, 2011 thru December 31, 2011	\$ 3,950
2012	\$ 4,095
2013 thru 2017	\$ 5,250
2018 thru 2022	\$ 5,750
2023 thru 2027	\$ 6,550
2028 thru 2032	\$ 7,400
If extended:	
2033 thru 2037	\$ 7,700
2038 thru 2042	\$ 8,500
2043 thru 2047	\$ 9,100

2. **FULL FORCE AND EFFECT.** As modified and amended hereby, Lessor and Tenant each ratifies and affirms the terms of the Restated Lease. Except as expressly modified herein, the Restated Lease remains in full force and effect.
3. **BINDING.** This Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective successors in interest and assigns and shall run with the land, both as respects benefits and burdens created herein.
4. **COUNTERPARTS.** This Amendment may be executed in separate counterparts, with signature to one being deemed signature to each such counterpart, each of which shall be deemed to be an original and all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties have executed this Amendment on the date first listed above.

**CITY SIGNATURE PAGE**

**"LESSOR"**

**CITY OF PEORIA, ARIZONA**, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Bob Barrett, Mayor

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Interim City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen M. Kemp, City Attorney

STATE OF ARIZONA            )  
  ) ss:  
COUNTY OF MARICOPA        )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_ 2010, by  
Bob Barrett, Mayor of the City of Peoria, Arizona, an Arizona municipal corporation, on behalf of  
the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**TENANT SIGNATURE PAGE**

**"TENANT"**

**KLOS ENTERPRISES, L.L.C.**, an  
Arizona limited liability company

By: \_\_\_\_\_

Name: Ronald L. Klaphake

Title: Chief Executive Officer

STATE OF MONTANA     )

) ss:

COUNTY OF RAVALLI    )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2010,  
by Ronald L. Klaphake, Chief Executive Officer of KLOS ENTERPRISES, L.L.C., an  
Arizona limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**LEASEHOLD MORTGAGEE CONSENT PAGE**

Leasehold Mortgagee hereby unconditionally consents to the Parties' execution of this Lease as of the day and year first written.

**"LEASEHOLD MORTGAGEE"**

**CIENA CAPITAL, LLC**, a Delaware limited liability company

By: \_\_\_\_\_

Name: Cynthia C. Herring

Title: Senior Vice President and  
Director of Loan Servicing

Address: One Independence Pointe  
Suite 102  
Greenville, SC 29615

STATE OF SOUTH CAROLINA )

) ss:

COUNTY OF \_\_\_\_\_)

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_ 2010, by Cynthia C. Herring, Senior Vice President and Director of Loan Servicing, of CIENA CAPITAL, LLC, a Delaware limited liability, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**LEASEHOLD MORTGAGEE CONSENT PAGE**

Leasehold Mortgagee hereby unconditionally consents to the Parties' execution of this Lease as of the day and year first written.

**"LEASEHOLD MORTGAGEE"**

**SOUTHWESTERN BUSINESS  
FINANCE CORPORATION**, an Arizona  
corporation

By: \_\_\_\_\_

Name: William T. Brice

Title: Portfolio Manager

Address: 3200 N. Central Avenue  
Suite 1550  
Phoenix, Arizona 85012

STATE OF ARIZONA        )  
  ) ss:  
COUNTY OF MARICOPA    )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_  
2010, by William T. Brice, Portfolio Manager, of SOUTHWESTERN BUSINESS  
FINANCE CORPORATION, an Arizona corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: