

WHEN RECORDED RETURN TO:

City of Peoria
City Clerk
8401 W. Monroe Street
Peoria, Arizona 85345

**CITY OF PEORIA OLD TOWN COMMERCIAL REHABILITATION EASEMENT
AGREEMENT**

This CITY OF PEORIA OLD TOWN COMMERCIAL REHABILITATION EASEMENT AGREEMENT (the "Rehabilitation Easement") is made as of the ____ day of _____, 2010, by and between [INSERT NAME] (the "Property Owner"), whose principal address is [INSERT ADDRESS] and the City of Peoria, Arizona, an Arizona charter municipal corporation (the "City"). The Property Owner and the City may be referred to herein as a "Party" or collectively as the "Parties."

RECITALS

A. The City is authorized under Arizona Revised Statutes, Title 9, Chapter 4, Article 1, and Article I, Section III of the City of Peoria Charter to accept easements to preserve the historical, architectural, archaeological or cultural aspects of real property within the City of Peoria, Arizona. The City is also authorized to accept easements over real property adjacent to public rights-of-way and public improvements for the purpose of preserving the public's investment in these improvements.

B. The City has adopted the City of Peoria Old Town Commercial Rehabilitation Program (the "Rehabilitation Program") to promote improvements to the exteriors of commercial buildings in the Old Town area. The Rehabilitation Program is designed to promote and assist in the improvement of Old Town commercial properties through exterior rehabilitation of facades on primary structures and related structural and site elements including parking areas and walkways. The objective of the Rehabilitation Program is to preserve the history of the area as well as revitalize the

commercial district while at the same time preserving the public's substantial investment in public improvements that have been made and will be made in Old Town.

C. The Property Owner holds title in fee simple to that certain property located at [INSERT PHYSICAL ADDRESS], which is more particularly described in **Exhibit "A"** attached hereto and made a part hereof (the "Property"), including all improvements, fixtures, and buildings thereon (the "Structures"). (Any reference to the "Property" hereinafter shall be deemed to include each of the "Structures".)

D. On _____, 20____, the Property Owner submitted an Old Town Commercial Rehabilitation Program Application (the "Application") for the purpose of participating in the Program. The City thereafter confirmed that the Property is eligible for participation in the Program. The Parties have met and reached an agreement in regard to what improvements will be made to the Property pursuant to the Program, which improvements are described in **Exhibit "B"** attached hereto and made a part hereof (the "Project"). The portion of the Property upon which the Project will be constructed and to which this Rehabilitation Easement shall apply is described in **Exhibit "C"** attached hereto and made a part hereof (the "Project Area").

E. In order to effectuate the respective obligations of the City and the Property Owner under the Rehabilitation Program, the Property Owner desires to grant, convey, transfer, and assign to the City, and the City desires to accept, an easement on the Project Area for purposes of constructing the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the City's agreement to fund, design, and construct the Project, in an amount not to exceed [INSERT DOLLAR FIGURE] (the "Project Cost") subject to the terms and conditions of this Rehabilitation Easement, the Property Owner and the City hereby agree as follows:

1. Grant of Easement: The Property Owner does hereby irrevocably grant, convey, transfer, and assign unto the City an easement over and upon the Project and the Project Area for a term of twenty (20) years from the date hereof through and including [INSERT MONTH, DAY, YEAR] (the "Term"), which easement contains the covenants herein stated for the public purpose of constructing the Project, conserving and preserving the historical, architectural, and cultural aspects of the Property, and protecting the public's substantial financial investment in public improvements in the Old Town area.

2. Property Owner's Covenants: In furtherance of the Rehabilitation Easement herein granted, the Property Owner hereby covenants and agrees with the City as follows:

2.1. Documentation of the Project after Completion of Construction and Acceptance by the City. For the purposes of this Rehabilitation Easement, the exterior condition of the Property, the Project Area, and the Project will be depicted in an original set of photographs (collectively, the "Photographs") dated thirty (30) days following the issuance of a certificate of occupancy for the Project and filed in the office of the City of Peoria Economic Development Services Department. The exterior condition and appearance of the Property, the Project Area, and the Project as depicted in the Photographs (collectively, the "Present Condition") will be deemed to describe their external nature as of the date thereof.

2.2. Maintenance of the Property, the Project, and the Project Area. The Property Owner will, at all times, maintain the Property, the Project, and the Project Area in a good and sound state of repair. The Property Owner shall maintain the exterior of the entire Property (including the Project and the Project Area) during the Term of this Rehabilitation Easement in substantially its Present Condition, including keeping the Property free of trash and debris, weeds, and graffiti, and shall promptly replace any broken windows, lighting, or signs. Upon receiving written notice from the City that the Property, the Project, or the Project Area is not being maintained properly or requires repair, the Property Owner shall complete all necessary work within thirty (30) calendar days, at its sole cost and expense. The time period for completing the work may only be extended beyond thirty (30) days with the City's written approval and then shall be completed to the City's satisfaction within a mutually agreed upon time period. If the Property Owner fails to undertake or complete the necessary work, the Parties agree that the City may cause the work to be completed and may thereafter record a lien for the cost against the Property.

2.3. Maintenance of the Project. The Property Owner shall regularly inspect the Project and promptly notify the City's Economic Development Services Department when it becomes aware that maintenance or repairs to the Project or the Project Area are necessary. With the concurrence of the Economic Development Services Department, the Property Owner shall undertake, at its sole cost and expense, any and all necessary maintenance or repairs and complete them to the City's satisfaction. The Property Owner shall not destroy, modify, or add anything to the Project or the Project Area, except as otherwise approved in advance in writing by the City's Economic Development Services Department. Any changes to the Project or Project Area by the Property Owner shall be in accordance with the City's Design Review Manual for Old Town.

2.4. Inspection. In order to periodically observe the Project and the Project Area, representatives of the City shall have the right to enter the Property to conduct inspections of the Project and the Project Area. These inspections will be made and performed at times mutually agreed upon by the Property Owner and the City.

2.5. Insurance. The Property Owner, at the Property Owner's sole cost and expense, shall at all times (a) keep the Project insured at its replacement value on an "all risk" basis to ensure complete restoration of the Project in the event of loss or physical damage. Said property coverage policy shall contain provisions which ensure that the face amount of the policy is periodically adjusted for inflation, and the Property Owner shall provide a Certificate of Insurance to the City evidencing such insurance, including an endorsement naming the City as a loss payee; and (b) carry and maintain liability insurance in an amount satisfactory to the City to protect against injury to visitors or other persons on the Property, and the Property Owner shall provide a Certificate of Insurance to the City evidencing such insurance, and naming the City as an additional insured on the policy.

2.6. Visual Access. The Property Owner agrees not to substantially obstruct the opportunity of the general public to view the exterior architectural features of the Property from adjacent publicly accessible areas such as public streets and sidewalks. This provision shall not apply to any portion of the Project that is not visible from a public area.

2.7. Compliance with Applicable Laws and Codes. The Property Owner shall maintain, operate, and manage the Property, including the Project and the Project Area, in full compliance with all applicable Federal, State, Peoria City Code, and Peoria Zoning Ordinance provisions. Failure to do so shall be considered a breach of this Rehabilitation Agreement subject to the notice and cure provisions set forth above in Section 2.2, and would constitute a default if not timely cured or otherwise rectified.

3. Warranties and Representations of the Property Owner. The Property Owner represents and warrants to the City as follows:

3.1. Information Furnished, True and Correct. All information given to the City by the Property Owner in order to induce the City to accept this Rehabilitation Easement, including all information contained in this Rehabilitation Easement, is true, correct and complete.

3.2. Legal, Valid and Binding. This Rehabilitation Easement is in all respects, legal, valid and binding upon the Property Owner and enforceable in accordance with its terms, and grants to the City a direct, valid, and enforceable easement upon the Project Area and the Project. The Property Owner warrants and covenants that it represents all lenders, tenants, and other persons having an interest in the Property and that each has or will execute and acknowledge the binding nature of this Rehabilitation Agreement.

3.3. No Impairment of Rehabilitation Easement. The Property Owner, for itself, its successors, and assigns, has not reserved, and to the Property Owner's knowledge, no other person or entity has reserved or obtained any rights, the exercise of which may impair the easement granted herein.

4. Application of Insurance Proceeds. Subject to the insurance proceeds requirements of any recorded Deed of Trust or Mortgage applicable to the Property, in the event of damage or destruction of the Project Area or Project resulting from casualty, the Property Owner agrees to apply all available insurance proceeds and donations to the repair and reconstruction of the damage, with such funds applied first to repair and reconstruct those features funded by the City and determined essential to the Project by the City's Economic Development Services Department. In the event the City determines, in its reasonable discretion, after reviewing all bona fide cost estimates in light of all available insurance proceeds and other monies available for such repair and reconstruction, that either (a) the damage to the Project Area or Project is of such magnitude and extent that repair and reconstruction of the damage would not be possible or practical or (b) that the damage to the Project Area or Project presents an imminent hazard to public safety, then the City may elect not to repair or reconstruct the damaged Project Area or Project. In the event of such a determination by the City, the City, will, at the City's sole cost and expense, raze the damaged portions of the Project and remove all debris, slabs, and any other portions and parts of the damaged Project required to protect the health, safety, and welfare of the public. In such event, the City shall release any interest it has in the insurance proceeds for the damage to the Project. Nothing in this paragraph is intended to supersede or impair the rights to insurance proceeds of a lienholder pursuant to a recorded Deed of Trust or Mortgage applicable to the Property.

5. Indemnification. The Property Owner covenants and agrees to pay, protect, indemnify, hold harmless, and defend the City at the Property Owner's sole cost and expense from any and all liabilities, claims, costs, attorneys' fees, judgments or expenses asserted against the City, its mayor, city council members, employees, agents or independent contractors, resulting from actions or claims of any nature arising out of the conveyance, possession, administration or exercise of rights under this Rehabilitation Easement, except in such matters arising solely from the intentional misconduct or negligence of the City, its mayor, city council members, employees and agents.

5.1. Survival of Indemnification. The obligations of the Property Owner under this indemnification shall survive termination of this Rehabilitation Easement for a period of two (2) years.

5.2. Explanation of Indemnification. For purposes of explanation of paragraph 5 only, and without in any manner limiting the extent of the foregoing indemnification, the Property Owner and the City agree that the purpose of paragraph 5 is to require the Property Owner to bear the expense of any claim made by any third party against the City, which arises because the City has an interest in the Property as a result of this Rehabilitation Easement. The Property Owner will have no obligation to the City for any claims that may be asserted against the City as a direct result of the City's intentional misconduct or negligence.

6. Default/Remedy. In the event that (a) the Property Owner fails to perform any obligation of the Property Owner set forth herein, or fails to otherwise comply with any stipulation or restriction set forth herein, or (b) any representation or warranty of the Property Owner set forth in the Application or herein is determined by the City to have been untrue when made, then in addition to any remedies now or hereafter provided by law and in equity, the City, following prior written notice to the Property Owner, may (i) institute suit(s) to enjoin such violation by ex parte, temporary, preliminary or permanent injunction, including prohibitory and or mandatory injunctive relief, and to require the restoration of the Property to the condition and appearance required under this Rehabilitation Easement, or (ii) enter upon the Property, correct any such violation, and hold the Property Owner responsible for the cost thereof, and such cost until repaid shall constitute a lien on the Property, or (iii) revoke the City's acceptance of this Rehabilitation Easement and upon written notice from the City, the Property Owner shall reimburse the City the full amount of the Project Cost. Determination of the amount due to the City shall be made as follows: (i) the Project Cost will be reduced at a rate of five percent (5%) annually for each year of full compliance by the Property Owner with this Rehabilitation Agreement calculated on each anniversary date of this Agreement; (ii) in the event of an uncured Default by the Property Owner, the Property Owner shall pay upon demand to the City the then remaining balance of the Project Cost plus five percent (5%) annual interest. In the event the Property Owner violates any of its obligations under this Rehabilitation Easement, the Property Owner shall reimburse the City for any and all costs and expenses incurred by the City in connection therewith, including all court costs and attorneys' fees.

7. Waiver. The exercise by the City of any remedy hereunder shall not have the effect of waiving or limiting any other remedy and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

8. Runs with the Land. This Rehabilitation Easement shall run with the land and shall be binding upon the City, the Property Owner, and their respective heirs, successors, and assigns.

9. Effect and Interpretation. The following provisions shall govern the effectiveness and duration of this Rehabilitation Easement:

9.1 Interpretation. Any rule of strict construction designed to limit the breadth of restriction on alienation or use of property shall not apply in the construction or interpretation of this Rehabilitation Easement, and this Rehabilitation Easement shall be interpreted broadly to affect the transfer of rights and restrictions on use herein contained.

9.2 Violation of Law. Nothing contained herein shall be interpreted to authorize or permit the Property Owner to violate any ordinance or regulation relating to building materials, construction methods or use, and the Property Owner agrees to

comply with all applicable laws, including, without limitation, all building codes, zoning laws, and all other applicable laws related to the maintenance and demolition of historic property. In the event of any conflict between any such laws and the terms hereof, the Property Owner promptly shall notify the City of such conflict and shall cooperate with the City and the appropriate authorities to accommodate the purposes of both this Rehabilitation Easement and such ordinance or regulation.

9.3 Amendments and Modifications. For purposes of furthering the preservation of the Project Area, the Project, and the Property and the other purposes of this Rehabilitation Easement, and to meet changing conditions, the Property Owner and the City are free to amend jointly the terms of this Rehabilitation Easement in writing without notice to any party; provided, however, that no such amendment shall limit the Term or interfere with the purposes of this Easement, and further provided that any such amendment shall be authorized, approved and/or ratified by the City of Peoria City Council. Such amendment shall become effective upon recording the same among the land records of Maricopa County, Arizona, in the Office of the County Recorder.

9.4 Recitals. The above Recitals are incorporated herein by this reference.

9.5 Time of the Essence. Time is of the essence in the performance of each and every term and condition of this Rehabilitation Easement by the Property Owner.

9.6 Gender. The pronouns "he", "his" and "himself" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender, as the context requires.

9.7 Cancellation. The City may cancel this Rehabilitation Easement for conflict of interest without penalty or further obligation pursuant to A.R.S. § 38-511.

IN WITNESS WHEREOF, the Property Owner and the City have executed this Easement on the date first above written, which Rehabilitation Easement shall be effective immediately upon such execution.

PROPERTY OWNER

By: _____
NAME

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by NAME the _____ of the COMPANY, a limited liability corporation, being authorized so to do.

Notary Public

My commission expires:

CITY OF PEORIA, an Arizona municipal corporation

By: _____
Carl Swenson
Its: City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this __ day of _____, 2007 by Carl Swenson the City Manager of the City of Peoria, an Arizona charter municipal corporation, for the municipal corporation, being authorized so to do.

Notary Public

My commission expires:

ATTEST:

City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp
City Attorney

EXHIBIT "A"

(LEGAL DESCRIPTION TO BE ATTACHED)

EXHIBIT "B"

(PROJECT DESCRIPTION TO BE ATTACHED)

EXHIBIT "C"

(PROJECT AREA LEGAL DESCRIPTION TO BE ATTACHED)