

# CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS . 11465 WEST CIVIC CENTER DRIVE . AVONDALE, AZ 85323

**WORK SESSION**  
**September 17, 2007**  
**6:00 PM**

## **CALL TO ORDER BY MAYOR ROGERS**

**1 ROLL CALL BY THE CITY CLERK**

**2 OPTIONS FOR SELECTION OF VICE MAYOR**

Council will discussion options for the selection of the Vice Mayor position. For information, discussion and directions.

**3 CITY COUNCIL WORK SESSION- WAL-MART ELEVATIONS**

City staff will present to the Council the Wal-Mart elevations for Agua Fria Marketplace. For information, discussion and direction only.

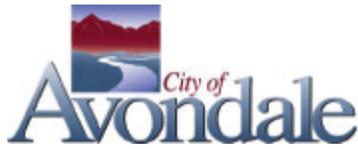
**4 ADJOURNMENT**

Respectfully submitted,

A handwritten signature in cursive script that reads "Linda M Farris".

Linda Farris, CMC  
City Clerk

Any individual with a qualified disability may request a reasonable accommodation by contacting the City Clerk at 623-333-1200 at least 48 hours prior to the council meeting.



# CITY COUNCIL REPORT

**SUBJECT:**  
Options for Selection of Vice Mayor

**MEETING DATE:**  
September 17, 2007

**TO:** Mayor and Council  
**FROM:** Sammi Curless, Assistant to the Mayor and Council (623)333-1613  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

At the July 16, 2007 City Council meeting, staff was directed to explore various options for the selection of the Vice Mayor position.

**BACKGROUND:**

Article II, Section 9 of the City Charter states that,

"At the first meeting of the council following administering the oaths to the newly elected mayor and/or councilmen, the council shall designate one of its members as vice-mayor who shall serve in such capacity for a two-year term at the pleasure of the council."

Staff has surveyed Valley cities to determine the methods used for the selection of the Vice Mayor. The following table highlights the selection processes utilized:

City	Selection Process
Apache Junction	<ul style="list-style-type: none"> <li>• The Vice Mayor is selected by the Mayor and Council at the same meeting at which new officials are sworn in</li> <li>• Term length is 2 years with no term limit</li> <li>• Any Councilmember can be nominated and selected</li> <li>• Do not take turns</li> </ul>
Cave Creek	<ul style="list-style-type: none"> <li>• Mayor and Council designate one of the Councilmembers as Vice Mayor at the first regular meeting of June of each odd numbered year</li> <li>• Vice Mayor serves at the pleasure of the Council</li> </ul>
Chandler	<ul style="list-style-type: none"> <li>• Within 31 days of taking office, the Council elects from among its members a Vice Mayor</li> <li>• Serves 2 year term and can serve more than one term</li> </ul>
Fountain Hills	<ul style="list-style-type: none"> <li>• Vice Mayor position is an 8-month rotating position</li> <li>• Each Councilmember serves once within their term</li> <li>• The Clerk's Office retains a list of the order a Councilmember serves as Vice Mayor which is based on the number of ballots casts for each successful candidate</li> </ul>

Goodyear	<ul style="list-style-type: none"> <li>• No written process but is an understanding amongst the Council</li> <li>• Vice Mayor is elected by Council every 2 years on a rotation basis</li> <li>• Gives every Councilmember an opportunity</li> <li>• Rotation order is based usually on the most senior Councilmember who has not served</li> </ul>
Litchfield Park	<ul style="list-style-type: none"> <li>• Voted on by Council during the same meeting when newly elected Council is sworn in</li> <li>• 2 year term with no term limit</li> </ul>
Mesa	<ul style="list-style-type: none"> <li>• Within 30 days of taking office, the Council is to elect a Vice Mayor which usually occurs at the same meeting as the Mayor is sworn in</li> <li>• 2 year term with no term limit</li> </ul>
Paradise Valley	<ul style="list-style-type: none"> <li>• Does not have direct election of the Mayor or Vice Mayor; rather 20 days after election the Council must choose a Mayor and Vice Mayor from among their number</li> <li>• Terms have traditionally been 2 years</li> <li>• Ordinance was defeated last year to limit the Vice Mayor to one consecutive term</li> </ul>
Peoria	<ul style="list-style-type: none"> <li>• Appointed during a regular Council meeting through a nomination process</li> <li>• Length of term will vary and members can serve more than one term</li> </ul>
Phoenix	<ul style="list-style-type: none"> <li>• Council selects from among its members a Vice Mayor through nomination and voting process held each January</li> <li>• General practice is a term of 1 year; with opportunity to serve multiple terms during time in office</li> </ul>
Scottsdale	<ul style="list-style-type: none"> <li>• Council practice has been to rotate Vice Mayor position every 8 months based on tenure and/or largest number of votes received</li> <li>• Ensures that everyone on Council is able to serve as Vice Mayor during a 4-year term</li> </ul>
Surprise	<ul style="list-style-type: none"> <li>• Each January, the Council selects one of its members to serve as Vice Mayor</li> </ul>
Tolleson	<ul style="list-style-type: none"> <li>• Council nominates and votes on nominations for Vice Mayor</li> <li>• 2 year term with no limit on number of terms</li> <li>• Does not rotate</li> </ul>

**DISCUSSION:**

While it is the prerogative of the City Council to select a Vice Mayor in a manner that is consistent with the desires of the City Council and to meet the intent of the City Charter, staff believes that options exist for the selection of the Vice Mayor.

The first option suggests amending Section 14 of the City Council Rules of Procedure via resolution to clarify whether the Vice Mayor position is limited to one two-year term. This would allow a Councilmember to serve only one term and would allow the other members of the Council to serve a term as Vice Mayor during their respective term on the Council. Those interested in serving would still be nominated and voted on by the City

Council.

The second option would be to establish a formal rotation process based upon number of votes garnered during the last election or number of years on the Council. The length of the term could be set by the City Council to a time frame most appropriate.

A final option would be to leave the process as it currently stands and allow the City Council full discretion to select a Vice Mayor in a manner deemed most appropriate.

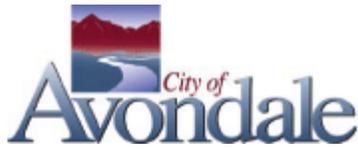
**RECOMENDATION:**

For Council discussion and to provide direction to staff as appropriate.

**ATTACHMENTS:**

**[Click to download](#)**

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**  
City Council Work Session- Wal-Mart Elevations

**MEETING DATE:**  
September 17, 2007

**TO:** Mayor and Council  
**FROM:** Brian Berndt, Development Services Director (623) 333-4011  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

City Council expressed concern with the Wal-Mart elevations for Agua Fria Marketplace Phase I located on the southwest corner of Avondale Boulevard and McDowell Road at the June 18, 2007 Work Session meeting. In response, the applicant has provided a variety of elevations for review. The applicant is requesting direction from Council. This item is being presented for information and discussion only.

**BACKGROUND:**

The property was annexed on February 1, 1999. The property was rezoned from AG (Agricultural) to PAD (Planned Area Development) by City Council on May 3, 1999 (Exhibit A & B). The PAD includes approximately 90 acres and consisted of three components: 1) 26 acres of R-4; 2) 56 acres of Commercial; 3) 9 acres of congregate care. On January 18, 2000, the Council approved Crystal Springs Apartments Master Site Plan and Final Site Plan for Phase I, which consisted of 200 units on approximately 13 acres at 14 units per acre. Phase I construction was completed in 2001. On November 5, 2001, the Council approved Crystal Springs Apartments Phase II final site plan. Phase II construction was completed in 2003.

A site plan application for the 56 acres of Commercial in the Crystal Springs PAD was submitted on February 2, 2007. First review comments were sent out on March 20, 2007. On March 29, 2007, the applicant held an open house meeting to obtain public input on the project. 12 people including the development team attended the meeting. Staff met with the applicant on April 10, 2007 to discuss first review comments. Part of the second submittal was received on May 22, 2007. On June 18, 2007 Council Work Session was held for the Wal-Mart elevations. Council requested that the applicant reconsider the proposed elevations. The remainder of the second submittal was received at the end of June. The applicant received second review comments on August 31, 2007.

**RECOMENDATION:**

No action is required at this time. This item is being presented for information and direction only.

**ATTACHMENTS:**

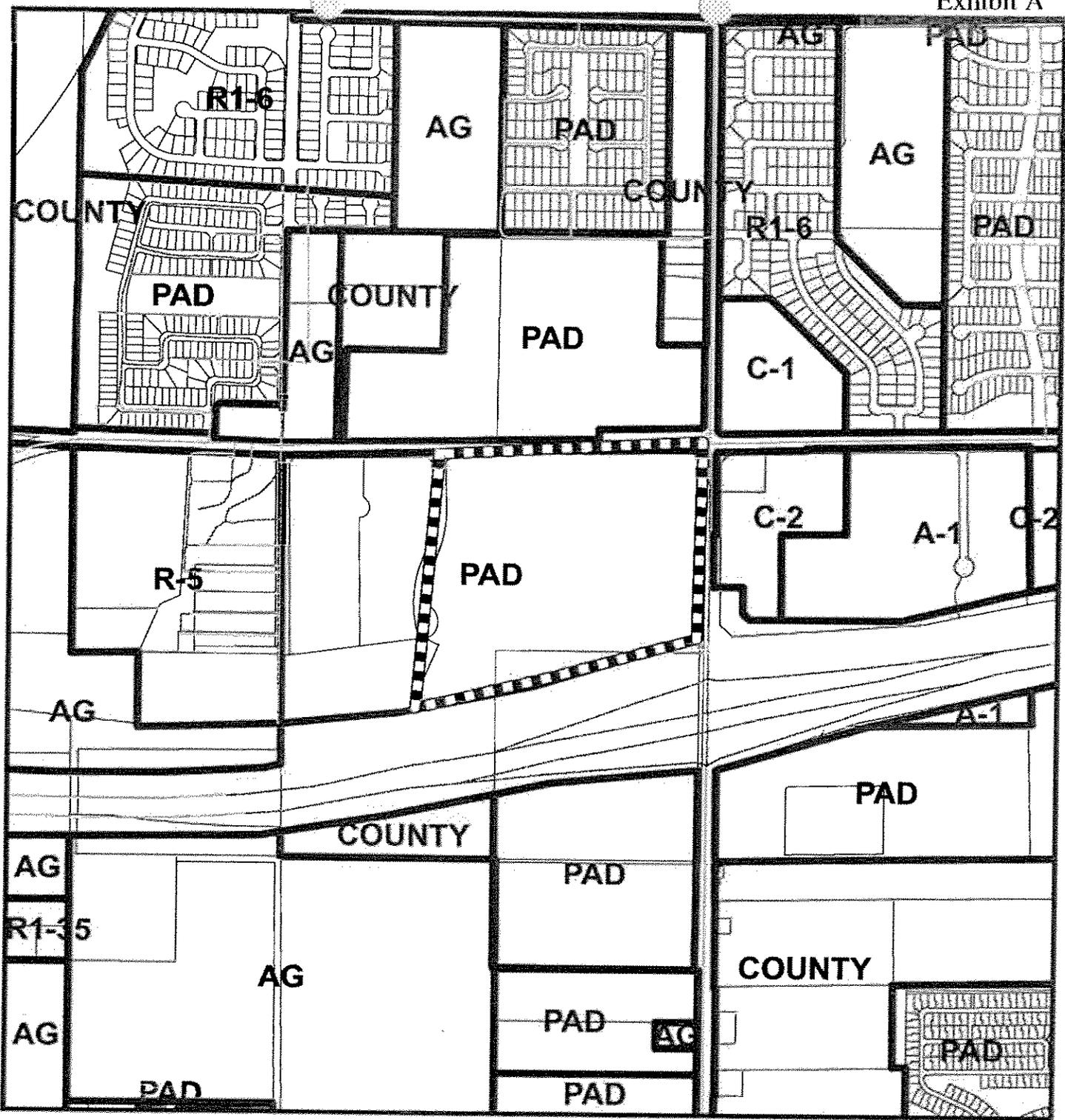
- Exhibit A - Zoning Vicinity Map
- Exhibit B - Air Photo 2006
- Exhibit C - Proposed Elevations (hard copies to be distributed)

Project Manager: Megan Neal, Planner II (623) 333-4018

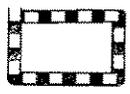
**ATTACHMENTS:**

Click to download

[Exhibits A,B](#)



### Zoning Vicinity Map



Subject Property



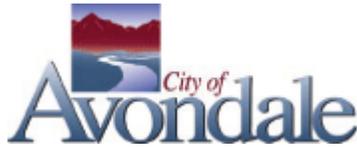


### 2006 Aerial Photograph



Subject Property





# CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS . 11465 WEST CIVIC CENTER DRIVE . AVONDALE, AZ 85323

**REGULAR MEETING**  
**September 17, 2007**  
**7:00 PM**

**CALL TO ORDER BY MAYOR ROGERS**  
**PLEDGE OF ALLEGIANCE**  
**MOMENT OF REFLECTION**

**1 ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK**

**2 UNSCHEDULED PUBLIC APPEARANCES**

(Limit three minutes per person. Please state your name.)

**3 CONSENT AGENDA**

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

**a. APPROVAL OF MINUTES**

- a. Regular meeting of September 4, 2007
- b. Work Session of September 4, 2007

**b. CLAIMS - AUGUST 2007**

Claims for August 2007

**c. LIQUOR LICENSE - MY BIG FAT GREEK RESTAURANT**

Staff is requesting that the City Council consider a request by Ms. Lauren Merrett, for a Series 16 (State Series 12) Restaurant license to sell all spirituous liquors at My Big Fat Greek Restaurant, 10040 West McDowell Road. The Council will take appropriate action.

**d. PURCHASE OF SKID LOADER**

Staff is requesting City Council authorization to attach to the Houston-Galveston Area Council (H-GAC) contract for the purchase of one Case 570M XT Loader from Falcon Power for a total of \$51,327.38. The Council will take appropriate action.

**e. AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH COE AND VAN LOO CONSTRUCTION SERVICES FOR THE THOMAS (FULTON) ESTATES LIFT STATION**

Staff is requesting that the City Council approve Amendment No. 2 to the professional services agreement with Coe and Van Loo Construction Services, LLC., for additional construction management services associated with the Fulton Estates lift station, in an amount not to exceed \$28,876.84 for a revised total contract amount of \$85,814.84, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

**f. APPROVAL TO RE-PLAT PARCELS ALONG WESTERN AVENUE BETWEEN 4TH STREET AND 5TH STREET FOR THE OLD TOWN LIBRARY**

Staff is requesting that the City Council approve the re-plat of parcels along Western Avenue between 4th street and 5th street for the Old Town Library and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**g. DR-06-20 AVONDALE COLDWATER I SITE PLAN**

The Council will consider a request to continue this item to the October 1, 2007 Council meeting. The Council will take appropriate action.

**h. ORDINANCE 1267-907 RIGHT OF WAY DEDICATION - RYLAND HOMES - AVONDALE BOULEVARD AND BUCKEYE ROAD (MC85)**

The Council will consider an ordinance accepting the dedication of certain rights-of-way along Avondale Boulevard and Buckeye Road adjacent to the Coldwater Ridge subdivision and authorizing the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

**i. RESOLUTION - CANVASS OF VOTES FOR THE SEPTEMBER 11, 2007 PRIMARY ELECTION**

The Council will consider a resolution canvassing the vote for the September 11, 2007 Primary Election. The Council will take appropriate action.

**j. RESOLUTION 2681-907 - INTERGOVERNMENTAL AGREEMENT - LITTLETON SCHOOL DISTRICT**

Staff is requesting that the City Council adopt a resolution authorizing an intergovernmental agreement with Littleton Elementary School District #65 for the purpose of offering out of school time recreation programs. The Council will take appropriate action.

**k. RESOLUTION 2679-907 IN SUPPORT OF LTAF II FUNDING APPLICATION**

Staff is requesting that the City Council adopt a resolution authorizing the submittal of an application to receive 2008 Local Transportation Assistance Funds (LTAF II) in the amount of \$115,669.58. The Council will take appropriate action.

**4 E-CITATION FOR POLICE AND CITY COURT**

Staff is requesting that the City Council approve a contract with Advanced Public Safety (APS) for the purchase of eight E-Citation devices and associated hardware and software in the amount of \$52,727.15. The Council will take appropriate action.

**5 APPROVAL OF AMENDMENT NO. 3 TO THE DESIGN-BUILD CONTRACT WITH LANDSCAPES UNLIMITED FOR PRE-CONSTRUCTION SERVICES OF PHASE II OF FESTIVAL FIELDS**

Staff is requesting that the City Council approve Amendment No. 3 to the Design-Build Agreement with Landscapes Unlimited, LLC to provide pre-construction services for phase II of Festival Fields at a cost of \$650,570.29 and authorize the Mayor or City Manager and City Clerk to execute the contract documents. The Council will take appropriate action.

**6 PUBLIC HEARING AND RESOLUTIONS 2669-907 AND 2670-907 - MAJOR GENERAL PLAN AMENDMENT AND SPECIFIC PLAN AMENDMENT FOR PASADERA (GP-07-3 & SP-07-2)**

The Council will hold a public hearing and will consider resolutions approving a major general plan amendment and specific plan amendment for Pasadera, approximately 40.5 acres located southeast of the southeast corner of Dysart and Indan School Roads. The Council will take appropriate action.

**7 RESOLUTION AUTHORIZING AN I-10 ACCELERATION INTERGOVERNMENTAL AGREEMENT**

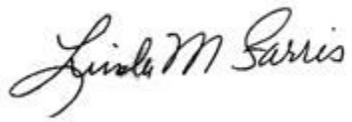
The Council will consider a resolution authorizing an intergovernmental agreement with the Arizona Department of Transportation (ADOT), the Maricopa Association of Governments (MAG), and the cities of Goodyear and Litchfield Park to accelerate the widening of Interstate 10 from the Loop 101 to Sarival Road. The Council will take appropriate action.

**8 EXECUTIVE SESSION**

**a.** The Council may hold an executive session pursuant to Rev. Stat. § 38-431.03 (A)(4) for discussion or consultation with the City's attorney in order to consider its position and instruct the City's attorney regarding the council's position regarding an intergovernmental agreement.

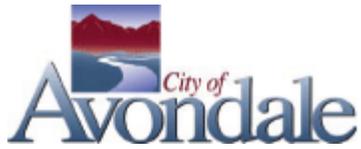
**9 ADJOURNMENT**

Respectfully submitted,

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Linda Farris, CMC  
City Clerk

Any individual with a qualified disability may request a reasonable accommodation by contacting the City Clerk at 623-333-1200 at least 48 hours prior to the council meeting.



# CITY COUNCIL REPORT

**SUBJECT:**  
Approval of Minutes

**MEETING DATE:**  
September 17, 2007

**TO:** Mayor and Council  
**FROM:** Linda Farris  
**THROUGH:** Charlie McClendon, City Manager

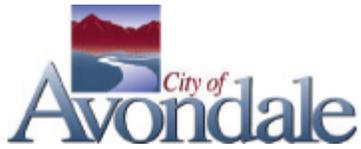
**PURPOSE:**

- a. Regular meeting of September 4, 2007
- b. Work Session of September 4, 2007

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**  
CLAIMS - AUGUST 2007

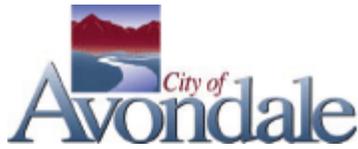
**MEETING DATE:**  
September 17, 2007

**TO:** Mayor and Council  
**FROM:** Linda Farris  
**THROUGH:** Charlie McClendon, City Manager

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**  
Liquor License - My Big Fat Greek Restaurant

**MEETING DATE:**  
September 17, 2007

**TO:** Mayor and Council  
**FROM:** Linda M. Farris, City Clerk (623)333-1211  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council consider a request by Ms. Lauren Merrett, for a Series 16 (State Series 12) Restaurant license to sell all spirituous liquors at My Big Fat Greek Restaurant, 10040 West McDowell Road.

**DISCUSSION:**

The City Clerk's Office has received an application for a Series 16 (State Series 12) Restaurant license to sell all spirituous liquors from Ms. Lauren Merrett, My Big Fat Greek Restaurant, 10040 West McDowell Road, Avondale, Arizona.

This is a new license. Previously, Paul Lees Chinese Kitchen occupied the facility. The required fee of \$1,100.00 has been paid.

As required by state law and city ordinance, the application was posted from August 13, 2007 through September 1, 2007 and a notice was published in the West Valley View on August 24, 2007 and August 28, 2007. No comments were received.

The Arizona Department of Liquor License and Control has accepted this application as submitted as complete. The Development Services, Police and Fire Departments have reviewed the application and are recommending approval. Their comments are attached.

**RECOMENDATION:**

Staff recommends that the City Council approve this request by Ms. Lauren Merrett, My Big Fat Greek Restaurant, 10040 West McDowell Road, Avondale.

**ATTACHMENTS:**

Click to download

- [Application](#)
- [Comments](#)
- [Vicinity Map](#)
- [Pictures](#)

# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

07 JUL 31 Lic. Lic. # 4 09

400 W Congress #521  
Tucson AZ 85701-1352  
(520) 628-6595

## APPLICATION FOR LIQUOR LICENSE

TYPE OR PRINT WITH BLACK INK

Notice: Effective Nov. 1, 1997, All Owners, Agents, Partners, Stockholders, Officers, or Managers actively involved in the day to day operations of the business must attend a Department approved liquor law training course or provide proof of attendance within the last five years. See page 5 of the Liquor Licensing requirements.

### SECTION 1 This application is for a:

- INTERIM PERMIT *Complete Section 5*
- NEW LICENSE *Complete Sections 2, 3, 4, 13, 14, 15, 16, 17*
- PERSON TRANSFER (Bars & Liquor Stores ONLY)  
*Complete Sections 2, 3, 4, 11, 13, 15, 16, 17*
- LOCATION TRANSFER (Bars and Liquor Stores ONLY)  
*Complete Sections 2, 3, 4, 12, 13, 15, 16, 17*
- PROBATE/WILL ASSIGNMENT/DIVORCE DECREE  
*Complete Sections 2, 3, 4, 9, 13, 15, 17 (fee not required)*
- GOVERNMENT *Complete Sections 2, 3, 4, 10, 13, 15, 16, 17*

### SECTION 2 Type of ownership:

- J.T.W.R.O.S. *Complete Section 6*
- INDIVIDUAL *Complete Section 6*
- PARTNERSHIP *Complete Section 6*
- CORPORATION *Complete Section 7*
- LIMITED LIABILITY CO. *Complete Section 7*
- CLUB *Complete Section 8*
- GOVERNMENT *Complete Section 10*
- TRUST *Complete Section 6*
- OTHER Explain \_\_\_\_\_

### SECTION 3 Type of license and fees:

1. Type of License: 12 2. Total fees attached: \$ 200
- LICENSE #: 12077248
- Department Use Only
- APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.**  
A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

### SECTION 4 Applicant: (All applicants must complete this section)

1. Applicant/Agent's Name: Mr. Merrett Lauren Kay  
(Insert one name ONLY to appear on license) Last First Middle
2. Corp./Partnership/L.L.C.: OCEAN DINING L.L.C.  
(Exactly as it appears on Articles of Inc. or Articles of Org.)
3. Business Name: My Big Fat Greek Restaurant  
(Exactly as it appears on the exterior of premises)
4. Business Address: 10040 W MCDOWELL ROAD AVONDALE Maricopa 85232  
(Do not use PO Box Number) City COUNTY Zip
5. Business Phone: ( ) pending Residence Phone: ( ) unlisted
6. Is the business located within the incorporated limits of the above city or town?  YES  NO
7. Mailing Address: \_\_\_\_\_  
City State Zip
8. Enter the amount paid for a 06, 07, or 09 license: \$ \_\_\_\_\_ (Price of License ONLY)

#### DEPARTMENT USE ONLY

Accepted by: De Date: 7/31/07 Lic. # 12077248

Fees: 100 100 \_\_\_\_\_ \$ 200

Application Interim Permit Agent Change Club F. Prints TOTAL

PROCESSING APPLICATIONS TAKES APPROXIMATELY 90 DAYS, AND CIRCUMSTANCES OFTEN RESULT IN A LONGER WAITING PERIOD.  
YOU ARE CAUTIONED REGARDING PLANS FOR A GRAND OPENING, ETC., BEFORE FINAL APPROVAL AND ISSUANCE OF THE LICENSE.

**SECTION 5 Interim Permit:**

1. If you intend to operate business while your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01.
2. There **MUST** be a valid license of the same type you are applying for currently issued to the location.
3. Enter the license number currently at the location. \_\_\_\_\_
4. Is the license currently in use?  YES  NO If no, how long has it been out of use? \_\_\_\_\_

ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.

I, Amy S. NOTIONS, declare that I am the CURRENT OWNER, AGENT, CLUB MEMBER, PARTNER, STOCKHOLDER OR LICENSEE of the stated license and location.

foregoing application State of \_\_\_\_\_ County of \_\_\_\_\_  
 X \_\_\_\_\_ The foregoing instrument was acknowledged before me this  
 (Signature) \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
 Day Month Year

My commission expires on: \_\_\_\_\_  
 \_\_\_\_\_ (Signature of NOTARY PUBLIC)

**SECTION 6 Individual or Partnership Owners:**

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$29 FEE FOR EACH CARD.

1. Individual:

Last	First	Middle	% Owned	Residence Address	City State Zip

Partnership Name: (Only the first partner listed will appear on license) \_\_\_\_\_

General-Limited	Last	First	Middle	% Owned	Residence Address	City State Zip
<input type="checkbox"/>						
<input type="checkbox"/>						
<input type="checkbox"/>						
<input type="checkbox"/>						

(ATTACH ADDITIONAL SHEET IF NECESSARY)

2. Is any person, other than the above, going to share in the profits/losses of the business?  YES  NO  
 If Yes, give name, current address and telephone number of the person(s). Use additional sheets if necessary.

Last	First	Middle	Residence Address	City, State, Zip	Telephone#

**AMENDMENT**

**SECTION 5 Interim Permit:**

1. If you intend to operate business while your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01.
2. There **MUST** be a valid license of the same type you are applying for currently issued to the location.
3. Enter the license number currently at the location. 12076064
4. Is the license currently in use?  YES  NO If no, how long has it been out of use? \_\_\_\_\_

**ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.**

I, Amy Nations declare that I am the CURRENT OWNER, AGENT, CLUB MEMBER, PARTNER, STOCKHOLDER OR LICENSEE of the stated license and location.  
(Print full name)

X \_\_\_\_\_ State of \_\_\_\_\_ County of \_\_\_\_\_  
(Signature) The foregoing instrument was acknowledged before me this \_\_\_\_\_  
 Day \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Month Year

My commission expires on: \_\_\_\_\_  
(Signature of NOTARY PUBLIC)

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1. Individual:

Last	First	Middle	% Owned	Residence Address	City State Zip

Partnership Name: (Only the first partner listed will appear on license) \_\_\_\_\_

General	Limited	Last	First	Middle	% Owned	Residence Address	City State Zip
		<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	<input type="checkbox"/>						
<input type="checkbox"/>	<input type="checkbox"/>						
<input type="checkbox"/>	<input type="checkbox"/>						

(ATTACH ADDITIONAL SHEET IF NECESSARY)

2. Is any person, other than the above, going to share in the profits/losses of the business?  YES  NO  
 If Yes, give name, current address and telephone number of the person(s). Use additional sheets if necessary.

Last	First	Middle	Residence Address	City, State, Zip	Telephone#

**REST**

# License 12076064

Issue Date: 1/20/2005

Expiration Date: 3/31/2008

Issued To:

AMY S NATIONS, Agent  
PLCK/WEST LIMITED PARTNERSHIP #2, Owner

Restaurant

Mailing Address:

AMY S NATIONS  
PLCK/WEST LIMITED PARTNERSHIP #2  
MY BIG FAT GREEK RESTAURANT  
736 S LONGMORE ST  
CHANDLER, AZ 85244

Location:

MY BIG FAT GREEK RESTAURANT  
10040 W MCDOWELL RD  
AVONDALE, AZ 85232

**EXP 3/31/2008**

SHOPPING CENTER  
LEASE AGREEMENT  
FOR

~~JC DRENGO III~~ Ocean Dining LLC  
D/B/A MY BIG FAT GREEK RESTAURANT  
TENANT

GATEWAY PAVILIONS  
SHOPPING CENTER

Another 5'

07 JUL 31 12:14 PM '09

Lease Draft Date: March 16, 2007  
AGREEMENT

SHOPPING CENTER LEASE  
TABLE OF CONTENTS

ARTICLE I - ABSTRACT OF LEASE  
ARTICLE II - SHOPPING CENTER AND PREMISES

- ARTICLE III - LEASE TERM AND POSSESSION OF PREMISES
- ARTICLE IV - RENT AND OTHER TENANT CONTRIBUTIONS
- ARTICLE V - SECURITY
- ARTICLE VI - CONSTRUCTION, ALTERATIONS, MAINTENANCE AND REPAIRS
- ARTICLE VII - USE OF PREMISES
- ARTICLE VIII - LIABILITY INSURANCE AND INDEMNIFICATION
- ARTICLE IX - LOSS, DESTRUCTION OR TAKING OF PREMISES
- ARTICLE X - ASSIGNMENT, SUBLETTING, MORTGAGING AND SUBORDINATION
- ARTICLE XI - DEFAULT AND REMEDIES FOR DEFAULT
- ARTICLE XII - GENERAL PROVISIONS

**EXHIBITS**

- EXHIBIT A-1 - Site Plan of Shopping Center and Depiction of Location of Premises
- EXHIBIT A-2 - Legal Description of Shopping Center
- EXHIBIT B - Minimum Rent
- EXHIBIT C-1 - Landlord's Work
- EXHIBIT C-2 - Tenant's Work
- EXHIBIT D - Sign Criteria for Shopping Center
- EXHIBIT E - Guaranty
- EXHIBIT F - Prohibited Uses - Identifies uses at the Shopping Center in which Tenant may not engage.
- EXHIBIT G - Rules and Regulations
- EXHIBIT H - Exclusive and Prohibited Uses - Identifies uses at the Shopping Center in which Tenant may not engage
- EXHIBIT I - Site Plan for Outdoor Seating Area
- RIDER

07 JUL 21 09:11 PM '09

SHOPPING CENTER LEASE

AGREEMENT

ARTICLE I - ABSTRACT OF LEASE

Date of Lease: This Lease is entered into by the undersigned parties on this 29 of June, 2007.

1.1 PARTIES.

**A. LANDLORD:**

75320-1474	Name:	Inland Southwest Management, LLC, as managing agent for the owner	Phone:	(630) 218-8000
	Rent Payment:	P.O. Box 201474	(Location)	Dallas, TX
	Address:	of the Shopping Center 2901 Butterfield Road Oak Brook, Illinois 60523		
	(for notices)			

**B. OWNER:**

Name:	Inland Western Avondale	Phone:	(630) 218-8000
Address:	McDowell, L.L.C.		
(for notices)	2901 Butterfield Road Oak Brook, IL 60523		

**C. TENANT:**

Name:	JC Dining LLC	Phone:	
(and Status)	a limited liability company	Store Name (Trade Name):	My Big Fat Greek Restaurant
Address:	9011 North 67 <sup>th</sup> Street		
(for notices)	Paradise Valley, AZ 85286		

**D. GUARANTOR:**

Name:	John Roumanas	Phone:	
Address:			

1.2 PROPERTY.

**A. SHOPPING CENTER:**

Name:	Gateway Pavilions	Description:	Site Plan showing the
Location	Avondale, AZ	of Shopping Center (and	approximate
(include county)	Maricopa County	location of Premises) is attached as	Exhibit A-1 and legally described
		on Exhibit A-2.	

**B. PREMISES:**

Space No.:	_____	Description:	Approximately 6,000 square feet of gross floor as outlined on the Site Plan attached as Exhibit A-1.
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1.3 TERM OF LEASE.

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A. The term (the "Term") of this Lease shall be for a period commencing on the date of Landlord's delivery of possession of the Premises to Tenant with Landlord's Work "substantially completed" (as defined and described in Section 6.2 below)(the "Commencement Date"), and ending and expiring on the last day of the month which is twelve (12) years and zero (0) months after the Rent Commencement Date if the Rent Commencement Date is the first day of a month or, if the Rent Commencement Date is other than the first day of a month, on the first full month following the Rent Commencement Date (the "Termination Date"), unless sooner terminated or extended as provided in this Lease. Unless otherwise set forth in the Lease, the Rent Commencement Date shall be one hundred twenty (180) days after Tenant takes possession of the Premises.

B. Extended Term: One (1) option of five (5) years, as provided in Section 3.1 below.

1.4 RENT AND OTHER TENANT CONTRIBUTIONS.

A. Minimum Rent shall be: See Exhibit B

B. Additional Rent as more specifically defined in Section 4.3A shall include Tenant's Proportionate Share of Common Area Expenses, Real Estate Taxes and Insurance (as such terms are defined and described in Section 4.3 below), with an annual adjustment as provided in Section 4.3C. If it is determined by Landlord, in Landlord's reasonable judgment, that any estimates in Additional Rent are incorrect, it may adjust Tenant's estimated payments at any time during the term.

C. ~~Percentage Rent shall be \_\_\_\_\_% of Tenant's Gross Receipts (as defined in Section 4.2) in excess of Minimum Rent for any calendar year calculated and payable on a monthly basis.~~

D. The term "Rent" shall include Minimum Rent, Additional Rent, ~~Percentage Rent~~ and all other amounts payable by Tenant pursuant to the terms of this Lease.

E. Notwithstanding anything in this Lease to the contrary, Rent for the first month ("Initial Rent") and the Security Deposit described in Section 1.5 below shall be paid to Landlord upon execution of the Lease by Tenant. The Initial Rent (in the amount of \$16,815.00) shall be applied toward the first month that Rent is due pursuant to Section 4.1 and Exhibit B.

1.5 SECURITY DEPOSIT. \$14,000.00 (Section 5.1).

1.6 CONSTRUCTION, ALTERATIONS, MAINTENANCE, AND REPAIRS.

A. Initial Construction by Landlord (Section 6.2):  
 X  None. \_\_\_\_\_ (See Exhibit C-1.)

B. Initial Construction by Tenant (Sections 6.4 and 6.7):  
\_\_\_\_\_ None.  X  (See Exhibit C-2.)

C. Sign criteria (Section 6.5) are attached as Exhibit D.

1.7 USE OF PREMISES. Tenant shall use the Premises for only the operation of a full-service, sit-down restaurant whose primary menu items include traditional Greek food, so long as these ancillary uses do not violate any existing Exclusive Uses, Prohibited Uses, or any Operating/Easement agreements affecting the Shopping Center and for no other purposes whatsoever. Tenant shall operate the Premises throughout the Term under Tenant's trade name, My Big Fat Greek Restaurant ("Tenant's Trade Name"), and no other trade name without Landlord's prior written consent. Tenant's use shall be subject to the Prohibited Uses as set forth in Exhibit F and to the Shopping Center Exclusives as set forth in Exhibit H. Shopping Center specific Prohibited Uses are set forth in Exhibit H. Tenant has an Exclusive Use rights, subject to existing leases in the Shopping Center and/or permitted uses of Anchor Tenants.

07 JUL 31 09, 16: PM 4 09

1.8 **RESTRICTED AREA.** All area located within three (3) miles (measured in a straight line in all directions from the outside property lines of the Shopping Center) of the Shopping Center.

1.9 **ANTICIPATED TENANT OPENING DATE:** \_\_\_\_\_ (“Opening Date”)

1.10 **ABSTRACT OF VARIABLE PROVISIONS AND STANDARD PROVISIONS.** The previous provisions of this Article I will be referred to as the “Abstract of Lease” and the provisions of the remaining Articles of this Lease will be referred to as the “Standard Provisions.” Wherever in the Standard Provisions or elsewhere the parties, effective date, premises, rent, charges or other variable terms are defined or referred to, they shall be those identified in the Abstract of Lease above and the exhibits to this Lease. In the event of any conflict between the terms of the Abstract of Lease and the Standard Provisions, the terms of the Abstract of Lease shall supersede and prevail. The Standard Provisions may, however, add detail or clarification to the summary provisions described in the Abstract of Lease.

## **ARTICLE II - SHOPPING CENTER AND PREMISES**

2.1 **SHOPPING CENTER.** The Premises are part of a shopping center which is depicted substantially in accordance with a site plan (“Site Plan”) as outlined in the attached Exhibit A-1 and which is legally described on Exhibit A-2. The purpose of the Site Plan attached is to show the general configuration of the Shopping Center and the approximate location of the Premises. Landlord reserves the right to change the size, layout and location of any buildings or common areas, parking and other facilities shown on Exhibit A-1 as well as reduce or expand the size of the Shopping Center. The term “Shopping Center” herein shall be deemed to mean the entire development owned by Landlord from time to time, including any and all existing and proposed structures (whether reflected in Exhibit A-1 or hereafter incorporated in the Shopping Center during the term or any extension thereof), parking facilities, common facilities, and the like to be built on the property shown on said Exhibit A-1 as the same may from time to time be increased by the addition of other land, together with structures and the like thereon which may from time to time be included by Landlord in the development.

### 2.2 **PREMISES.**

A. **DESCRIPTION.** Landlord on behalf of and as agent for the owner of the Shopping Center hereby leases to Tenant and Tenant leases and accepts subject to the terms and conditions of this Lease, the Premises. The square footage of the Premises shall be the square footage set forth in Section 1.2.B. above. If the floor area of the Premises, or the Shopping Center shall be more or less than the estimated square footage set forth in Section 1.2 of the Abstract of the Lease, neither the Minimum Rent nor calculation of Tenant’s Proportionate Share hereunder shall be affected. Under no circumstances shall Landlord or Tenant be entitled to any rent credits or other credits past, present and future for an error in the square footage calculation.

B. **EXCEPTION AND RESERVATION.** Landlord reserves and excepts from the Premises the roof and exterior walls of the building or buildings of which the Premises are a part, and further reserves the right to construct additional floors on the building of which the Premises are a part and the right in, over and upon the Premises as may be reasonably necessary or advisable for the servicing of the Premises or of other portions of the Shopping Center.

C. **SUBSTITUTE PREMISES.** After the date hereof, Landlord may substitute for the Premises other space (hereinafter called “Substitute Premises”) in the Shopping Center. Insofar as reasonably possible, the Substitute Premises shall have a comparable square foot area and a configuration substantially similar to the Premises. Tenant agrees that all of the obligations of this Lease, including the payment of Minimum Rent, will continue despite Tenant’s relocation to the Substitute Premises. Upon substantial completion of the Substitute Premises, this Lease will apply to the Substitute Premises as if it had been the space originally described in the Lease. Landlord shall use commercially reasonable efforts to minimize any period when the Premises shall be closed to the public as a result of relocation. Provided that

07 JUL 31 1991 11:09 AM 4 09

Tenant shall be unable to conduct any business at the Shopping Center solely due to such relocation, all Rent shall abate from the date the Premises are closed until the date the Substitute Premises are open for business. Tenant agrees to use all reasonable efforts to open for business in the Substitute Premises as quickly as is reasonably possible under the circumstances, and in all events within thirty (30) days after Landlord delivers possession of the Substitute Premises to Tenant. Landlord hereby agrees to pay the reasonable cost of relocation such as equipment moving and installation costs. Landlord shall not, however, be liable or responsible in any way for damages, loss of business, income or profits or injuries suffered by Tenant pursuant to a relocation in accordance with this provision including, but limited to, loss of goodwill, business, or profits.

2.3 **COMMON AREA.** Tenant along with its Lease of the Premises receives the non-exclusive right to use, in common with others, the Common Areas of the Shopping Center. The term "Common Areas" herein shall include all service roads, loading facilities, sidewalks, automobile parking areas, driveways, footways and other facilities designed for common use, as may be installed by Landlord as hereinafter provided, and of such other and further facilities as may be provided or designated from time to time by Landlord for common use, subject, however, to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof, as prescribed from time to time by Landlord.

### **ARTICLE III - LEASE TERM AND POSSESSION OF PREMISES**

#### **3.1 TERM.**

A. **INITIAL TERM.** The Term of this Lease shall be as set forth in Section 1.3 above. Notwithstanding the foregoing, this Lease and all of the obligations of Landlord and Tenant set forth herein are binding and shall be in full force and effect from and after the date of their mutual execution of this Lease, and this Lease shall not be deemed a contract to make a lease. Tenant shall be responsible for the payment of any and all utilities servicing the Premises from and after the date that Landlord delivers the Premises to Tenant. Landlord and Tenant agree that if the Term shall not have commenced on or before the first (1<sup>st</sup>) anniversary of the date of this Lease, then Landlord and Tenant each shall have the right to terminate this Lease by delivering notice thereof to the other party prior to such commencement.

If this Lease is executed before any portion of the Premises becomes vacant or otherwise available and ready for occupancy, or if any present tenant or occupant of any portion of the Premises holds over and Landlord is unsuccessful in acquiring possession of such portion of the Premises prior to the Commencement Date, Landlord shall not be deemed to be in default hereunder nor in any way liable to Tenant and Tenant agrees to accept possession of such portion of the Premises at such time that Landlord is able to tender the same. Upon its determination of the Commencement Date, the Termination Date and the Rent Commencement Date, Landlord will notify Tenant of same and such dates shall be binding on Landlord and Tenant for all purposes under this Lease.

B. **EXTENDED TERM.** Provided that Tenant is not in default hereunder, both at the time of exercise of the option as well as at the time of commencement of any Extended Term hereinafter defined, or has not been in default during the 365 days immediately preceding the Termination Date, and provided, further, that this Lease has not been terminated during the initial Term or a prior Extended Term, Tenant shall have the number of options to extend the Term for the number of years each as set forth in Section 1.3.B. above, immediately following the then current term and subject to all of the terms, conditions, covenants and provisions of this Lease ("Extended Term"). Tenant shall exercise its extension rights hereunder in each instance by delivery to Landlord of written notice no earlier than two hundred and seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of the then current term. Except to the extent expressly otherwise set forth herein, nothing contained in this Lease shall be construed as granting any rights to extend the Term beyond the Termination Date. In the event Tenant is in default either at the time it exercises its rights to extend or at the intended commencement date of such Extended Term, then all of Tenant's extension rights described in this Section shall terminate automatically. The rights set forth herein to extend the Term of this Lease are personal and reserved to the original Tenant and may not be exercised by any successor or assign of the original Tenant. For the purposes of this Lease, the "Term" shall include any "Extended Term."

07 JUL 21 09:11:11 PM 4:09

3.2 **QUIET ENJOYMENT.** Landlord agrees that, if the Rent and any other additional charges are being paid in the manner and at the time prescribed and the covenants and obligations of Tenant are being all and singularly kept, fulfilled and performed, Tenant shall lawfully and peaceably have, hold, possess, use and occupy and enjoy the Premises so long as this Lease remains in force without hindrance, disturbance or molestation from Landlord, subject to the specific provisions of this Lease. The loss or reduction of Tenant's light, air or view will not be deemed a disturbance of Tenant's occupancy of the Premises nor will it reduce Tenant's obligations under this Lease or create any liability of Landlord to Tenant.

3.3 **SURRENDER OF PREMISES.**

A. **OBLIGATIONS UPON SURRENDER.** Upon any termination of this Lease or termination of Tenant's right to possession of the Premises, whether by lapse of time, cancellation or termination, forfeiture, or otherwise, Tenant shall immediately surrender possession of the Premises and all buildings and improvements on the same to Landlord in "broom clean" condition and good and tenantable repair, reasonable wear and damage from fire or other casualty or peril excepted, and shall surrender all keys and security codes for the Premises to Landlord at the place then fixed for the payment of Minimum Rent and shall inform Landlord of all security codes, combinations of locks, safes and vaults, if any, in the Premises.

B. **RIGHT TO REMOVE.** At any time during the ten (10) days before the Termination Date of this Lease, Tenant, if not in default hereunder at such time, shall have the right to remove, at Tenant's sole cost and expense, and at the end of the Term or termination of Tenant's right to possession of the Premises, if directed to do so by Landlord, shall remove, at Tenant's sole cost and expense, from the Premises all furniture, furnishings, signs, and equipment then installed or in place in, on or about the Premises provided, however, Tenant shall make all repairs, at Tenant's sole cost and expense, to the Premises required because of such removal and to restore the Premises to good order, repair and condition all within such ten (10) day period. If any of such property shall remain on the Premises after the end of the Term, at the option of Landlord, such property shall be and become the property of Landlord without any claim therein of Tenant. Landlord may direct Tenant to remove and repair such property, in which case Tenant agrees to do so, at Tenant's sole cost and expense, and to reimburse Landlord as Additional Rent for any expense of removal in the event Tenant shall fail to remove such property if and when directed. Tenant hereby grants Landlord the absolute right to dispose of any property remaining on the Premises following Tenant's failure to remove same in any manner as Landlord determines in its sole discretion without liability therefor to Tenant and at Tenant's sole cost and expense.

3.4 **HOLDING OVER.** Any holding over after the expiration of the Term of this Lease or Tenant's right to possession of the Premises, without the consent of Landlord, shall be construed to be a tenancy from month to month, cancelable by either Landlord or Tenant upon thirty (30) days' written notice, and at Minimum Rent equal to two hundred percent (200%) of the total Minimum Rent as existed during the last year of the term hereof for each month or partial month of holding over, and further upon all of the terms and conditions (including, without limitation, the obligation to pay Additional Rent) as existed other than payment of Minimum Rent during the last year of the term hereof. Such holding over by Tenant, and Landlord's collection of any Rent therefor, shall not serve as permission for Tenant's continued occupancy of the Premises nor serve to extend the Term. Tenant shall also indemnify, defend and hold Landlord harmless from and against all claims and damages, consequential as well as direct, sustained by reason of Tenant's holding over. The provisions of this Section 3.4 shall not be deemed to be a waiver of Landlord's right of reentry or right to regain possession by actions at law or in equity or any other rights under this Lease, and any receipt of payment of holdover Rent by Landlord shall not be deemed a consent by Landlord to Tenant's remaining in possession or be construed as creating or renewing any lease term or right of tenancy except as elected by Landlord as set forth above.

**ARTICLE IV - RENT AND  
OTHER TENANT CONTRIBUTIONS**

4.1 **MINIMUM RENT.** Commencing on and as of the Rent Commencement Date, Tenant shall pay

07 JUL 31 14 PM 4:09

to Landlord the minimum annual rent (hereinafter referred to as "Minimum Rent") set forth in the Abstract of Lease, payable in advance in equal monthly installments on or before the first day of each calendar month, without prior demand therefor and without offset. The first payment date for Minimum Rent shall, if the Rent Commencement Date is other than the first day of a month, include Minimum Rent for the fractional month on a per diem basis (calculated on the basis of a thirty-day month); and thereafter the Minimum Rent shall be paid in equal monthly installments in advance on or before the first day of each calendar month during the Term of this Lease.

4.2 PERCENTAGE RENT.

A. ~~PAYMENT OF PERCENTAGE RENT. Commencing upon receipt by Tenant of Gross Receipts in any calendar year in excess of the Minimum Rent for such calendar year, Tenant shall pay (on a monthly basis as provided for herein) in addition to the Minimum Rent for such calendar year, Tenant shall pay (on a monthly basis as provided for herein), to Landlord, at the time and in the manner herein specified, percentage rent (hereinafter referred to as "Percentage Rent") in an amount obtained by multiplying Tenant's Gross Receipts for any calendar month by the percentage set forth in Section 1.4 C of the Abstract of Lease and subtracting the Minimum Rent paid by Tenant in such calendar month. In no event shall the calculation of Percentage Rent reduce the amount of Minimum Rent payable to Landlord.~~

B. GROSS RECEIPTS. The term "Gross Receipts" as used herein is hereby defined to mean gross receipts and sales from all business conducted upon or from the Premises, whether such receipts be obtained at the Premises or elsewhere, and whether such business be conducted by Tenant or by any licensees, concessionaires or tenants of Tenant, and whether such receipts be evidenced by cash, check, credit, charge account, exchange or otherwise, and shall include, but not be limited to, the amounts received from the sale of goods, wares, fixtures and merchandise and for services rendered, including the amount of all orders taken, received or filled at the Premises, whether such orders be filled from the Premises or elsewhere, together with any interest charged to customers on all such amounts. If any one or more departments or other divisions of Tenant's business shall be sublet by Tenant or conducted by any person, firm or corporation other than Tenant, there shall be included in Gross Receipts for the purpose of fixing the ~~Percentage Rent~~ payable hereunder all the Gross Receipts of such departments or divisions whether such receipts be obtained at the Premises or elsewhere. In the same manner and with the same effect as if the business or sales of such departments and divisions of Tenant's business had been conducted by Tenant itself. Gross Receipts shall also be meant to include any rents collected by Tenant from sublessees, licensees, or concessionaires. Also included in the term Gross Receipts will be all internet or mail order sales in the general geographical area of the Shopping Center by Tenant or a parent, subsidiary or affiliate of Tenant of products normally sold in the Premises by Tenant. Gross Receipts shall not include sales of merchandise for which cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided they shall have been previously included in Gross Receipts; and there shall be deducted from Gross Receipts the sales price of merchandise returned by customers for exchange, provided that the sales price of the merchandise delivered to the customer in exchange shall be included in Gross Receipts. Gross Receipts shall not include the amount of any sales or use tax levied directly on sales and collected from customers and paid by Tenant, provided that specific record is made at the time of each sale of the amount of such sales or use tax and the amount thereof is separately charged to the customer. No franchise or capital stock tax and no income or similar tax based upon income or profits as such and no Gross Receipts tax shall be deducted from Gross Receipts. If Tenant's goods, wares, merchandise or fixtures are moved off Premises for sale, such sale shall be deemed to have occurred at the Premises.

C. ANNUAL STATEMENT. Within thirty (30) days after the end of each calendar year during the Term of this Lease, Tenant shall submit to Landlord an accurate, unaudited, written statement signed by Tenant or on its behalf by a duly authorized officer or representative, showing the full amount of Tenant's Gross Receipts from the Premises during such year.

D. SALES TAX REPORTS. Upon the request of Landlord, Tenant shall provide copies to

07 JUL 31 11:41 AM '09

Landlord of all State and local sales and use tax reports filed by Tenant at the time these reports are filed with the appropriate agencies.

E. ANNUAL STATEMENT AND ADJUSTMENT. Within thirty (30) days after each calendar year end, Tenant shall submit to Landlord a statement certified as correct by Tenant, a principal officer of Tenant, or by a certified public accountant, which shall set forth by calendar month the total Gross Receipts of Tenant and of each subtenant, licensee and concessionaire with respect to the preceding calendar year. Upon request, Tenant shall give Landlord the total gross sales and an itemization of each of the permitted deductions herein, to arrive at the total Gross Receipts. ~~If the total of the monthly Percentage Rent payments made during the preceding year is less than Percentage Rent payments for such calendar year as set forth above, then Tenant shall pay such deficiency to Landlord at the time of submitting the year end statement; and if the total such monthly payments exceeds the said amount payable, then Landlord shall credit such excess toward the Minimum Rent owed by Tenant as the same becomes due or, upon termination of the Lease, shall refund any such excess payments to Tenant.~~

F. BUSINESS RECORDS. The business of Tenant and of any sublessee, licensee, licensee or concessionaire upon the Premises shall be operated so that a duplicate sales slip, invoice or cash register receipt, serially numbered, shall be issued with each sale or transaction, whether for cash, credit or exchange. Tenant shall keep at all times during the Term hereof, at the Premises or at the general office of the Tenant, full, complete and accurate books of account and records in accordance with accepted accounting practices with respect to all operations of the business to be conducted in or from the Premises including the recording of Gross Receipts and the receipt of all merchandise into and the delivery of all merchandise from the Premises during the Term hereof, and shall retain such books and records, as well as all contracts, vouchers, checks, inventory records, and other documents and papers in any way relating to the operation of such business, for at least three (3) years from the end of the lease year to which they are applicable, or, if any audit is required or a controversy should arise between the parties hereto regarding the Rent payable hereunder, until such audit or controversy is terminated.

G. RIGHT TO AUDIT. Landlord shall have the right, but not more than once during any twelve-month period, to make independent examinations or audits of all of Tenant's books, records and accounts which pertain to or show Gross Receipts, or to have same made by an accountant or certified public accountants designated by Landlord. Such audits shall be limited to the determination of the Gross Receipts as defined herein and shall be conducted at Tenant's home office during normal business hours and after reasonable prior notice. If the examination or audit shows that there has been a deficiency in the payment of Percentage Rent, Additional Rent or Minimum Rent, Tenant shall immediately pay to Landlord the deficiency together with interest at the rate of ten percent (10%) per annum from the date the payment should have been made. If, as a result of any audit of Tenant's records it is determined that Gross Receipts are understated by more than 3%, then Tenant shall also pay the reasonable cost and expenses incurred in connection with such audit. If Tenant shall fail to prepare and deliver any statement of Gross Receipts, required hereunder, within the time provided, then in addition to the remedies available to Landlord under Section 11.2, Landlord may have a certified public accountant, selected by Landlord, audit Tenant's records and prepare such statements which shall be conclusive on Tenant and Tenant shall pay the expenses of such an audit and preparation of such statements and the Percentage Rent so determined, together with the interest at the rate of ten percent (10%) per annum from the date the payment should have been made. Any information gained from statements as herein provided or any examination or audit shall be confidential and shall not be disclosed except to carry out the purposes hereof, provided, however, that Landlord may disclose the contents of any such statements and/or audit in connection with any financing arrangements or assignment of Landlord's interest in the Premises or with any litigation with Tenant regarding Gross Receipts or Percentage Rent.

4.3 TENANT'S SHARE OF COMMON AREA AND SHOPPING CENTER EXPENSES.

A. MONTHLY PAYMENT OF ESTIMATED CHARGE. For each year of the Term

07 JUL 31 1974 10 409

hereof, Tenant shall pay to Landlord, as additional rent ("Additional Rent"), Tenant's proportionate share ("Proportionate Share") of: (i) all costs of operation and maintenance of the Common Areas ("Common Area Expenses"); (ii) all real estate taxes levied and assessed against the Shopping Center including the Common Areas ("Real Estate Taxes"); (iii) all insurance coverage upon the Shopping Center and its operations ("Insurance"); and (iv) Landlord's administrative fees ("Administrative Fee"). As for Tenant's Proportionate Share, as hereinafter defined, set forth in the Abstract of Lease, such amount shall be payable as Additional Rent in equal monthly installments at the same times as Minimum Rent is payable hereunder, without demand and without any deduction or setoff whatsoever. Landlord may, at its sole option, adjust Tenant's monthly payments of estimated charges if Landlord, in its reasonable judgment, determines the estimated charges are incorrect.

B. DEFINITIONS. For the purpose of this Section:

(1) "Tenant's Proportionate Share" shall be a percentage equal to the rentable square footage of the Premises divided by the total square footage of all rentable floor space in the Shopping Center from time to time; provided, however, that Landlord may exclude from such rentable floor space in the Shopping Center, at Landlord's option, any portions of the Shopping Center: (i) not occupied and open for business during all or any portion of the subject year, (ii) leased to or used by other parties as major tenants (tenants occupying greater than ten percent (10%) of the Shopping Center), theaters, restaurants, storage areas, or premises in separate buildings, where such parties are not required to pay a full pro rata share of Common Area Expenses or Real Estate Taxes, as the case may be, pursuant to a lease or other agreement with Landlord, and (iii) with respect to Real Estate Taxes, areas of the Shopping Center for which separate real estate tax bills are received and which are the sole responsibility of separate parties pursuant to a lease or other agreement with Landlord; provided, Landlord shall also deduct from Common Area Expenses (after computing Landlord's Administrative Fee (as defined in clause (4) below)) or Real Estate Taxes, as the case may be, all amounts received from such excluded parties for Common Area Expenses or Real Estate Taxes; provided, Landlord shall also deduct from Real Estate Taxes all amounts received from such excluded parties for Real Estate Taxes. If the Shopping Center shall be a part of or shall include a group of buildings or structures collectively owned or managed by Landlord or its affiliates, or shall include any space used for office, medical, dental or other non-retail purposes, Landlord may determine separately and allocate Real Estate Taxes or Common Area Expenses between such buildings and structures and the parcels on which they are located, and between the retail and non-retail areas of the Shopping Center, in accordance with sound accounting and management principles, in which event Tenant's Proportionate Share shall be based on the ratio for which Landlord separately determines such Real Estate Taxes or Common Area Expenses, subject to the adjustments set forth above.

(2) Common Area Expenses shall include all expenditures incurred by or on behalf of Landlord in operating, maintaining, repairing or replacing the Shopping Center and Common Areas, including, without limitation, exterior walls and other structural elements of the Shopping Center, the cost of all of Landlord's gardening and landscaping, assessments, repairs, preventive maintenance, any association fees, repainting including restriping or repaving of parking lot and access ways, repairing or replacing any streets, curbs or parking lots, roof repairs and replacement, updating and maintenance and replacement of directory signs, rental of signs and equipment, lighting, sanitary control, cleaning, sweeping, removal of ice, snow, trash, rubbish, garbage and other refuse, repair or replacement of awnings, depreciation over a period not exceeding sixty (60) months of machinery, equipment and other assets used in the operation and maintenance of the Shopping Center, repair or replacement of on-site water lines, sanitary sewer lines, storm water lines, gas lines and electrical lines and equipment serving the Shopping Center, all costs, charges and expenses incurred by Landlord in connection with any change of any company providing utility services including without limitation repair, installation and service costs associated therewith, the cost of police, fire protection, security and traffic control services, Landlord's management fees, all Landlord's insurance relating to the common facilities or the Shopping Center as a whole or the operations thereon including, but not limited to, casualty insurance, flood insurance, rent loss insurance, fire insurance and extended coverage as well as general liability insurance, umbrella liability insurance, bodily injury, public liability, property damage liability,

07 JUL 31 1991 12: PM 4 09

automobile insurance, sign insurance, and any other insurance carried by Landlord in limits selected by Landlord, reasonable reserves for anticipated expenditures, costs incurred by Landlord under any operating and easement agreements or other similar agreement of record and the cost of all personnel required to supervise, implement and accomplish all of the foregoing. Notwithstanding the foregoing, the following shall not constitute Common Area Expenses: (a) Real Estate Taxes; (b) interest, points and fees on debt or amortization on or for any mortgage or similar security instrument (a "Security Instrument") encumbering the Shopping Center, and all principal, escrow deposits and other sums paid on or in respect to any indebtedness (whether or not secured by a Security Instrument), and all costs incurred in connection with any financing, refinancing or syndication of the Shopping Center; (c) costs of capital improvements and any other expenditures that, under generally accepted accounting principles ("GAAP"), should be capitalized, except that Common Area Expenses shall include the cost during the Term, as reasonably amortized by Landlord in accordance with GAAP, of any capital improvement; (d) costs of improvements to, or alterations of, space leased to or available for lease to any tenant; (e) costs of repairing or restoring any portion of the Shopping Center damaged by a fire or other casualty, except to the extent that such costs constitute expenses (as opposed to capital expenditures) under GAAP and do not exceed the amount of the deductible under the policy of casualty insurance maintained (or required to be maintained) by Landlord, or are not covered or paid for by insurance proceeds; (f) costs of repairs, alterations or replacements required as the result of the exercise of any right of eminent domain or conveyance in lieu thereof, except to the extent that such costs constitute expenses (as opposed to capital expenditures) under GAAP and are not part of the condemnation award payable to Landlord with respect thereto; (g) costs and expenses incurred in connection with leasing space in or procuring tenants for the Shopping Center, including, without limitation, leasing commissions and advertising expenses, and legal and other professional fees; (h) court costs and legal fees incurred to enforce the obligations of tenants under leases of portions of the Shopping Center, or resulting from the violation by Landlord of the terms and conditions of any lease; (i) costs of correcting defects in the initial construction of the Shopping Center, provided that this shall not exclude the cost of normal repair and maintenance expected with respect to the construction materials and equipment installed in the Shopping Center; (j) wages, salaries, compensation and benefits of any employees above the level of property manager; and (k) fines, interest, charges, penalties, damages and other costs incurred by Landlord by reason of any default (or claim of default) or late payment by it under any lease or other contract or instrument (regardless of whether or not the payment itself is allowed to be included in Common Area Expenses), including, without limitation, any legal and other professional fees paid or incurred in connection therewith;

(3) Real Estate Taxes shall include all taxes, assessments and other governmental charges, general and special, ordinary and extraordinary, of any kind and nature whatsoever, including, but not limited to, assessments for public improvements or benefits, which shall during the Term hereof be paid, assessed, levied, imposed upon or become due and payable and Landlord's reasonable expense in obtaining any refund or reduction of Real Estate Taxes, subject only to the following:

(a) Franchise, estate, inheritance, succession, capital levy, transfer, federal and state income and excess profit taxes imposed upon Landlord shall be excluded; and

(b) If at any time during the Term of this Lease and notwithstanding clause (3)(a) above, a tax or excise on rents or other tax, however described, is levied or assessed against Landlord on account of the rent expressly reserved hereunder, as a substitute in whole or in part for taxes assessed or imposed on land and buildings or on land or buildings, such tax or excise on rents or other tax shall be included within the definition of real estate taxes, but only to the extent of the amount thereof which is lawfully assessed or imposed as a direct result of Landlord's ownership of this Lease or of the Rent accruing under this Lease;

(4) Landlord's Administrative Fee shall be an amount which is not to exceed fifteen percent (15%) of the aggregate of the sum of items B(2) and (3) hereinabove.

07 JUL 81 09:16 AM 409

C. **ANNUAL STATEMENT AND ADJUSTMENT.** After the end of each calendar year, and following receipt of billings for Real Estate Taxes and Insurance, Landlord shall supply Tenant with a summary of all costs and expenditures as enumerated above and a determination of Tenant's Proportionate Share thereof. In the event the amount billed to Tenant shall be less than its Proportionate Share, the same shall be paid as Additional Rent within ten (10) days after notice of such determination. In the event the amount billed to Tenant exceeds its Proportionate Share, then such excess shall be applied to the next Minimum Rent coming due, until fully exhausted (provided, that if such excess is determined after the Termination Date, then, provided and subject to the condition that Tenant shall not be in default of this Lease, such excess shall be refunded to Tenant). Said summary shall also contain a determination by Landlord of the monthly sum to be paid by Tenant during the succeeding months of the lease year, if an adjustment is required, which determination shall be based in part on the expenses for the preceding year modified by any known increases in the cost of said services. Failure of Landlord to provide notice of under or overpayment shall not constitute a default by Landlord under this Lease and will not waive any of Landlord's rights to collect such payments or Tenant's obligations hereunder including, but not limited to, Tenant's obligations to pay its Proportionate Share of all costs and expenditures, but will extend each party's rights until the date notice is given.

D. **BOOKS AND RECORDS.** Landlord shall maintain complete and accurate books and records of all Common Area Expenses paid or incurred by Landlord and all payments of Common Area Expenses received from Tenant. Such books and records shall be kept at a location in the continental United States known to Tenant, and Tenant or auditors selected by Tenant shall have the right, within ninety (90) days of the initial billing, with a minimum of ten (10) days' prior notice, to inspect and audit such books and records at any time during normal business hours, at Tenant's sole cost and expense. Unless Tenant objects to Landlord's billing, within ninety (90) days of the initial billing, Landlord's calculation of Common Area Expenses shall be final and binding on Tenant. If Tenant objects to Landlord's billing, the Landlord and Tenant shall, in good faith, attempt to resolve any such objections.

#### 4.4 RENT PAYMENT PROCEDURES.

A. **PAYMENT LOCATION.** Tenant shall, without prior notice or demand and without any setoff or deduction whatsoever, pay all Minimum Rent, Additional Rent, Percentage Rent and other charges and render all statements herein prescribed at the Landlord's address or other office specifically provided in the Abstract of Lease or to such other person or corporation, and at such other place as may be designated by Landlord in writing from time to time.

B. **TAXES ON RENT.** Tenant shall further pay to Landlord any and all excise, privilege, sales, rental and other taxes, levied or assessed by any governmental authority upon or measured by the Rent reserved to Landlord under the provisions of this Lease. Such tax shall be paid by Tenant whether or not it comprises a portion of any Real Estate Taxes or real property tax bills.

C. **INTEREST AND LATE CHARGES.** Tenant covenants and agrees that all sums to be paid under this Lease, if not paid when due, shall bear interest on the unpaid portion thereof at the per annum rate equal to the lesser of eighteen percent (18%) or the maximum rate permitted by law from the date when due but not in excess of the highest legal rates. Tenant further agrees that for each calendar month, that the Rent is not paid to Landlord within ten (10) days of the due date as provided herein above, Tenant shall promptly pay to Landlord a late fee equal to the greater of \$150.00 or ten (10%) percent of the monthly Rent. If Landlord shall pay any monies, or incur any expenses in correction of any violation of any covenant of Tenant herein set forth, the amounts so paid or incurred shall, at Landlord's option and on notice to Tenant, be considered Additional Rent payable by Tenant with the first installment of Minimum Rent thereafter to become due and payable, and may be collected or enforced as by law provided with respect to Rent. Tenant shall pay to Landlord Fifty and no/100 (\$50.00) dollars for each of Tenant's checks returned to Landlord unpaid by Tenant's bank.

4.5 **TAXES AND ASSESSMENTS ON TENANT'S PROPERTY.** Tenant shall be responsible for and shall pay before delinquency all taxes assessed against the leasehold interest or personal property of any kind owned or placed in, upon or about the Premises by Tenant. Tenant hereby agrees to protect and hold

07 JUL 31 09:14:09 PM '09

harmless Landlord and the Premises from all liability for Tenant's share of any and all such taxes, assessments and charges together with any interest, penalties or other charges thereby imposed, and from any sale or other proceedings to enforce payment thereof, and to pay all such taxes, assessments and charges before same become a lien on the Premises. If any tax lien is threatened by any governmental entity, agency or authority, or in the event of the filing of a notice of any such lien, Tenant will promptly pay same and take steps immediately to have same removed. If the lien is not removed within twenty (20) days from the date of written notice from Landlord, Landlord shall have the right, at Landlord's option, to cause the same to be discharged by record of payment, deposit, bond or order of a court of competent jurisdiction or otherwise, or to pay any portion thereof and of the amounts so paid, including attorneys' fees and expenses connected therewith, together with interest on all of the foregoing at the per annum rate equal to the lesser of eighteen percent (18%) or the maximum rate permitted by law, shall be Additional Rent due from Tenant to Landlord and shall be paid to Landlord immediately upon rendition to Tenant of bill.

4.6 **UTILITIES CONSUMED ON THE PREMISES.** In addition to all payments of Minimum Rent and Additional Rent herein specified, Tenant shall be responsible for and shall pay for all utilities used, or consumed in or upon the Premises, and all sewer charges, as and when the charges therefor shall become due and payable. Commencing on the date Landlord notifies Tenant that the Premises are ready for occupancy, Tenant shall make all appropriate applications to the local utility companies and pay all required deposits for meters and service for all utilities commencing with the delivery of possession of the Premises as provided in Section 6.2. Landlord at its option may control the provider of electrical service to the Premises. If permitted by Law, Landlord shall have the right at any time and from time to time during the Term to either contract for service from a different company or companies providing electricity service (each such company shall hereinafter be referred to as an "Alternate Service Provider") or continue to contract for service from the present provider of electric service ("Electric Service Provider"). Tenant shall cooperate with Landlord, the Electric Service Provider and any Alternate Service Provider at all times and, as reasonably necessary, shall allow Landlord, Electric Service Provider, and any Alternate Service Provider reasonable access to the Shopping Center's electric lines, feeders, risers, wiring, and any other machinery within the Premises.

Landlord shall in no way be liable or responsible for any loss, damage (direct, indirect or consequential), or expense that Tenant may sustain or incur by reason of any change, failure, interference, disruption, or defect in the supply or character of the electric energy furnished to the Premises, or if the quantity or character of the electric energy supplied by the Electric Service Provider or any Alternate Service Provider is no longer available or suitable for Tenant's requirements, and no such change, failure, defect, unavailability, or unsuitability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under the Lease.

In the event any utility or utility services (such as water or sewage disposal) are not separately metered or assessed to Tenant or are otherwise furnished to Tenant for which Landlord is billed directly or for which a lien could be filed against the Premises or any portion thereof, Tenant shall at Landlord's request pay the cost thereof as Additional Rent to Landlord (or any proration of such cost attributable to the Premises as determined by Landlord in Landlord's sole and absolute discretion) as and when the charges thereof become due and payable; otherwise, Tenant shall deliver original receipt bills to Landlord not less than 30 days before the same are due and payable without interest or penalty together with full payment for same. In no event shall Landlord be liable for any interruption or failure in the supply of any utilities to the Premises.

4.7 **SHOPPING CENTER PROMOTIONS.** Tenant agrees to participate in, and pay its pro rata share of, all promotions and marketing activities relating to the Shopping Center as a whole, including, without limitation, cooperative advertising employed in connection with such promotions. Tenant shall include the name and location of the Shopping Center in all advertising done by Tenant for its business at the Premises.

4.8 **INDEPENDENT COVENANTS.** Tenant's covenants to make payments pursuant to this Lease including, but not limited to, Minimum Rent, Additional Rent and ~~Percentage Rent~~ are independent covenants and, except as expressly set forth in this Lease, are not subject to setoff, deduction, reduction,

07 JUL 31 1991, 11:40 AM

\* Tenant shall deliver the Security Deposit by July 5, or this Lease shall be deemed void and of no further effect.

ARTICLE V - SECURITY

5.1 SECURITY DEPOSIT. When delivered to Landlord ~~upon execution of this Lease~~, the Security Deposit shall remain on deposit with Landlord during the Term of this Lease and any extensions thereof as security for the payment of Rent and the full and faithful performance by Tenant of the covenants and conditions of this Lease. In the event of any default, the Security Deposit shall be retained by Landlord and may be applied toward damages arising from such default. Said deposit shall not be construed as liquidated damages. Upon yielding of the Premises at the termination of this Lease and in compliance with the terms and provisions of this Lease, and provided no default has occurred, the Security Deposit shall be returned to the Tenant. No interest shall be payable on the Security Deposit. Should Landlord convey its interest under this Lease, the Security Deposit, or the part or portion thereof not previously applied, shall be turned over to Landlord's grantees or assignees; and Tenant hereby releases Landlord from any liability with respect to the Security Deposit and Tenant agrees to look solely to such grantee or assignee for the return of the Security Deposit and this provision shall also apply to subsequent grantees or assignees. Should the entire Security Deposit, or any portion thereof, be appropriated and applied by Landlord for the payment of unpaid Minimum Rent, Additional Rent or other sums due and payable to Landlord by Tenant, then Tenant shall, upon written demand by Landlord, remit to Landlord a sufficient amount in cash to restore the Security Deposit to the original sum deposited, and Tenant's failure to do so shall constitute a breach of this Lease for nonpayment of Rent.

5.2 SECURITY AGREEMENT. As additional security for Tenant's covenants and obligations under this Lease, Tenant hereby grants to Landlord a security interest in Tenant's furniture, fixtures, equipment and inventory, together with all accessions thereto. Landlord shall have the right to file or record any appropriate financing statements to perfect its lien on such furniture, fixtures, equipment and inventory. If requested by Landlord for clarification purposes, Tenant shall provide a security agreement separate and apart from this Lease. Upon the occurrence of any event of default as defined in this Lease, Landlord shall have all rights with respect to the above named collateral granted a secured party pursuant to the Uniform Commercial Code or other applicable statutes. Except by the written consent of the Landlord, Tenant shall not execute or deliver any security interest in any furnishings, trade fixtures, equipment, machinery, or other property placed upon the Premises at any time other than that granted Landlord herein.

5.3 SECURITY IN ADDITION TO OTHER REMEDIES. The security given Landlord in this Article shall not limit, replace or obviate the remedies of Landlord upon a default by Tenant as described at Article XI below.

ARTICLE VI - CONSTRUCTION,  
ALTERATIONS, MAINTENANCE AND REPAIRS

6.1 CONDITION OF THE PREMISES. Except for any initial construction set forth on Exhibit C and Landlord's duty to repair as provided in Section 6.3, Tenant hereby accepts the Premises "as is" without any representation, warranty or expectation as to the condition of the Premises. It is agreed that by accepting possession of the Premises, Tenant acknowledges (i) Landlord's full and final completion of Landlord's Work as set forth in Exhibit C attached hereto and made a part hereof, (ii) Landlord's construction and delivery of the Premises to Tenant in the condition called for hereunder, and (iii) that the Premises were in good and satisfactory condition as of the time of such taking, subject, however, in all events, to Punch List Items (as defined in Section 6.2 below).

6.2 INITIAL CONSTRUCTION BY LANDLORD. The responsibility for performance and payment for the initial construction of improvements on and in connection with the Premises, if any, is set forth in Exhibit C attached hereto and made a part hereof. Landlord shall use commercially reasonable efforts to substantially complete such construction in a timely manner, provided that in the event such substantial construction is delayed or hindered by strikes, casualties, fires, injunctions, inability to secure materials, restraints of law, actions of the elements, or any other causes beyond the reasonable control of Landlord, or by any acts or omissions of Tenant, then the construction period shall be extended to the extent of such delays.

07 JUL 31 11:41 AM '40

Landlord's Work shall be deemed to be "substantially completed" for all purposes under this Lease if and when the Landlord's Work has been completed, except for minor, finish-out and so-called punch list items (collectively, "Punch List Items") in substantial compliance with the plans and specifications therefor. Notwithstanding the foregoing, the Premises shall be deemed to have been "substantially completed" upon Landlord's delivery of possession thereof to Tenant, unless Tenant, within ten (10) days after receipt of such possession, notifies Landlord in writing that the Premises have not been "substantially complete" and the specific, detailed reasons therefor. Tenant agrees that, within ten (10) days after Landlord's delivery of the Premises to Tenant, Tenant shall inspect the Premises with Landlord or its representative and execute Landlord's standard punch list ("Punch List") which shall identify any uncompleted portions of Landlord's Work agreed to by Landlord and Tenant. If Landlord and Tenant are unable to agree upon the work to be included in the Punch List, the dispute shall be submitted to an architect selected by Landlord for resolution, whose decision as to the work to be included in the Punch List shall be final and binding on the parties. All costs and expenses incurred in connection with the resolution of any such dispute shall be shared equally by Landlord and Tenant. Tenant further agrees that at the request of Landlord from time to time thereafter, Tenant shall promptly furnish to Landlord a revised Punch List reflecting the completion of any prior Punch List Items. If Tenant fails to conduct such inspection or execute the Punch List, Landlord is authorized to complete and sign the Punch List on behalf of Tenant, which as so completed shall be binding upon Tenant.

Tenant, its agents, servants and contractors, prior to the delivery of possession of the Premises, shall have the right to enter upon the Premises, for the purpose of taking measurements or making Tenant's improvements therein, but for no other purposes; provided, however, that such entry shall not interfere with or obstruct the progress of the work being done by Landlord and further provided Tenant has first delivered evidence of liability insurance in amounts as are required by the terms of this Lease.

**6.3 LANDLORD'S DUTY TO REPAIR.** Landlord shall, subject to Tenant's reimbursement as provided in Section 4.3, maintain in good repair the exterior walls, roof, and sidewalks located on the Shopping Center. Tenant agrees that it will not permit or authorize any person to go onto the roof of the building of which the Premises are a part without the prior written consent of Landlord. Landlord shall not be required to make any repairs to the exterior walls, roof, and sidewalks unless and until Tenant has notified Landlord in writing of the need of such repairs and Landlord shall have had a reasonable period of time thereafter to commence and complete said repairs. Landlord may at its sole discretion arrange for a maintenance contract of all roof structures, the cost of which shall be Tenant's responsibility as to Tenant's Proportionate Share thereof. Tenant shall pay, as Additional Rent to Landlord, its Proportionate Share of the cost of said repairs and maintenance incurred by Landlord.

**6.4 TENANT'S ALTERATIONS AND IMPROVEMENTS TO PREMISES.** Except for Tenant's business fixtures, Tenant shall not make or cause to be made any alterations, additions, or improvements to the building, or install or cause to be installed any interior signs, floor covering, exterior lighting, plumbing fixtures, shades or awnings, radio or television antennae, loud speakers, sound amplifiers or similar devices, or make any changes to the storefront or exterior of the building without first obtaining Landlord's written approval and consent, which approval and consent shall not be unreasonably withheld. Notwithstanding the foregoing, Tenant shall not be required to obtain Landlord's approval and consent if the cost of such improvements does not exceed \$50,000.00, such improvements are made to the interior of the Premises only, are non-structural in nature, do not affect the HVAC, electrical, plumbing, or other mechanical systems of the Shopping Center, and do not affect visibility either into or from the Premises. Tenant shall present to the Landlord plans and specifications for such work at the time approval is sought. Such approval shall not be deemed Landlord's requirement that such work be done or that Landlord is a party to any contract for such work. No additions, alterations, changes or improvements shall be made to the Premises which will weaken the structural strength, lessen the value of, or change the architectural appearance of any building or other construction. All building materials and fixtures installed by Tenant shall be new or completely reconditioned. At Landlord's sole option, Tenant, at its sole cost and expense, shall, in connection with completion of its work, deliver copies of invoices and lien waivers from the general contractors, all subcontractors and suppliers. Prior to commencement of any work, Tenant shall provide certificates of insurance for worker's compensation and liability insurance relating to such work in all amounts as are required by Landlord and naming Landlord, Landlord's mortgagee and such other parties as are designated by Landlord, as additional insured parties. All alterations, improvements, additions, and

07 JUL 31 09:15 PM '40

fixtures (excluding business fixtures) made or installed by Tenant as aforesaid shall remain upon the Premises at the expiration or earlier termination of this Lease and shall become the property of Landlord, unless Landlord shall, prior to the expiration or termination of this Lease, have given written notice to Tenant to remove the same, in which event Tenant shall remove the same and restore the Premises to the same good order and condition in which it was at the commencement of this Lease. Should Tenant fail so to do, Landlord may do so, collecting, at Landlord's option, the cost and expense thereof from the Tenant as Additional Rent, together with a fee of Five Hundred and No/100 Dollars (\$500.00) for the administrative costs thereof.

**6.5 SIGNS.** Tenant shall not place, alter, exhibit, inscribe, point, or affix any sign, awning, canopy, advertisement, notice or other lettering on any part of the outside of the Premises or of the building of which the Premises is a part, or inside the Premises if visible from the outside, without first obtaining the Landlord's written approval thereof; and Tenant further agrees to maintain such sign, awning, canopy, decoration, advertising matter, lettering, etc., as may be approved in good condition and repair at all times, and repair all damage to the Premises that is caused by the installation, maintenance or removal of such signs, lettering, etc. All signs shall comply with the sign criteria provided by Landlord in Exhibit D, and Tenant shall be obligated to install at least one sign in conformance with, as well as any additional signs required by, such sign criteria. All tenant signs shall, at Tenant's cost, comply with applicable laws, codes, ordinances, rules and regulations. If directed by Landlord, Tenant, at its sole cost, shall remove all signs upon the termination of the Lease and will repair all damage caused by such removal.

**6.6 FURNITURE, TRADE FIXTURES AND EQUIPMENT.** Tenant shall not cut or drill into, or secure any trade fixture, apparatus or equipment of any kind to any part of the Premises without first obtaining the written consent of Landlord. All furnishings, trade fixtures, equipment, and machines installed by Tenant in the Premises shall be new or completely reconditioned and remain the property of Tenant subject to Landlord's security interest as defined in Section 5.2 above and shall be removable by Tenant subject to Landlord's security interest as defined in Section 5.2 above at the expiration or earlier termination of this Lease or any renewal or extension thereof, provided that in the event of such removal Tenant shall promptly restore the Premises to their original order and condition. Any such equipment not removed at or prior to such termination shall, at Landlord's option, be and become the property of Landlord. If any personal property is leased or otherwise owned by a third party, Tenant shall provide Landlord with the identity of the owner in sufficient detail for Landlord to be able to communicate with such owner.

**6.7 INITIAL INSTALLATION AND IMPROVEMENTS BY TENANT.** Tenant, prior to commencing any work in, at or upon the Premises, shall submit to Landlord for Landlord's prior written approval: (i) complete architectural, electrical and mechanical plans and specifications covering all work which Tenant proposes to do in the Premises, including the installation of any fixtures therein, whether such work is to be done by Tenant or by others, (ii) sworn statements from Tenant and its general contractor, including the names, addresses and copies of contracts for all contractors and materials suppliers; (iii) all necessary permits evidencing compliance with all applicable governmental rules, regulations and requirements and payment of all impact, usage or other fees; (iv) certificates of insurance in form and amounts required by Landlord, naming Landlord, Landlord's mortgagee and such other parties, as designated by Landlord, as additional insureds; and (v) all other documents and information as Landlord may reasonably request in connection with such work. All plans and specifications shall be prepared in such detail as is required by the applicable governmental jurisdiction in which the Shopping Center is located and, if such applicable governmental jurisdiction does not require submittal of such plans and specifications, then in such detail as Landlord reasonably requires and Tenant agrees not to commence work upon any portion of the Premises until Landlord has approved such plans and specifications in writing. Landlord agrees to act with reasonable promptness with respect to the approval or non-approval of such plans and specifications. Any changes in said plans or specifications must be similarly approved, in writing, by Landlord.

Upon receiving possession of the Premises from Landlord, Tenant, at its sole expense, shall with due diligence proceed to commence work on these initial improvements and alterations to the Premises and to install such furnishings, trade fixtures and equipment and to perform such other work as shall be necessary or appropriate in order to prepare the Premises for the opening of business. In the event that

07 JUL 31 09, 11:40 PM 430

Tenant does not open the Premises for the conduct of its business on or before the Tenant Opening Date, such shall be considered to be a Tenant default and will be governed by the provisions of Section 11.1 (5). Landlord, in addition to all other remedies hereunder as provided in Section 11.2, shall also have the right to terminate this Lease by giving Tenant notice of such termination, whereupon this Lease shall be terminated unless within seven (7) days of the giving of said written notice of termination, Tenant shall have opened the Premises for the conduct of its business.

All of Tenant's work and installations shall be done in a first-class, workmanlike manner using qualified labor and high quality material and in compliance with all laws, rules, regulations and orders of all governmental authorities having jurisdiction thereof and free of liens and claims for liens. Tenant's work shall be conducted so as not to interfere with other work in progress in the Premises or the Shopping Center or with other tenants' business and, in the performance of Tenant's work, Tenant shall engage and employ only such labor as will not cause any conflict or controversy with any labor organization representing trades performing work for Landlord or others in the Shopping Center, or any part thereof, including the Premises. At Landlord's sole option, Tenant at its sole cost and expense, shall, in connection with the completion of its work, deliver a general contractor's affidavit, copies of invoices, lien waivers from the general contractor, all subcontractors and supplies and a date down of Landlord's title policy, insuring no construction related exceptions including, but not limited to mechanic's liens, or lien exceptions resulting from work completed by or on behalf of Tenant.

Tenant shall, at Tenant's own expense, promptly remove from the Premises and the Shopping Center area all trash and debris which may accumulate in connection with Tenant's work in the Premises. Tenant, prior to delivery of possession, shall with the prior consent of Landlord be permitted to install fixtures and equipment. Any work done by Tenant prior to delivery of possession of the Premises shall be done in a manner as will not interfere with the progress of the work by Landlord of completing construction and Landlord shall have no liability or responsibility for loss of, or any damage to fixtures, equipment or other property of Tenant so installed or placed on the Premises.

Tenant will obtain, at its sole cost, a certificate of occupancy or similar approval and deliver a copy thereof to Landlord upon completion of Tenant's work.

6.8 **MECHANIC'S LIENS.** If Tenant makes any alterations or improvements in the Premises, Tenant must pay for same when made. Nothing in the Lease shall be construed to authorize Tenant or anyone dealing with or under Tenant, to charge the rents of the Premises, or the property of which the Premises form a part, or the interest of Landlord in the estate of the Premises, or any person under and through whom Landlord has acquired its interest in the estate of the Premises, with a mechanic's lien or encumbrance of any kind, and under no circumstances shall Tenant be construed to be the agent, employee or representative of Landlord in the making of any such alterations or improvements to the Premises. If a mechanic's or materialmen's lien is threatened by any contractor or supplier, or in the event of the filing of a notice of any such lien, Tenant will promptly pay same and take steps immediately to have same removed. If the lien is not removed within ten (10) days from the date of written notice from Landlord, Landlord shall have the right at Landlord's option to cause the same to be discharged by record of payment, deposit, bond or order of a court of competent jurisdiction or otherwise, or to pay any portion thereof and of the amounts so paid, including attorneys' fees and expenses connected therewith, together with interest on all of the foregoing at the per annum rate equal to the lesser of eighteen percent (18%) or the maximum rate permitted by law, shall be Additional Rent due from Tenant to Landlord and shall be paid to Landlord immediately upon rendition to Tenant of bill. Tenant will indemnify, defend and hold harmless Landlord from and against all loss, claims, damages, costs or expenses suffered by Landlord by reason of any repairs, installations or improvements made by Tenant. Tenant will provide insurance certificates from all contractors performing Tenant's work in form and substance as is required by Tenant under this Lease.

No mechanics' or materialmen's liens or mortgages, deeds of trust, or other liens of any character whatsoever created or suffered by Tenant shall in any way, or to any extent, affect the interest or rights of Landlord in any buildings or other improvements on the Premises, or attach to or affect Landlord's title to or rights in the Premises including, but not limited to, Landlord's reversionary interest or other estate or interest of Landlord in the Premises.

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**6.9 TENANT'S DUTY TO REPAIR AND MAINTAIN PREMISES.** Tenant, at its sole cost and expense, shall keep and maintain in good order, condition and repair (including any such replacement, periodic painting, and restoration as is required for that purpose) the Premises and every part thereof and any and all appurtenances hereto located, including, but without limitation, the exterior and interior portion of all doors, door checks, windows, plate glass, store front, all plumbing and sewage facilities within the Premises including free flow up to the main sewer line, fixtures, heating and air conditioning and electrical systems (whether or not located in the Premises), sprinkler systems, walls, floors and ceilings (including (i) any damage to the walls, floors, ceilings or the other areas of the Premises or (ii) any mold or mildew condition on the walls, floors, ceilings or the other areas of the Premises, caused by or resulting from moisture on or about the Premises), motors applicable to the Premises, and all alterations, improvements and installations made by Tenant under the terms of this Lease and any exhibits thereto, as herein provided; any repairs required to be made in the Premises due to burglary of the Premises or other illegal acts on the Premises or any damage to the Premises caused by a strike involving the Tenant or its employees.

Tenant shall maintain and bear the expense of the light fixtures and bulbs, any sprinkler system, air-conditioning units and filters, janitorial services, interior pest control, and the like. In the event that any governmental regulations or insurance company insuring the shopping center or the Premises, from time to time, shall require modifications including, but not limited to, emergency lighting to be installed in the Premises, the installation and the maintenance of the same, including providing of battery power, shall be the responsibility of Tenant. Tenant will not cause or permit accumulation of any debris or extraneous matter on the roof of the Premises and will be responsible for any damage caused to the roof by any acts of the Tenant, its agents, servants, employees or contractors of any type or nature.

At all times during the Term, Tenant, at its sole cost and expense, shall maintain a maintenance contract in effect with a licensed competent contractor for the consistent periodic (which shall be at least quarterly, or more frequently if required by any manufacturer's warranty) inspection and maintenance of all heating, ventilation and air conditioning ("HVAC") systems located on or for the use of the Premises. If the permitted use of the Premises is as a restaurant or other prepared food provider, Tenant, at its sole cost and expense, shall maintain in effect at all times during the term of the Lease (or so long as the use of the Premises includes a restaurant or other food provider) a grease trap maintenance contract for the consistent and periodic inspection and maintenance of all grease traps located on or which service the Premises. All HVAC and grease trap maintenance contracts will be entered into with responsible, experienced providers. Tenant is obligated to provide copies of all such maintenance contracts to Landlord on an annual basis.

If Tenant refuses or neglects to commence and to complete repairs or maintenance required herein promptly and adequately, Landlord may, but shall not be required to, make and complete said repairs and Tenant shall be liable for the cost thereof to Landlord as Additional Rent. Except to the extent otherwise expressly provided in Section 6.3 above, or Sections 9.1 or 9.2 below, Landlord shall not be obligated to repair, replace, maintain or alter the Premises, and Tenant waives all laws in contravention thereof.

#### **ARTICLE VII - USE OF PREMISES**

**7.1 TENANT'S USE OF THE PREMISES.** Tenant shall use and occupy the Premises only for those permitted uses reflected in Section 1.7 of the Abstract of Lease and for no other purpose without Landlord's prior written consent. Additionally, except as provided to the contrary as permitted uses in the Abstract of Lease, Tenant shall not violate in any manner (a) the exclusive use rights granted by Landlord to other tenants in the Shopping Center when Tenant has received written notice of such exclusive use rights, (b) any use restriction or prohibition contained in any document of record of which Tenant has been provided a copy, or (c) any of the Prohibited Uses set forth in Exhibit F attached hereto and made a part hereof. If any conflict shall develop between Tenant and any other tenant of the Shopping Center regarding any provisions in this Lease or in leases to other tenants in the Shopping Center, Landlord shall be the sole arbitrator of such conflict. Landlord's decision shall be binding on Tenant and Landlord shall incur no liability to Tenant as a result of any such determination made by Landlord hereunder. If Landlord permits a deviation from any provision of this Lease, the permission, to be effective, must be in writing and Landlord in its sole discretion may withhold or revoke such permission. Failure of Landlord to enforce any provision in this Lease or in leases to any other tenant in the Shopping Center shall be at Landlord's sole discretion and Landlord shall incur no liability to Tenant as a result of any determination made by Landlord.

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Furthermore, if Tenant's use of the Premises or any improvement constructed by Tenant in, at or upon the Premises or the Shopping Center causes the imposition of any impact fees against any portion of the Shopping Center, then Tenant shall pay such fees prior to delinquency.

Notwithstanding anything contained in this Lease to the contrary, neither Tenant nor any person, firm, or corporation directly or indirectly affiliated with Tenant nor Tenant's franchisers, subsidiaries, parents, partners or shareholders (in a closely held corporation) shall conduct or operate, within the Restricted Area during the Term, any commercial establishment for the same or a similar use as the permitted use described in Section 1.7 of the Abstract of Lease. Nothing contained in this Lease is intended to (or shall) limit or restrict the Landlord and its affiliates, successors and/or assigns or any other tenant and their successors and/or assigns from engaging in one or more types of retail businesses. Tenant will at all time be the operator and manager of the Premises. Any attempt to use a management contract, concession agreement or any other arrangement whereby the operation of the business of the Premises will be other than by Tenant shall constitute a violation of this Lease.

**7.2 USE OF COMMON AREAS.** All facilities furnished by Landlord in the Shopping Center and designated for the general use, in common, of occupants of the Shopping Center, including Tenant hereunder, their officers, agents, employees and customers, including, but not limited to, parking areas, streets, sidewalks, canopies, roadways, loading platforms, washrooms, shelters, ramps, landscaped areas and other similar facilities, shall at all times be subject to the exclusive control and management of Landlord. Landlord shall have the right from time to time to change the area, level, location and arrangement of such parking areas and other facilities above referred to; and make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the common facilities. Tenant hereunder and any other subtenants and licensees shall comply with all rules and regulations made by Landlord pertaining to the operation and maintenance of said common facilities, including, but not limited to, such reasonable requirements pertaining to sanitation, handling of trash and debris, loading and unloading of trucks and other vehicles, and safety and security against fires, theft, vandalism, personal injury and other hazards. The parking area shall be limited to parking for customers and employees of tenants of the Shopping Center, Landlord and any other parties permitted by Landlord from time to time, and Tenant and its employees may not park in any portion of the parking area, except that portion thereof, if any, designated or which may hereafter be designated as "Employees' Parking Area." Landlord retains the right to grant exclusive parking rights to portions of the Shopping Center to other tenants of the Shopping Center. Landlord shall have the exclusive right at any and all times to close any portion of the common areas for the purpose of making repairs, changes or additions thereto and may change the size, area or arrangement of the parking areas or the lighting thereof within of adjacent to the existing areas and may enter into agreements with adjacent owners for cross-easements for parking, ingress or egress.

**7.3 CONDUCT OF TENANT'S OPERATIONS.**

A. Subject to inability by reason of strikes or labor disputes or unavailability of goods or other reasons beyond Tenant's reasonable control, Tenant shall, at all times during the Term, carry at all times in the Premises a stock of merchandise of such size, character and quality as shall be reasonably designed to produce the maximum return to Landlord and Tenant. Tenant shall, at all times during the Term, conduct its business in the Premises a minimum time period from 10:00 A.M. to 9:00 P.M. on Mondays through Saturdays and from 11:00 A.M. to 5:00 P.M. on Sundays (except for state and federal designated holidays), and shall continuously and uninterruptedly occupy the Premises and operate the store throughout the Term for the use permitted by this Lease in an efficient, professional and first-class manner and maintaining a full staff of trained, experienced and qualified employees. Tenant shall be liable to Landlord for any and all suits, damages, liabilities, losses (including loss or diminution of rents or profits), costs and expenses (including, without limitation, court costs and reasonable attorneys' fees) paid, suffered or incurred by Landlord as a result of Tenant's failure to comply with its obligations under this subsection A. Nothing contained in this subsection A is intended to or shall restrict or limit any other remedies available under this Lease, at law and in equity for Tenant's failure to comply with its obligations hereunder.

B. At all times throughout the Term, and without limitation of Tenant's other obligations set forth in this Lease, Tenant shall:

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(1) comply with any and all requirements of any of the constituted public authorities, and with the terms of any State or Federal law, statute or local ordinance or regulation applicable to Tenant for its use, safety, cleanliness or occupation of the Premises including, but not limited to, the requirements of the Americans with Disabilities Act and requirements of any insurer of the Shopping Center or the Premises, and shall defend and hold Landlord harmless from penalties, liens, costs, expenses or damages resulting from Tenant's failure to do so.

(2) Give to Landlord prompt written notice of any accident, fire damage or environmental condition occurring on or to the Premises or of any leaks, moisture buildup on or about the Premises.

(3) Load and unload goods at such times in the areas and through such entrance as may be designated for such purposes by Landlord. Such trailers or trucks shall not be permitted to remain parked overnight in any area of the Shopping Center, whether loaded or unloaded.

(4) Comply with all reasonable rules and regulations of Landlord in effect at the time of the execution of this Lease or at any time or times, and from time to time, promulgated by Landlord, which Landlord in its sole discretion shall deem necessary in connection with the Premises, the building of which the Premises are a part, or the Shopping Center. Landlord agrees that it shall not enforce any such rules and regulations in an arbitrary and capricious manner.

(5) Tenant shall maintain complete and attractive display windows in the Premises. Tenant shall keep all display windows clean and shall keep the same illuminated during normal business hours and at such other times as Landlord may from time to time reasonably require.

(6) Tenant shall not commit or permit any waste upon the Premises nor shall Tenant perform any act or carry on any practice which may injure the Premises, any other space in the Shopping Center or any other tenant or occupant of the Shopping Center, or cause any offensive odor, noise or vibration, or constitute a nuisance or menace to any other occupant or other persons in the Shopping Center, and in no event shall any offensive noises be emitted from the Premises.

(7) Tenant shall keep trash and refuse in covered trash receptacles authorized by Landlord, which trash receptacles shall be kept within the Premises at all times, and in no event stored outside of the Premises. Tenant shall cause such trash and refuse to be removed from the Premises in the manner, at such times, and in such areas as Landlord may designate for such purpose. If Landlord provides for trash removal by a contractor, Tenant shall use such contractor for its trash removal and pay when due all charges assessed in connection with such trash removal at the rates established therefor. Tenant shall ensure that no trash, garbage and refuse accumulate.

(8) Tenant will at its expense (a) keep the inside and outside of all glass in the doors and windows of the Premises clean; (b) keep all the walls and interior and exterior store surfaces of the Premises clean, dry and free from mold and mildew; (c) replace promptly any cracked or broken glass of the Premises with glass of like kind and quality; (d) maintain the Premises in a clean, orderly and sanitary condition and free of insect, rodents, vermin and other pests; (e) keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises; and (f) conduct its business in all respects in a manner consistent with the quality and standards of operation of the Shopping Center and in a dignified manner and in accordance with high standards of store operation.

(9) Tenant agrees that neither it nor anyone taking under through it shall operate nor cause or permit to be operated from or at the Premises a catalogue, Internet, mail order or an "800-type" phone-order facility, or a wholesale, discount, outlet, "warehouse," "dollar-type" or unit price store. In regard to the use and occupancy of the Premises and the Common Areas of the Shopping Center, Tenant will not: (i) place or maintain any merchandise, trash, debris, refuse or other articles in any vestibule or entry of the Premises, on the footwalks or corridors adjacent thereto or elsewhere on the exterior of the Premises; (ii) use or permit the use of any objectionable

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advertising medium such as, without limitation, loudspeakers, public address systems, sound amplifiers, or the reception of radio, television or other media broadcasts which is in any manner audible or visible outside of the Premises; (iii) permit undue accumulations of or burn garbage, trash, rubbish or other debris within or without the Premises; (iv) cause or permit objectionable odors in Landlord's reasonable opinion to emanate or to be dispelled from the Premises; (v) cause water to accumulate, pool or cause leaks into adjacent premises, (vi) solicit business in any area of the Shopping Center outside the Premises; (vii) distribute handbills or other matter in any area of the Shopping Center outside the Premises; (viii) receive or ship articles of any kind outside the designated loading areas for the Premises; (ix) use any plaza, exterior areas, corridor, sidewalk, or any other area of the Shopping Center adjacent to or near the Premises for the sale or display of any merchandise or for any other business use, occupation or undertaking; (x) conduct or permit to be conducted any auction, sidewalk sale, distress sale, fire sale, going out-of-business sale, or the like; (xi) use or permit the use of any portion of the Premises for any unlawful purpose or for any activity of a type which is not generally considered appropriate for high-caliber, urban, shopping areas conducted in accordance with good and generally accepted standards of operation; (xii) place a load upon any floor that exceeds the floor load that the floor was designed to carry; or (xiii) deface, damage or demolish any sign, light standard or fixtures, landscaping material or other improvement or property in any areas of the Shopping Center outside the Premises.

(10) Tenant shall not do, or suffer to be done, any act, matter or thing objectionable to the fire insurance companies whereby the fire insurance or any other insurance now in force or hereafter to be placed on the Premises or any part thereof, or on the building of which the Premises may be a part, shall become void or suspended, or whereby the same shall be rated as a more hazardous risk than at the date when Tenant receives possession hereunder. In case of a breach of this covenant, in addition to all other remedies of Landlord hereunder, Tenant agrees to pay to Landlord as Additional Rent any and all increase or increases of premiums on insurance carried by Landlord on the Premises, the Shopping Center or any part thereof, caused in any way by the occupancy of Tenant.

7.4 **RIGHTS RESERVED BY LANDLORD.** All of the following rights are reserved by Landlord, each of which Landlord may (but without obligation to) exercise without notice or liability to Tenant. The exercise of such rights by Landlord shall not be deemed an eviction, disturbance or disruption of Tenant's use or possession of the Premises.

A. **EASEMENTS.** Landlord expressly reserves all rights in and with respect to the land hereby leased not inconsistent with Tenant's use of the Premises as provided in the Lease, including (without in any way limiting the generality of the foregoing) the rights of Landlord to establish common areas and grant parking easements to others and to enter upon the Premises and to grant, in Landlord's sole discretion, easements to others (even before the establishment of common areas) for the purpose of installing, using, maintaining, renewing and replacing such overhead or underground water, gas, sewer and other pipe lines, and telephone, electric, and power lines, cables and conduits.

B. **INSPECTION, REPAIR AND INSTALLATION.** Landlord reserves the right to, at all reasonable times, by itself or its duly authorized agents, employees and contractors to go upon and inspect the Premises and every part thereof, to enforce or carry out the provisions of this Lease, at its option to make repairs, alterations and additions to the Premises or the building of which the Premises are a part, to perform any defaulted obligation of Tenant or for any other proper purposes. Landlord also reserves the right to install or place upon, or affix to the roof and exterior walls of the Premises, equipment, signs, displays, antenna, cables and any other object or structure of any kind, provided the same shall not materially impair the structural integrity of the building or interfere with Tenant's occupancy.

C. **PRESENTATION FOR SALE OR LEASE.** Landlord hereby reserves the right during normal business hours to enter the Premises and to exhibit the same for purposes of sale, lease or mortgage, and, during the last twelve (12) months of the term of this Lease, to exhibit the same to any prospective Tenant, and to display a "For Sale" sign at any time, and also after notice from either party of their intention to terminate this Lease, or at any time within twelve (12) months prior to the expiration of this Lease, a "For Rent" sign, a "For Sale" sign, or both, as Landlord shall require, except on doors leading into the Premises.

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7.5 HAZARDOUS MATERIALS.

A. HAZARDOUS MATERIALS. Tenant shall comply with all environmental laws relating to Hazardous Materials (as hereinafter defined) affecting the Premises, the Shopping Center and the improvements thereon, and the business conducted thereon by Tenant, or any activity or condition on or in the Premises. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, and which is stored, used, disposed of or released in violation of any law, rule, regulation or order of any local governmental authority, the state in which the Premises is located or the United States Government. Without limiting the generality of the foregoing, Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Premises or the Shopping Center by itself or its agents, employees, contractors or invitees without the prior written consent of Landlord. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises caused or permitted by Tenant results in contamination of the Premises, the Shopping Center or any adjacent property, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses, including, without limitation, diminution in value of the Premises, the Shopping Center, and/or adjacent property, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, the Shopping Center, and/or adjacent property, damages arising from any adverse impact on occupying or marketing of the Premises, the Shopping Center, and/or adjacent property, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees which arise during or after the term or extended term of this Lease as a result of such contamination. This indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises, the Shopping Center, and/or adjacent property. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises or Shopping Center caused or permitted by Tenant results in any contamination of the Premises, the Shopping Center, and/or adjacent property, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises, the Shopping Center, and/or adjacent property to the condition existing prior to the introduction of any such Hazardous Material to the Premises, the Shopping Center, and/or adjacent property; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions are in accordance with all applicable laws and governmental requirements and would not potentially have any material adverse long-term or short-term effect on the Premises, the Shopping Center, and/or adjacent property.

B. INSPECTION. Landlord shall have the right, but not the duty, to inspect the Premises at any time to determine whether Tenant is complying with the requirements of this Section 7.5. If Tenant is not in compliance with the requirements of this Section 7.5, Landlord shall have the right, but not the obligation, to immediately enter upon the Premises to remedy any condition which is in violation of the terms of this Lease or caused by Tenant's failure to comply with the requirements of this Lease. Landlord shall use reasonable efforts to minimize interference with Tenant's business as a result of any such entry by Landlord. The provisions of this Section 7.5 shall survive the expiration or earlier termination of this Lease and Tenant's surrender of the Premises to Landlord.

ARTICLE VIII - LIABILITY INSURANCE AND INDEMNIFICATION

8.1 ALLOCATION OF RISKS AND INSURANCE.

A. OPERATION OF SHOPPING CENTER AND COMMON FACILITIES. Landlord bears the risk of and may insure, as practical or required by a lender of Landlord, the operation of the Shopping Center as a whole or the common facilities. Such insurance may include, but is not limited to, general liability, umbrella liability, bodily injury, public liability, property damage liability, automobile insurance, sign insurance and the like in limits selected by Landlord. Tenant shall pay to Landlord its

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Proportionate Share of such insurance as provided in Section 4.3 above.

B. **PREMISES AND SHOPPING CENTER.** Landlord bears the risk of and shall keep the buildings and improvements forming at any time a part of the Premises insured against loss or damage by fire, with extended coverage and vandalism and malicious mischief endorsement or their equivalents, in such insurance companies as Landlord shall select and in amounts not less than eighty percent (80%) of the replacement cost of the building and structures insured with loss payable thereunder to Landlord and to any authorized encumbrances of Landlord (with standard mortgagee loss payable clause) in accordance with their respective interests. Landlord may also maintain rent insurance equal to at least one year's Rent. If the Lease is canceled for any reason or if Tenant has committed an event of default which has not been cured, all insurance proceeds shall be paid and retained by Landlord, subject to the rights of any authorized encumbrances of Landlord. Tenant shall pay to Landlord its Proportionate Share of such Insurance as provided in Section 4.3 above. Tenant agrees not to keep upon the Premises any articles or goods which may be prohibited by the standard form of fire insurance policy. It is agreed between the parties that in the event the insurance rates applicable to fire and extended coverage insurance covering the within Premises shall be increased by reason of any use of the Premises made by the Tenant, then Tenant shall pay to Landlord such increase in Insurance as shall be occasioned by said use.

C. **PROPERTY OF TENANT.** Tenant agrees that all property owned by it in, on, or about the Premises shall be at the sole risk and hazard of the Tenant. Landlord shall not, regardless of fault, be liable or responsible for any loss of or damage to Tenant, or anyone claiming under or through Tenant, or otherwise, whether caused by or resulting from a peril required to be insured hereunder, or from water, steam, gas, leakage, plumbing, electricity or electrical apparatus, pipe or apparatus of any kind, the elements or other similar or dissimilar causes, and whether or not originating in the Premises or elsewhere.

D. **OPERATIONS OF TENANT.** All operations conducted by Tenant shall be at Tenant's sole risk. In addition, Tenant shall procure insurance for its operations as specified in the Abstract of Lease and as follows:

- (1) **Liability Insurance:** Tenant shall keep in force and at its own expense Commercial General Liability (CGL) insurance, which shall be on a primary and non-contributory basis, naming as Additional Insured parties, Landlord, Landlord's property management company, and any mortgagees designated by Landlord, with coverage for premises/operations, personal and advertising injury, products/completed operations and contractual liability with single limits of liability of not less than \$1,000,000 for bodily injury and property damage per Occurrence, \$2,000,000 for bodily injury and property damage for General Aggregate, and Fire Legal Liability insurance in amounts sufficient to cover the replacement costs of the Premises and loss of use thereof.
- (2) **Plate Glass Insurance:** Tenant shall keep and maintain in force during the Term hereof, plate glass insurance upon windows and doors in the Premises.
- (3) **Dram Shop/Liquor Liability Insurance:** In the event that at any time during the Term of the Lease or any extension or renewal thereof, drugs, prescription drugs, beer, wines or other alcoholic liquors or beverages are sold or given away upon or from the Premises (it being understood and agreed, however, the foregoing provision shall not authorize the use of the Premises for such purposes without the express written consent of the Landlord being set forth otherwise in this Lease), Tenant shall, at its sole expense, obtain, maintain, and keep in force, adequate Dram Shop/Liquor Liability insurance protecting both Tenant and Landlord in connection therewith with policy as required, from time to time, under the laws of the state in which the Premises are located and with a minimum coverage of the greater of (a) \$1,000,000 per occurrence or (b) the amount required by the laws of the state where the Premises are located. In the event Tenant shall fail to procure such insurance, then sales of the foregoing products shall be suspended immediately until such coverage is again in force.
- (4) **Physical Damage Insurance** including, but not limited to, fire, sprinkler leakage, vandalism and all other risks of direct physical loss as insured against under special broad form

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or damage to their respective properties or interests (including business interruption and rent loss), to the extent such loss or damage is insured against, or required to be insured against pursuant to the terms of this Lease, by Landlord or Tenant (as applicable) pursuant to this Article VIII, regardless of fault or negligence and regardless of the amount of insurance proceeds actually collected or collectible under any insurance policies in effect, and Landlord and Tenant each represent and warrant to the other that all such policies permit such waiver and contain, and will contain, enforceable waiver of subrogation endorsements. Nothing contained herein shall serve as a waiver for any deductible or self-insured risk. In addition, Landlord and Tenant agree that in the event of any loss or damage to their respective properties or interests (including business interruptions or loss), the party suffering the loss shall resort to its insurance coverage prior to asserting any claim or demand against the party causing the loss.

## **8.2 INDEMNIFICATION AND WAIVER OF CLAIMS**

A. **INDEMNIFICATION.** Subject to Landlord's waiver contained in Section 8.1G above, Tenant shall indemnify and defend Landlord and hold it harmless from and against any and all claims, actions, damages, liability and expense including, without limitation, court costs and reasonable attorneys' fees suffered, paid or incurred by Landlord (1) in connection with loss of life, personal injury and/or damage to or theft or misappropriation or loss of property occurring in or about, or arising from or out of, the Premises and adjacent sidewalks and loading platforms or areas or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, invitees, customers or employees unless such claim, action, damage, liability or expense is the result of the intentional and willful misconduct or the gross negligence of Landlord, or (2) from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed under this Lease. Subject to the waivers contained in Section 8.1G above and subsection B below, Landlord shall indemnify and defend Tenant and hold it harmless from and against any and all claims, actions, damages, liability and expense including, without limitation, court costs and reasonable attorneys' fees suffered, paid or incurred by Tenant (1) in connection with loss of life, personal injury and/or damage to or theft or misappropriation or loss of property occurring in or about, or arising from or out of, the Shopping Center (other than the Premises) caused by the intentional and willful misconduct or gross negligence of Landlord, its agents or employees.

B. **WAIVER OF CLAIMS.** Landlord and Landlord's agents, employees and contractors shall not be liable for, and Tenant hereby releases all claims for, damage or injury to person and property or theft or loss of use of property and loss of business sustained by Tenant or any person claiming through Tenant resulting from any theft, fire, accident, occurrence, injury or condition in or upon the Premises or building of which they shall be a part, including, but not limited to, such claims for damage resulting from: (i) any defect in or failure of plumbing, heating or air-conditioning equipment, sprinkler, electric wiring or installation thereof, water pipes, stairs, railings or walks; (ii) any equipment or appurtenances becoming out of repair; (iii) the bursting, leaking or running of any tank, washstand, water closet, waste pipe, drain, sprinkler or any other pipe or tank in, upon or about such building or Premises; (iv) the backing up or overflow of any sewer pipe drain, retention pond, storm water drainage or downspout; (v) the escape of gas, steam or hot water; (vi) water, snow or ice being upon or coming through the roof or any other place upon or near such building or Premises or otherwise; (vii) the falling of any fixture, plaster or stucco; (viii) broken glass; and (ix) any act or omission of co-tenants or other occupants of said building or of adjoining or contiguous property or buildings including their employees, licensees and invitees. In the event the Premises or its contents are damaged or destroyed by fire or other insured casualty, the rights, if any, of either party hereto against the other with respect to such damage or destruction are waived, and all policies of fire and/or extended coverage or other insurance covering the Premises or its contents shall contain a clause or endorsement providing in substance that the insurance shall not be prejudiced if the insureds have waived the right of recovery from any person or persons prior to the date and time of loss or damage, if any.

## **ARTICLE IX - LOSS, DESTRUCTION OR TAKING OF PREMISES OR SHOPPING CENTER**

9.1 **FIRE OR OTHER CASUALTY.** Tenant shall give to Landlord prompt written notice of any accident, fire or damage occurring on or to the Premises. Thereupon, Landlord's obligation concerning the repair or reconstruction of the Premises will be as follows:

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A. **PARTIAL DESTRUCTION OF PREMISES.** If the Premises shall be damaged by the elements or other casualty or by fire, not due to Tenant's intentional acts or negligence, but are not thereby rendered untenable in whole or in part, Landlord shall promptly after receipt of insurance proceeds cause such damage to be repaired, and the Rent shall not be abated. If by reason of any such occurrence, the Premises shall be rendered untenable only in part, Landlord shall promptly after receipt of insurance proceeds cause the damage to be repaired and the Rent meanwhile shall be abated proportionately as to the portion of the Premises and only for the time such Premises are rendered untenable.

B. **SUBSTANTIAL DESTRUCTION OF PREMISES.** If the Premises shall be rendered wholly untenable by reason of such occurrence (i.e., destruction of 25% or more), and Tenant actually shall not be operating in any portion of the Premises, then Landlord shall promptly after receipt of insurance proceeds cause such damage to be repaired, and the Rent shall meanwhile be abated in whole, provided, however, that Landlord shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Premises, and in such event this Lease and the tenancy hereby created shall cease as of the date of the said occurrence, the Rent to be adjusted as of such date. If Landlord shall not have completed such repairs within one (1) year after the occurrence of such fire or other casualty, then Tenant shall have the right to terminate this Lease by delivering notice thereof to Landlord prior to such completion.

C. **DESTRUCTION OF SHOPPING CENTER.** If the Shopping Center shall be damaged by the elements or other casualty or by fire, not due to Tenant's negligence and which damage does not render the Premises untenable in whole or in part, Landlord shall promptly after receipt of insurance proceeds cause such damage to be repaired and the Rent shall not be abated. If the Shopping Center or any premises (other than the Premises) located thereon suffers damage or destruction of a substantial nature (i.e., destruction of 10% or more of the Shopping Center), which damage or destruction does not render the Premises untenable in whole or in part, Landlord shall after receipt of insurance proceeds cause such damage to be repaired and the Rent shall not be abated; provided, however, that Landlord shall have the right to be exercised by notice in writing to be delivered to Tenant within sixty (60) days from and after such occurrence to elect not to reconstruct the destroyed portion of the Shopping Center, and in such event this Lease and the tenancy hereby created shall cease as of the date of the occurrence, the Rent to be adjusted as of such date.

## 9.2 CONDEMNATION.

A. **AWARD.** If title to all or any portion of the Premises is taken by a public or quasi-public authority under any statute or by right of eminent domain of any governmental body, whether such loss or damage results from condemnation of part or all of the Premises or any portion of the parking area or service entrances and exits, Tenant shall not be entitled to participate or receive any part of the damages or award except where said award shall provide for moving or other reimbursable expenses for the Tenant under applicable statute in which event the latter sum shall be received by Tenant, and except that portion of any award allocated to the taking of Tenant's trade fixtures, equipment and personal property, or to a loss of business by Tenant. None of the awards or payments to Landlord shall be subject to any diminution or apportionment on behalf of Tenant or otherwise.

B. **SUBSTANTIAL OR MATERIAL TAKING OF PREMISES.** Should any power of eminent domain be exercised after Tenant is in possession, such exercise shall not void or impair this Lease unless the amount of the Premises so taken is such as to substantially and materially impair the usefulness of the Premises for the purpose for which the same are hereby demised, in which event either party may cancel this Lease by notice to the other within sixty (60) days after possession is taken, and the Rent herein provided shall abate as of the date possession is taken by the condemning authority.

C. **PARTIAL TAKING OF PREMISES.** If a portion of the Premises shall be taken as herein provided for public improvements or otherwise under the exercise of the right of eminent domain and the Premises shall continue to be reasonably suitable for the use which is herein authorized, then the Rent herein provided shall be reduced from the date of such taking in direct proportion to the reduction in usefulness of the Premises and the Lease shall continue in full force and effect.

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D. If a portion of the Shopping Center shall be taken as herein provided for public improvements or otherwise under the exercise of the right of eminent domain, such exercise shall not void or impair the Lease unless the amount of the Shopping Center so taken, in Landlord's sole and absolute discretion, is such to substantially or materially impair the usefulness of the Shopping Center, in which event Landlord may cancel this Lease by notice to Tenant within sixty (60) days after possession is taken, the Rent to be adjusted as of such date.

**ARTICLE X - ASSIGNMENT,  
SUBLETTING, MORTGAGING AND SUBORDINATION**

**10.1 ASSIGNMENT AND SUBLETTING BY TENANT.** Tenant may not and shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises, nor license concessions or lease departments therein, nor pledge or encumber by mortgage or other instruments any interest in this Lease (each individually and collectively referred to in this Section as a "Transfer") without first obtaining the consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. This prohibition includes, without limitation, any subletting or assignment which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's corporate, partnership or proprietary structure. Consent by Landlord to any transfer shall not constitute a waiver of the requirement for such consent to any subsequent Transfer. The acceptance of any Rent by Landlord from any alleged assignee or subtenant shall not constitute approval of the assignment or sublease of this Lease by the Landlord, and the consent by Landlord to one assignment or subletting of the Premises shall not constitute a waiver of Landlord's rights hereunder. Tenant shall pay to Landlord a Transfer Fee of \$2,000.00 for such written consent. In the event of any such assignment, subletting, licensing or granting of a concession made with the prior written consent of the Landlord as aforesaid, Tenant will nevertheless remain primarily liable for the performance of all the terms, conditions, and covenants of this Lease. Any Transfer shall be by agreement in a form and content acceptable to Landlord, and shall specify and require that each Transferee of this Lease by acceptance of any Transfer shall assume, be bound by, and be obligated to perform the terms and conditions of its sublessor and assignor under this Lease. A condition of such Transfer is the agreement of the parties that Landlord shall receive the full and complete Rent payment of the Transferee even though such payments may be in excess of the original Rent between Landlord and Tenant. It is the intent and understanding of the parties to this Lease that Tenant shall not receive any monetary benefit, in excess of the actual Rent obligation of Tenant, as agreed between the original Tenant and Landlord, through a Transfer to a third party. In the event of default of Tenant, Landlord at Landlord's sole option may succeed to the position of Tenant as to any subtenant or licensee of Tenant.

**10.2 ASSIGNMENT AND MORTGAGING BY LANDLORD.**

A. **TRANSFER BY LANDLORD.** The owner of the Premises shall only remain liable for the Landlord's obligations pursuant to the terms and limitations set forth in this Lease during its ownership of the Premises. So long as all sums held on Tenant's behalf in trust or escrow by Landlord are paid over to any purchaser of the Premises, Landlord and the owner of the Premises shall be and are hereby relieved of all covenants and obligations of Landlord hereunder after the date of sale of said Premises, and it shall be construed without further agreement between the parties that the purchaser has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder from the date of such sale.

B. **SUBORDINATION.** This Lease is subordinate to any and all leases, mortgages or deeds of trust hereinafter placed upon the Shopping Center, now or in the future, or any part thereof, and to all future modifications, consolidations, replacements, extensions and renewals of, and all amendments and supplements to said leases, mortgages or deeds of trust. Notwithstanding such subordination, as aforesaid, this Lease, except as otherwise hereinafter provided including, but not limited to, an event of default by Tenant, shall not terminate or be divested by foreclosure or other default proceedings under said leases, mortgages, deeds of trust, or obligations secured thereby, and Tenant shall attend to and recognize the landlord, mortgagee, trustee, beneficiary or the purchaser at the foreclosure sale in the event of such foreclosure or other default proceeding, as Landlord for the balance of the Term of this Lease, subject to all of the terms and provisions hereof. The provisions of this paragraph shall be self-operative, but Tenant acknowledges and agrees that as a material consideration inducing Landlord to enter into this Lease, Tenant shall acknowledge same by executing and delivering to Landlord, on demand at any time or times, any and

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all instruments in order to subordinate this Lease and Tenant's rights hereunder, as aforesaid. Notwithstanding the foregoing, any such mortgagee, beneficiary, purchaser or lessor may elect to give the rights and interests of Tenant under this Lease (excluding rights in and to insurance proceeds and condemnation awards) priority over the lien of its mortgage or deed of trust or the estate of its lease, as the case may be. In the event of such election and upon the mortgagee, beneficiary or lessor notifying Tenant of such election, the rights and interests of Tenant shall be deemed superior to and to have priority over the lien of said mortgage or deed of trust or the estate of such lease, as the case may be, whether this Lease is dated prior to or subsequent to the date of such mortgage, deed of trust or lease. In such event, Tenant shall execute and deliver whatever instruments may be required by such mortgagee, beneficiary or lessor to confirm such superiority on the form customarily used by such party. In the event of any act or omission by Landlord which would give Tenant the right to damages from Landlord or the right to terminate this Lease, Tenant will not sue for such damages nor exercise any such right to terminate until (i) it shall have given written notice of the act or omission to Landlord and to the holder(s) of the indebtedness or other obligations secured by any mortgage or deed of trust affecting the Premises or of any ground or underlying lease, if the name and address of such holder(s) have been furnished to Tenant, and (ii) a reasonable period of time, in light both of the time required to effect a remedy and of the impact of the act or omission on Tenant's business operations at the Premises, for remedying the act or omission has elapsed following the giving of the notice (which shall in no event be deemed any less than thirty (30) days), during which time Landlord and such holder(s), or either of them, and their agents or employees, will be entitled to enter upon the Premises and do therein whatever may be necessary to remedy the act or omission.

C. ESTOPPEL AND SUBORDINATION DOCUMENTS. Tenant acknowledges and agrees that as a material consideration inducing Landlord to enter into this Lease, Tenant agrees to execute, acknowledge and deliver any and all documents required to effectuate the provisions of this Section within seven (7) days after request thereof by Landlord. In the event that upon any sale, assignment, lease, mortgage or hypothecation of the Premises and/or the land thereunder by Landlord, a statement shall be required by Tenant, Tenant agrees to deliver and cause Guarantor to deliver in recordable form an Estoppel Certificate (if such be the case) that this Lease and Guaranty, as applicable, is in full force and effect and there are no defenses or offsets or Landlord defaults thereto, or stating those claimed by Tenant, the dates to which Rent or other sums have been paid in advance, and any other such certifications of Lease terms as may reasonably be required and such specific subordination agreement on Lender's form as may reasonably be required by Lender, it being intended that any such statements delivered pursuant to this Section may be relied upon by any prospective purchaser, mortgagee, assignee or beneficiary. Tenant hereby grants Landlord a power of attorney to execute any document in the name of Tenant in the event Tenant fails to execute, acknowledge and deliver any document required to effectuate the provisions of this Section within seven (7) days after request therefor by Landlord.

D. FINANCIAL STATEMENTS AND SALES FIGURES. Tenant acknowledges and agrees that as a material consideration inducing Landlord to enter into this Lease, Tenant shall, upon request from Landlord, provide a copy of Tenant's latest available financial statements and year-to-date sales figures, certified by Tenant as being true and correct. Tenant agrees to provide such statements within ten (10) days of Landlord's reasonable request. In addition, within sixty (60) days after Tenant's year end, and fifteen (15) days after each calendar quarter, Tenant shall deliver to Landlord monthly sales figures, certified by Tenant as being true and correct, for the prior year and/or quarter, as the case may be.

E. LENDER APPROVAL. If Landlord deems it necessary or appropriate it may submit this Lease to its mortgagee for approval. In such event this Lease and all of Landlord's covenants and obligations hereunder are expressly contingent upon a formal, approval by such mortgagee. Landlord shall inform Tenant not later than ten (10) business days after Landlord's execution of the Lease whether or not the mortgagee has approved or disapproved the Lease. If the mortgagee disapproves the Lease it shall be deemed void and of no further force or effect.

#### ARTICLE XI - DEFAULT AND REMEDIES FOR DEFAULT

11.1 TENANT EVENTS OF DEFAULT. The occurrence of any of the following shall constitute an event of default by Tenant hereunder:

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(1) The filing of a petition by or against Tenant or any Guarantor for adjudication as a bankrupt or insolvent, or for its reorganization or for the appointment of a receiver or trustee of Tenant's property; an assignment by Tenant for the benefit of creditors or the taking of possession of the property of Tenant by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of Tenant.

(2) Failure of Tenant to pay when due any installment of Rent hereunder or any other sum herein required to be paid by Tenant, and the continuance of such nonpayment for five (5) days after such installment is due.

(3) Abandonment, vacation or misuse of the Premises by Tenant.

(4) Tenant fails to observe or perform any of the covenants with respect to a Transfer.

(5) Tenant's failure to perform any other covenant or condition of this Lease within twenty (20) days after written notice and demand from Landlord.

**11.2 REMEDIES OF LANDLORD FOR DEFAULT BY TENANT.** Upon the occurrence of an event of default, Landlord shall have the right, then or at anytime thereafter, and while such event of default shall continue, and in addition to and not in lieu of any other remedies, relief or rights available to Landlord at law or equity or contained in this Lease, to do any of the following:

(1) Landlord by itself or its authorized agents may cure the default and charge Tenant for the costs of such cure, which charge shall be due and payable as Rent under this Lease immediately upon written notice to Tenant.

(2) Landlord may enforce every provision of the Lease in accordance with its terms including, but not limited to enforcement of the payment of Rent provisions by a suit or suits in equity or at law. In furtherance thereof, Landlord shall have the right to obtain reports on Tenant's (and any other party responsible for Tenant's performance) credit worthiness from the three (3) major credit reporting agencies or any other credit agency customarily used by Landlord, and Tenant hereby consents thereto.

(3) Landlord may (a) exercise its rights as secured party under its security agreement with Tenant as provided in Section 5.2 above; (b) apply all or part of the Security Deposit to the default of Tenant; or (c) exercise its rights under the Guaranty.

(4) Landlord shall have the right to terminate the Tenant's right of possession of the Premises without terminating this Lease and, therefore, to reenter the Premises to assume and take possession of the whole or any part thereof, and to remove all persons or personal property by direct or summary action, or in a different type of suit or proceeding, by force or otherwise, without being deemed liable of trespass or other actionable wrong by reason thereof, and without being liable for the damages therefor or in connection therewith, and, after demand made therefor, Tenant or anyone in possession claiming under Tenant shall be deemed guilty of unlawful detainer and subject to such summary judgment or other action as may be provided by law. Additionally, Landlord may with or without terminating the Lease relet the Premises as the agent for and in the name of the Tenant, at any rental readily acceptable, applying the proceeds first to reimburse Landlord for all costs of enforcement of this Lease including attorneys' fees and court costs, if any, second, to costs to re-rent the Premises including, but not limited to, tenant improvement costs and leasing commissions, third, to reimburse Landlord for Landlord's entire cost and expense in preparing the Premises for Tenant's occupancy, fourth, to the payment of such Rent as same comes due, and, fifth, toward the fulfillment of the other covenants and agreements of Tenant herein contained. Tenant shall not be entitled to any residual amount remaining after payment of all of the foregoing sums. Tenant hereby agrees that if Landlord shall recover or take possession of said Premises as aforesaid, and be unable to relet and rent the same so as to realize a sum equal to the Minimum Rent and Additional Rent hereby provided, Tenant shall pay to Landlord any loss or

07 JUL 31 1971

difference of Minimum Rent and Additional Rent for the remainder of the Term. Landlord may, but is not required to, assign this Lease to Guarantor, if any, in the name of and on behalf of Tenant or may enter into a new lease with Guarantor on the same terms as this Lease or upon different terms. Tenant acknowledges that Landlord has been granted Tenant's power of attorney coupled with an interest in order to effectuate Landlord's rights hereunder in the event that Tenant fails or refuses to do so within five (5) days of notice from Landlord.

(5) Landlord, irrespective of the date on which its right of reentry shall have accrued or be exercised, shall have the right, whether for rent or possession or otherwise, to terminate this Lease and the tenancy hereby created. Except to the extent required by applicable law, Landlord is under no affirmative duty to maximize the rent collected from any replacement tenant or otherwise mitigate Landlord's damages and Tenant waives any legal or equitable right or defense that Landlord mitigate its damages. This right to terminate is exercisable by a written notice to Tenant, which written notice may be part of a notice of default previously delivered to Tenant, and, as such, may be conditioned upon Tenant's failure to cure the default and the event of default. The termination may be made effective as of the event of default, or thereafter, and, if not otherwise specified, will be deemed to be effective immediately. Upon such termination, Landlord shall be entitled to and may take immediate possession of the Premises, any other notice or demand being hereby waived. Such termination does not, however, release Tenant from liability for Rent then overdue or remaining under the Lease but shall, if permitted by the laws of the state where the Premises are located, operate to accelerate the entire balance of the Term Rent and additional charges due over the entire lease Term, which shall become immediately due and payable by Tenant, along with all overdue Rent and charges.

If Landlord terminates this Lease as provided above, Landlord shall be entitled to recover from Tenant all damages and other sums which Landlord is entitled to recover under any provision of this Lease or at law or in equity or otherwise, including, but not limited to, all of the accrued Minimum Rent and Additional Rent for the period up to and including such Termination Date, as well as all other additional sums payable by Tenant or for which Tenant is liable or in respect of which Tenant has agreed to indemnify Landlord under any of the provisions of this Lease which may be then owing and unpaid and all costs and expenses, including without limitation, court costs and reasonable attorneys' fees incurred by Landlord in the enforcement of its rights and remedies hereunder and, in addition, any damages provable by Landlord as a matter of law including, without limitation, an amount equal to the then present value (using a discount rate of five percent (5%)) of the excess of the Minimum Rent and Additional Rent provided to be paid for the remainder of the Term over the fair market rental value of the Premises (determined at the date of termination of this Lease by Landlord in Landlord's reasonable discretion) after deduction of all anticipated expenses of reletting. In the alternative, Landlord shall have the right, at Landlord's option, from time to time, to recover from Tenant, and Tenant shall remain liable for all Minimum Rent, Additional Rent and other amounts due and owing under this Lease, plus (x) damages equal to all other sums which would have accrued under this Lease after the date of termination had it not been terminated, such damages to be due and payable as such sums would have become due, less (y) such amounts as Landlord may receive from reletting, if any, after first paying all costs of such reletting, including, without limitation, brokerage commissions and the costs of reasonable repairs, alterations, additions and redecorations, and the expenses of re-entry. The net amounts of rent from any re-letting collected remaining after such expenses shall operate only as an off-setting credit against the amount due hereafter with any excess or residue belonging to Landlord solely. Should the fair market rental value of the Premises after deduction of all anticipated expenses of reletting exceed the Minimum Rent and Additional Rent provided to be paid by Tenant for the remainder of the Term, Landlord shall not be obligated to pay to Tenant any part of such excess or to credit any part of such excess against any other sums or damages for which Tenant may be liable to Landlord.

(45438) Tenant shall reimburse and pay to Landlord all costs and expenses of Landlord in connection with Landlord's enforcement of its rights and remedies hereunder, including court costs and reasonable attorneys' fees all of which shall be deemed Additional Rent.

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(45439) Tenant shall reimburse and pay to Landlord all costs and expenses of Landlord in connection with Landlord's preparation of the Premises for Tenant's occupancy including, but not limited to, Landlord's Work all of which shall be deemed Additional Rent.

(45440) Landlord shall have the right to pursue any and all other rights and remedies available at law and in equity.

(45441) To the extent required by applicable law, Landlord shall use commercially reasonable efforts to mitigate the damages it suffers as a result of Tenant's default under this Lease; provided, however, that Tenant agrees that (i) Landlord will have satisfied its obligation to mitigate damages if Landlord endeavors, in good faith, to re-lease the Premises, (ii) Landlord will not be required to give preference to the Premises over other vacant space in the Shopping Center or any other property owned or controlled by Landlord or any affiliates thereof, (iii) Landlord may reject any prospective tenant who, in Landlord's reasonable discretion, is disreputable, whose business does not enhance the Shopping Center, who does not have sufficient business experience, or who lacks the financial ability to perform the tenant's obligations under Landlord's then current form Lease, (iv) under no circumstances shall Landlord be required or obligated to relet or attempt to relet the Premises for any period of time beyond the then applicable Termination Date, and (v) Landlord may reject any offer to lease the Premises at a rate which is less than the rate being charged for comparable space in the Shopping Center or on terms that are less favorable than those contained in this Lease or which (in Landlord's reasonable discretion) is not in the best interests of the Shopping Center.

### **11.3 NON-WAIVER OF REMEDIES.**

A. It is expressly agreed that neither the taking of possession of the Premises nor the institution of any proceedings by way of unlawful detainer, ejection, dispossession, eviction, quiet title, or otherwise, to secure possession of said Premises, nor the reentry by Landlord with or without the institution of such proceedings, nor the issuance of a writ of possession, nor the rerenting or subletting of said Premises, shall operate to relieve Tenant of its obligations to pay Rent and other amounts due hereunder, or operate to terminate this Lease in whole or in part, nor of itself constitute an exercise of Landlord's option to do so, but only by the giving of the written notice specifically specifying termination shall such termination be effected.

B. Acts of maintenance or preservation or efforts to relet the Premises, or the appointment of a receiver upon the initiation of the Landlord to protect the Landlord's interest under this Lease, shall not constitute a termination of the Lease.

C. Waiver by Landlord of any default, breach or failure of Tenant under this Lease shall not be construed as a waiver of any subsequent or different default, breach or failure. In case of a breach by Tenant of any of the covenants or undertakings of Tenant, Landlord nevertheless may accept from Tenant any full or partial payments hereunder without in any way waiving Landlord's right to exercise the remedies hereinbefore provided for by reason of any other breach or lapse which was in existence at the time such payment or payments were accepted by Landlord. Following any default by Tenant, Landlord may apply any payment to any Rent then owing, or damages, cost and fees in the manner it chooses in its sole discretion.

D. The specific remedies to which Landlord may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be lawfully entitled in case of any breach or threatened breach by either of them or of any provisions of this Lease.

**11.4 DEFAULTS BY LANDLORD.** If Landlord fails to perform any of Landlord's obligations under this Lease, which failure continues for more than thirty (30) days after Tenant's delivery of written notice to Landlord specifying such failure, or if such failure is of a nature to require more than thirty (30) days for remedy and continues beyond the time reasonably necessary to cure (and Landlord has not undertaken procedures to cure the failure within such thirty (30) day period and diligently pursued such efforts to

07 JUL 31 09:13 PM '40

complete such cure), Tenant may, in addition to any other remedy available at law or in equity, after a second written notice to Landlord and Landlord's failure to cure within ten (10) business days after receipt of such second written notice, at its option, incur any expense necessary to perform the obligation of Landlord specified in such notice and invoice Landlord for the cost thereof. In no event shall Tenant withhold, deduct or offset any expense or claim from the payment of Rent.

## ARTICLE XII - GENERAL PROVISIONS

12.1 **BROKERS.** Tenant warrants that it has employed no broker who has or may have a legitimate claim to a commission arising of Tenant's acceptance of this Lease. Any obligations or potential obligations for commission to any brokers who have a claim arising out of the actions of Tenant are the sole obligation of Tenant. Should a claim be made upon Landlord or the Premises by any brokers who in Landlord's discretion Landlord determines to have legitimate claim for commission arising out of this transaction, whether such claim is ultimately upheld or not, Landlord may, but shall not be obligated to, discharge the claim either by paying the amount claimed to be due or by any other means. Tenant shall reimburse and pay to Landlord on demand any amount so paid by Landlord and all costs and expenses, including reasonable attorneys' fees incurred by Landlord in connection therewith, together with interest thereon at the per annum rate equal to the lesser of eighteen percent (18%) or the maximum rate permitted by law from the respective date of Landlord's notice to Tenant of the making of the payment or of the incurring of the cost and expense, including such attorneys' fees. Any commission or other compensation due brokers employed by Landlord shall be the sole responsibility of Landlord.

12.2 **NO PARTNERSHIP.** Notwithstanding any other express or implied provision of this Lease, it is understood that Landlord does not in any way claim to be or propose a partnership or joint venture with Tenant in the conduct of Tenant's business.

12.3 **SUCCESSORS AND ASSIGNS.** All rights, obligations and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several and respective heirs, executors, administrators, successors, sublessees and assigns of said parties, subject to the provisions of Article X and except to the extent otherwise provided in this Lease, provided, however, that the liability of Landlord hereunder and any successor in interest and title to the Premises shall be limited to his or its interest in the Shopping Center, and no other assets of the Landlord other than his or its interest in the Shopping Center shall be affected by reason of any liability which said Landlord or successor in interest may have under this Lease. If there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein and the word "Tenant" shall be deemed and taken to mean each and every person or party mentioned as a Tenant herein, be the same one or more; and if there shall be more than one Tenant, any notice required or permitted by the terms of this Lease may be given by or to any one thereof and shall have the same force and effect as if given by or to all thereof.

12.4 **NOTICES.** Wherever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall not be deemed to have been duly given or served unless made in writing and either personally delivered or forwarded by Certified Mail, Return Receipt Requested, postage prepaid, nationally-recognized overnight courier service or personal delivery to the address for each party provided in the Abstract of Lease. Such addresses may be changed from time to time by either party by serving notices as above provided. While Tenant is in possession of the Premises, notices to the tenant may also be delivered or forwarded by Certified Mail to the Premises. Notice shall be deemed given when delivered (or upon refusal of acceptance of delivery), if given by personal delivery, otherwise one (1) business day following delivery to a nationally-recognized overnight courier service or three (3) business days following deposit in the United States mail.

### 12.5 **SCOPE AND INTERPRETATION OF THIS AGREEMENT.**

A. **ENTIRE AGREEMENT.** This Lease shall be considered to be the only agreement between the parties hereto pertaining to the Premises. It is understood that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, letters of intent, agreements and understandings, written or oral, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter

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thereof, and none shall be used to interpret or construe this Lease. All negotiations and oral agreements acceptable to Landlord and Tenant have been merged into and are included in this Lease.

B. **ARTICLE HEADINGS AND CAPTIONS.** The headings or captions of Articles in this Lease are for convenience and reference only and they in no way define, limit, or describe the scope or intent of this Lease or the provisions of such Articles.

C. **GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.** As used in this Lease and whenever required by the context thereof, each number, either singular or plural, shall include all numbers, and each gender shall include all genders. Landlord and Tenant, as used in this Lease, or in any other instrument referred to in or made a part of this Lease, shall likewise include both singular and plural, a corporation, limited liability company, partnership, individual or person acting in any fiduciary capacity as executor, administrator, trustee, or in any other representative capacity. All covenants herein contained on the part of Tenant shall be joint and several.

D. **TIME OF ESSENCE.** Time is hereby expressly declared to be of the essence of this Lease and of each and every covenant, term, condition and provision hereof.

E. **IMPARTIAL CONSTRUCTION.** The language in all parts of this Lease shall be in all cases construed as a whole according to its fair meaning and not strictly for nor against either Landlord or Tenant.

F. **GOVERNING LAW.** The laws of the State in which the Premises are located shall govern the validity and enforceability of this Lease. Jurisdiction and venue shall be deemed valid and appropriate in the county and state where the Shopping Center is located.

G. **PARTIAL INVALIDITY.** If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

H. **AMENDMENT.** Oral agreements that modify or are in conflict with any of the terms of this Lease shall be without force and effect. All amendments must be in writing executed by the parties or their respective successors in interest.

I. **TENANT'S CONFLICTS.** Tenant hereby covenants, warrants and represents that by executing this Lease and by the operation of the Premises under this Lease, it is not violating, has not violated and will not be violating any restrictive covenant or agreement contained in any other lease or contract affecting Tenant or any affiliate, associate or any other person or entity with whom or with which Tenant is related or connected financially or otherwise. Tenant hereby covenants and agrees to indemnify, defend and save harmless Landlord, any future owner of the fee or any part thereof, and any mortgagee thereof against and from all liabilities, obligations, damages, penalties, claims, costs and expenses, including attorneys' fees, paid, suffered or incurred by them or any of them as a result of any breach of the foregoing covenant. Tenant's liability under this covenant extends to the acts and omissions of any subtenant, and any agent, servant, employee or licensee of any subtenant of Tenant.

J. **LANDLORD, OWNER OR OWNER'S BENEFICIARY OR BENEFICIARIES THEREOF.** Wherever in this Lease Landlord is granted a right of consent or approval, a right of inspection, a right to add improvements to the Shopping Center, a right to designate repairs, maintenance or improvements required to be made by Tenant or changes in any plans submitted by Tenant or any other act which involved the exercise of discretion on the part of the Landlord hereunder, such right or exercise of discretion may be exercised by Landlord, owner or owner's beneficiary or beneficiaries thereof. Any obligation set forth in this Lease of the Landlord, or any obligation of Tenant which Landlord is given the right to perform on Tenant's behalf, shall be conclusively deemed to have been performed by owner's beneficiary or beneficiaries thereof. Any obligation of Tenant contained in this Lease to indemnify, defend or hold Landlord harmless (or Landlord and any other party), or to maintain and pay for insurance for the

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benefit of Landlord (or Landlord and any other party), or to waive any claim against Landlord (or Landlord and any other party) is hereby extended so that such obligations shall run in favor of Landlord, owner and owner's beneficiary or beneficiaries thereof. Wherever in this Lease it is acknowledged or stated that Landlord has made no representation or warranties or promises with respect to any matter, such provisions shall be deemed to acknowledge or state that neither Landlord nor owner nor owner's beneficiary or beneficiaries thereof, nor employee of Landlord has made such representations or warranties or promises. All rights to enforce any provision of this Lease on the part of Landlord or any rights to exercise any remedies of Landlord, either specifically provided for herein or at law or equity, may be exercised by Landlord, owner or owner's beneficiary or beneficiaries thereof, in their own name, alone or in conjunction with Landlord or any of the foregoing parties.

**K. EXECUTION OF LEASE BY LANDLORD.** The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises and this document becomes effective and binding only upon the execution and delivery hereby by Landlord and Tenant. The execution of this Lease by Tenant shall be deemed an offer by Tenant to lease the Premises from Landlord upon the terms and conditions contained in the Lease, which offer may be accepted by Landlord only by the execution of this Lease by Landlord. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

**L. JURY WAIVER. LANDLORD AND TENANT WAIVER THEIR RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER, OR WITH RESPECT TO ANY ISSUE OR DEFENSE RAISED THEREIN, INCLUDING THE RIGHT TO AND ADVISORY JURY (EXCEPT FOR PERSONAL INJURY AND PROPERTY DAMAGE), ON ANY MATTERS WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE AND OCCUPANCY OF THE PREMISES INCLUDING SUMMARY PROCEEDING AND POSSESSION ACTIONS, ANY EMERGENCY STATUTORY OR OTHER STATUTORY REMEDY.**

**M. RENTS FROM REAL PROPERTY.** Landlord and Tenant hereby agree that it is their intent that all Rent and other charges payable to the Landlord under this Lease shall qualify as "rents from real property" within the meaning of Section 856(d) of the Internal Revenue Code, as amended, (the "Code") and the Department of the U.S. Treasury Regulations promulgated thereunder (the "Regulations"). Should the Code or the Regulations, or interpretations thereof by the Internal Revenue Service contained in revenue rulings or other similar public pronouncements, be changed so that any Rent no longer so qualifies as "rent from real property" for purposes of Section 856(d) of the Code and Regulations, or any successor provision thereto, then the parties agree to execute such further instrument as may reasonably be required by the Landlord in order to give effect to the foregoing provisions of this Section.

**N. INDEPENDENT COVENANTS.** The covenants of Tenant to pay Rent and any and all other amounts payable by Tenant pursuant to the terms of this Lease are independent covenants, and Tenant shall not have the right to hold back, offset, or fail to pay any such amounts for default by Landlord or any other reason whatsoever.

**12.6 RADON GAS.** Radon gas is a naturally occurring radioactive gas that when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**12.7 ATTORNEYS' FEES.** In the case of the failure of either party to perform and comply with any of the covenants and conditions hereof within the time herein specified, whether suit be brought or not, the party so failing to perform and comply hereby agrees to pay to the other party hereto all costs, charges, and expenses of such collection or other enforcement of rights in any suit or otherwise, including its reasonable attorneys' fees. The prevailing party in any litigation arising out of this Lease, including any appellate

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proceedings and bankruptcy proceedings, shall be entitled to the award of its reasonable attorneys' fees and costs.

**12.8 LEASE NOT RECORDABLE.** Under no circumstances shall this Lease be recorded and if Tenant records this Lease in violation of the terms hereof, in addition to any other remedy available to Landlord upon Tenant's default, Landlord shall have the option to terminate this Lease by recording a notice to such effect. If a memorandum or short form of lease is recorded, then, on the termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord an instrument in writing releasing and quit-claiming to Landlord all right, title and interest of Tenant in and to the Premises and/or the Shopping Center by reason of this Lease or otherwise.

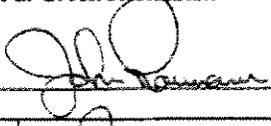
**12.9 ACCORD AND SATISFACTION.** Landlord is entitled to accept, receive and cash or deposit any payment made by Tenant for any reason or purpose, or in any amount whatsoever and apply the same at Landlord's option to any obligation of Tenant and the same shall not constitute payment of any amount owed except that to which Landlord has applied the same. No endorsement or statement on any check or letter of Tenant shall be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such check or payment shall be without prejudice to Landlord's right to recover any and all amounts owed by Tenant hereunder and Landlord's right to pursue any other available remedy and shall not be deemed to constitute a waiver of any of Landlord's rights hereunder.

**12.10 NO WAIVER.** No waiver of any provision of this Lease shall be implied by any failure of Landlord or Tenant to enforce any remedy on account of the violation of such provision, even if such violation be continued or repeated subsequently, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term hereof or create a new tenancy or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit for possession of the Premises or after final judgment for possession of the Premises Landlord may receive and collect any Rent due and the payment of said Rent shall not waive, affect or nullify said notice, suit or judgment. Acceptance by Landlord of less than the entire amount due and owing by Tenant shall not constitute a waiver by Landlord of its rights to further collection.

**12.11 COUNTERPARTS.** This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**12.12 EXHIBITS AND SCHEDULES.** All exhibits and schedules attached to this Lease are hereby incorporated by reference.

**TENANT:**  
JC DINING LLC ocean LLC  
LLC  
d/b/a My Big Fat Greek Restaurant

By: 

Name: John Roumanas

Its: Member

Dated: June 20, 07

**LANDLORD:**  
INLAND SOUTHWEST MANAGEMENT,

as managing agent for  
the Owner of the Shopping Center

By: 

Name: Frank Nataneek

Its: V.P. Leasing

Dated: 6/27/07

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NON-EXCLUSIVE APPURTENANT EASEMENTS FOR PARKING, ACCESS, DRAINAGE, ENCROACHMENTS AND UTILITIES, ALL AS MORE PARTICULARLY SET FORTH IN CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT RECORDED NOVEMBER 5, 2001 AS 01-1034470 AND RE-RECORDED AS 2002-0157426 OF OFFICIAL RECORDS AND FIRST AMENDMENT RECORDED JANUARY 6, 2004 AS 2004-13091 OF OFFICIAL RECORDS.

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EXHIBIT B

MINIMUM RENT

<u>Years</u>	<u>Monthly Rent</u> <u>PSF</u>	<u>Annual Rent</u>	<u>Annual</u>
1	\$14,000.00	\$168,000.00	\$28.00
2	\$14,420.00	\$173,040.00	\$28.84
3	\$14,852.60	\$178,231.20	\$29.71
4	\$15,298.18	\$183,578.13	\$30.60
5	\$15,757.12	\$189,085.47	\$31.51
6	\$16,229.84	\$194,758.03	\$32.46
7	\$16,716.73	\$200,600.77	\$33.43
8	\$17,218.23	\$206,618.79	\$34.44
9	\$17,734.78	\$212,817.35	\$35.47
10	\$18,266.82	\$219,201.87	\$36.53
11	\$18,814.83	\$225,777.92	\$37.63
12	\$19,379.27	\$232,551.25	\$38.76

EXTENDED TERM:

13 through 18

Fair Market Rental

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**EXHIBIT C-1**  
**LANDLORD'S WORK**

Tenant accepts the Premises in its current "as is" condition. Landlord has made no representations or warranties as to the condition of the Premises.

**EXHIBIT C-2**  
**TENANT'S WORK**

All work required to complete and place the Premises in finished condition to allow Tenant to open for business is to be done by the Tenant, at the Tenant's expense (including all impact fees), and in accordance with this Exhibit and the Lease to which this Exhibit is attached.

1. **Tenant's Work.** Includes, but is not limited to, the following:

- 1.1 All plumbing, including waterlines, floor drains and sinks other than plumbing described in Exhibit C-1.
- 1.2 All floor finishes and coverings over existing floor.
- 1.3 Painting and decorating.
- 1.4 All trade fixtures and furnishings.
- 1.5 All tenant signs in accordance with Exhibit D.
- 1.6 Storefront display platforms or backgrounds.
- 1.7 All additions, deletions or modifications to existing conditions or to Landlord's work (proposed or in place) as described in Exhibit C-1.
- 1.8 Temporary services and facilities during construction shall be the responsibility of the Tenant from the date Tenant commences Tenant's work, including costs or charges for any utility or other services to the Premises.
- 1.9 Tenant is responsible for all impact fees associated with the space.
- 1.10. If tenant's use is that of a restaurant, Tenant will install a grease trap prior to opening for business.

2. **Changes and Alterations.** Landlord reserves the right to require changes in Tenant's work when necessary by reason of code requirements, or building facility necessity, or directives of governmental authorities having jurisdiction over the Premises, or directives of Landlord's insurance underwriters.

3. **General Provisions.** All work done by Tenant shall be governed in all respects by, and be subject to, the following:

- 3.1 Tenant agrees not to commence Tenant's work until Tenant has secured Landlord's written approval of all contractors to be used in performing Tenant's work and of the plans and specifications required to be submitted by Tenant to Landlord. Landlord agrees to notify Tenant within a reasonable time in advance of the day when Tenant must commence Tenant's work and Tenant agrees that Landlord may require Tenant to commence work, subject to such notice to

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commence Tenant's work before Landlord's work has been fully completed, provided that the Premises and the building of which the Premises are a part are completed to the extent that it is practical for Tenant to commence Tenant's work. Tenant's work shall be coordinated with the work being done by the Landlord and/or other tenants of Landlord to such a degree that such work will not interfere with or delay the completion of work by Landlord and/or other tenants of Landlord. The technical review of Tenant's plans and specifications for purpose of securing Landlord's approval, shall be performed by the Landlord's project architect on an hourly fee basis, plus reimbursable expenses, in accordance with the terms of agreement between the Landlord and the architect, and the Tenant shall reimburse the Landlord for all such fees and expenses.

3.2 Tenant's work shall be performed in a first-class workmanlike manner and shall be in good and usable condition at the date of completion thereof. Tenant shall require any party performing any such work to guarantee the same to be free from any and all defects in workmanship and materials for one (1) year from the date of completion thereof. Tenant shall also require any such party to be responsible for the replacement or repair without additional charge of any and all work done or furnished by or through such part which shall become defective within one (1) year after substantial completion of the work. The correction of such work shall include, without charge, all expenses and damages in connection with such removal, replacement or repair of any part of the work which may be damaged or disturbed thereby. All warranties or guarantees as to materials or workmanship on or with respect to Tenant's work shall be contained in the contract or subcontract which shall be so written that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests appear, and can be directly enforced by either. Tenant covenants and agrees to give Landlord any assignment or other assurances necessary to effect the same.

3.3 Landlord shall have the right (but shall not be obligated) to perform by its own contractor or subcontractor, on behalf of and for the account of Tenant, any of Tenant's work which Landlord determines should be so performed. Generally, such work shall be work which affects any structural or roofing components, or work of other tenants of, or the general utility systems for, the building in which the Premises are located. If Landlord so determines, it shall so notify Tenant prior to the commencement of such work. Tenant shall promptly, on demand, reimburse Landlord for all costs of planning and performing such work when and as incurred by Landlord, and for all permits in connection therewith.

3.4 Compliance with Laws: All Tenant's work shall conform to applicable statutes, ordinances, regulations, codes and the requirements of Landlord's fire underwriter. Tenant shall obtain and convey to Landlord copies of all permits, certifications and approvals indicating compliance.

3.5 Approvals: No approvals by Landlord shall be deemed valid unless the same shall be in writing signed by the Landlord.

3.6 Drawing Submittal: The Tenant shall, before it commences Tenant's work, furnish Landlord with one (1) set of reproducible plans and specifications for all its architectural, mechanical and electrical systems. Such plans shall include the data for all electrical and cooling loads, in form approved by Landlord.

3.7 Tenant's plans and specifications shall be prepared by an architect or professional engineer licensed in the state where the Premises are located and shall bear the signature and seal thereof.

#### EXHIBIT D

#### SIGN CRITERIA FOR SHOPPING CENTER

##### Basic Criteria Governing Signs:

Tenant signs must be kept clean and in good operating condition. It is recommended that each tenant develop a maintenance program to assure that its sign(s) will always appear inviting to customers and enhance the overall

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appearance of the Shopping Center.

I. APPROVALS

1. Each tenant must submit its sign(s) to Landlord for review and approval prior to the filing of an application for a sign permit(s).
2. Each tenant shall be responsible for the costs of obtaining all permit(s) for its sign(s), and for the costs of manufacturing and installing its sign(s).
3. In addition to obtaining the approval of Landlord, a tenant must ensure that all of its signs are in conformance with local sign ordinances and codes.
4. All sign vendors and contractors must be approved by Landlord, and approved sign vendors and contractors must submit required insurance to Landlord prior to commencing any sign work at the Shopping Center.

II. MANUFACTURING

1. All wiring, transformers, ballasts and other necessary equipment shall be concealed.
2. All work shall be done in a workmanlike manner and approved by Landlord.
3. The responsible tenant, at that tenant's sole cost and expense, and to Landlord's satisfaction and approval, shall repair any damage to the fascia.
4. Upon vacating its leased premises, a tenant shall remove its sign(s) and restore the fascia to its original condition. This shall be done at the tenant's sole cost and expense, and to the satisfaction and approval of Landlord.

III. ALLOWABLE SIGN LOCATION

1. One sign per tenant may be located on the fascia of the Shopping Center.
2. Fascia signs shall be centered with respect to the tenant's total store frontage.
3. The tenant's entire copy and graphics must be located within the boundaries of the "designated sign area," as designated by Landlord.

IV. ALLOWABLE SIGN STYLES

1. Fascia signs shall be individually formed metal channel letters and graphics.
2. Letters and graphics must be covered with acrylic faces.
3. All canopy and graphics shall be internally illuminated with neon.
4. Aluminum returns or sides of letters and graphics shall be Lacyral 20-313E Duranodic, or equivalent, with a 4-inch (4") depth. Landlord must approve substitutions.
5. The tenant's copy and graphics shall be mounted entirely on a raceway that matches the color of the fascia on which it is located. Landlord will specify these colors.

V. ALLOWABLE SIGN SIZE

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1. The length of a tenant's sign will be limited to seventy-five percent (75%) of the tenant's sign panel.
2. A tenant shall be allowed up to two (2) square feet of sign face for each linear foot of the tenant's store frontage, but not to extend higher than the sign panel.
3. Letter sizes shall be as follow:
  - (a) for store fronts up to thirty feet (30'): capital letters shall be twenty-four inches (24"), and lower case letters shall be eighteen inches (18");
  - (b) for store fronts ranging from thirty feet (30') up to sixty feet (60'): capital letters shall be thirty inches (30"), and lower case letters shall be twenty-four inches (24").

#### VI. GENERAL REQUIREMENTS

1. No sign shall be placed in other than the "designated sign area," as designated by Landlord.
2. No sign perpendicular to the face of any building shall be permitted.
3. No roof-mounted sign of any kind shall be permitted.
4. No flashing, moving, or audible signs or beacons shall be permitted.
5. No banners or flagpoles shall be permitted.
6. Trailer signs, portable signs or temporary signs shall not be permitted.
7. All transformers or electrical appurtenances shall be used.
8. No exposed conduit, tubing, neon tubing, conductors, transformers or electrical appurtenances shall be allowed.
9. Electrical service to all signs shall be provided from the Tenant's meter, and it shall be the responsibility of each tenant to hire an electrician approved by Landlord to perform all required electrical work.
10. Landlord shall approve design of raceway mounting devices.
11. A tenant shall be responsible for repair of any damages to the building caused by the installation of its sign(s).
12. All signs shall be fully lighted and operational from a minimum of dusk until 2:00 a.m., Monday through Sunday (seven days a week).

#### EXHIBIT E

#### GUARANTY

THIS GUARANTY (this "Guaranty") dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by John Roumanas, an individual ("Guarantor"), having an address at 9011 North 67<sup>th</sup> Street, Paradise Valley, AZ 85286 to Inland Southwest Management, LLC (the "Landlord"), having an address at 2901 Butterfield Road, Oak Brook, IL 60523.

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WITNESSETH:

Contemporaneously herewith, Landlord, as lessor, is entering into a certain lease (the "Lease") for real property located in the City of Avondale, County of Maricopa, and State of Arizona, which property is more particularly described in Exhibit A-2 thereto with JC Dining LLC ("Tenant"), as lessee. Guarantor will receive a substantial economic benefit from the Lease and is executing this agreement as an inducement to Landlord to enter into the Lease. Landlord would not have executed the Lease with Tenant without Guarantor executing this Guaranty.

NOW THEREFORE, in consideration of the premises, Guarantor agrees as follows:

1. Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the Landlord (a) the full and punctual performance and observance by Tenant of all of the terms, conditions, covenants and obligations to be performed and observed by Tenant under the Lease and any month-to-month tenancy created as a result of Tenant holding over after the expiration or termination of the Lease including, without limitation, the payment as and when due, whether by acceleration or otherwise, of all Minimum Rent and Additional Rent (both as defined in the Lease) and any other sums payable by Tenant under the Lease, and (b) payment of all Enforcement Costs (as defined in Section 5 below). This is a guaranty of payment and performance, and not of collection, and Landlord shall not be obligated to enforce or exhaust its remedies against Tenant before proceeding to enforce this Guaranty. Landlord may, at Landlord's option, join Guarantor in any action or proceeding commenced by Landlord against Tenant in connection with or based upon the Lease or any term, covenant or condition thereof, and recovery may be had against Guarantor in such action or proceeding or in any independent action or proceeding against Guarantor without Landlord (i) asserting, prosecuting, or exhausting any remedy or claim against Tenant or (ii) commencing any proceeding to enforce or realize upon any collateral or other security (including, without limitation, any security deposit or other guaranties) which may be given to secure Tenant's obligations under the Lease, or to obtain any judgment, decree or foreclosure sale with respect thereto. Any suit or proceeding brought against Guarantor to collect the amount of any deficiency in payments due from Tenant under the Lease for any month or months shall not prejudice in any way the rights of Landlord to collect any such deficiency for any subsequent month or months in any similar suit or proceeding. Additionally, the maintenance of any action or proceeding by Landlord to recover any sum or sums that may be or become due under the Lease or to secure the performance of any of the other terms, covenants and conditions of the Lease shall not preclude Landlord from demanding and receiving the payment of such sums and the performance of such other terms, covenants and conditions from Guarantor, or from thereafter instituting and maintaining subsequent actions or proceedings for any subsequent default or defaults of Tenant under the Lease. Guarantor does hereby agree that, without affecting the liability of Guarantor under this Guaranty and without notice to Guarantor, Landlord may (i) grant to Tenant additional time for the payment of rent and any other sums due under the Lease or for the performance of any other terms, covenants and conditions contained in the Lease, or (ii) avail itself of or exercise any or all of the rights and remedies against Tenant provided by law, in equity, or by the Lease, and may proceed either against Tenant alone or jointly against Tenant and Guarantor or against Guarantor alone without first proceeding or exhausting any remedy or claim against Tenant.

2. Guarantor hereby assents to all of the provisions of the Lease and waives demand, protest, notice of any indulgences or extensions granted to Tenant, any requirement of diligence or promptness on the part of Landlord in the enforcement of the Lease and any notice thereof, and any other notice whereby to charge Guarantor. Guarantor shall be furnished with a copy of any notice of or relating to default under or termination of the Lease which is served upon Tenant.

3. (a) This Guaranty shall be a continuing guarantee and the liability of Guarantor hereunder shall in no way be affected, modified, diminished, impaired or terminated for any reason whatsoever, including, without limitation, by reason of any of the following, whether or not notice thereof is given to Guarantor: (i) any one or more sublettings of all or any portion of the Premises or any one or more assignments or other transfers of Tenant's interest in the Lease, (ii) any consent, approval, waiver or other action, inaction or omission under or concerning the Lease, (iii) any modifications, renewals, extensions or

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amendments of the Lease, (iv) any dealings or transactions or matter or thing occurring between Landlord and Tenant, (v) any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting Tenant or its successors or assigns, (vi) the release or discharge of Tenant from the performance or observance of any of the terms, covenants or conditions of law, by reason of any of the events described in the foregoing clause (v) hereof, or otherwise, (vii) any change in relationship between Guarantor and Tenant, (viii) the default or failure of Guarantor to perform any of its obligations set forth in this Guaranty, (ix) any action which Landlord may take or fail to take against Tenant by reason of any waiver of, or failure to enforce, any of the rights or remedies reserved to Landlord in the Lease, or otherwise, (x) any failure or refusal of Landlord to re-let the Premises or any part or parts thereof in the event that Landlord shall obtain possession of the Premises after Tenant's insolvency or default, (xi) any failure to collect rent thereof under any such reletting, (xii) any alterations, repairs, replacements and/or decoration in the Premises as Landlord, in Landlord's sole judgment, considers advisable and necessary for the purpose of re-letting the Premises, and (xiii) any other circumstance or condition that may result in a discharge, limitation or reduction of liability of a surety or guarantor. Not later than seven (7) days after the request of Landlord, Guarantor will execute an estoppel certificate in a form requested by Landlord (A) confirming Guarantor's obligations under this Guaranty, (B) acknowledging that this Guaranty has not been modified (or, if so, identifying all modifications) and is in full force and effect, and (C) confirming that Guarantor has no claims or defenses under this Guaranty or otherwise with respect to the full performance and satisfaction of all of the terms, provisions, agreements and obligations of this Guaranty. A failure to issue an estoppel certificate in the requested form shall constitute a default by Tenant under the Lease. Such estoppel certificate will be certified to Landlord and such other parties as are designated by Landlord.

(b) Guarantor hereby waives notice of the acceptance of this Guaranty and presentment and demand for payment, notice of nonpayment, notice of dishonor, protest, notice of protest, nonperformance, nonobservance and any other notice or demand to which Guarantor might otherwise be entitled. Guarantor hereby waives trial by jury of any and all issues arising in any action or proceeding between the parties, upon, under or in connection with this Guaranty or of any of its provisions, directly or indirectly, or any and all negotiations in connection therewith. Guarantor's obligations hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, and shall not be subject to, and Guarantor hereby irrevocably waives, any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of Tenant's obligations under the Lease or of any of Guarantor's obligations hereunder, or otherwise.

4. The obligations guaranteed by Guarantor pursuant to this Agreement include all terms, conditions, covenants and obligations to be performed and observed by Tenant during and/or with respect to the initial Term of the Lease, which is the period beginning on the "Commencement Date" and ending on the Termination Date as set forth in Section 1.3 of the Abstract of Lease and Section 3.1 of the Lease, the Extended Term, if any, and any month-to-month tenancy created after the expiration or termination of the Lease. This is a continuing guaranty and Guarantor's obligations hereunder shall survive the expiration of the initial Term and/or any expiration or termination of the Lease and shall continue until all obligations of Guarantor hereunder have been paid and satisfied in full. In the event that the Lease is modified, renewed or extended, or the Premises expanded or contracted, in any respect by agreement between Landlord and Tenant pursuant to an option granted in the Lease, or in the event that Tenant holds over beyond the Term of the Lease, or otherwise, then the obligations hereunder of Guarantor shall extend to the full and faithful performance and observance of all of the covenants, terms and conditions of the Lease and of any such modification, renewal, extension, expansion, contraction and/or hold over. Guarantor shall, from time to time within five (5) days after the request of Landlord, deliver to Landlord a notification and reaffirmation of all of Guarantor's covenants, liabilities and agreements contained in this Guaranty provided the failure of Guarantor to issue such notification and reaffirmation to Landlord shall not reduce or eliminate Guarantor's obligations hereunder. Guarantor intends that Guarantor shall remain liable hereunder as a principal until the full, final and unavoidable performance of all of liabilities and obligations hereunder, notwithstanding any fact, act, event or occurrence which might otherwise operate as a legal or equitable discharge of a surety or guarantor.

5. In addition to the amounts specified pursuant to Paragraph 1 hereof, Guarantor shall pay to Landlord any and all costs incurred by Landlord in enforcing this Guaranty, including court costs and

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reasonable attorneys' fees and costs (collectively, "Enforcement Costs").

6. This Agreement shall inure to the benefit of and may be enforced by Landlord and its successors and assigns and any assignee of Landlord's interest in the Lease (including Landlord's mortgagee), and shall be binding upon Guarantor and its successors and assigns. No assignment by Guarantor shall affect or reduce its obligations hereunder, and all such obligations shall continue as though no such assignment had been made.

7. This Agreement may not be changed or terminated orally, but only by a written instrument signed by the party against whom enforcement of any change or termination is sought.

8. Any notice required hereunder to be sent to Guarantor shall be sufficiently given by mailing by certified or registered mail, postage prepaid, addressed as follows:

John Roumanas  
9011 North 67<sup>th</sup> Street  
Paradise Valley, AZ 85286

9. If Landlord shall be obligated by any bankruptcy, insolvency or other legal proceedings to repay to Guarantor or to Tenant, or to any trustee, receiver or other representative of any of them, any amounts previously paid by Guarantor pursuant to this Guaranty, this Guaranty shall be deemed reinstated to the extent of that repayment made by Landlord as though such original amount was never paid. Landlord shall not be required to litigate or otherwise dispute its obligation to make such repayments if, in good faith and on the advice of counsel, Landlord believes that such obligation exists. Nothing herein contained is intended or shall be construed to give to Guarantor any right of subrogation under the Lease or any right to participate in any way therein or in Landlord's right, title and interest in the Lease. Notwithstanding any payments made under this Guaranty, all rights of subrogation and participation are expressly waived and released by Guarantor.

10. No delay on the part of Landlord in exercising any right, power or privilege under this Guaranty, nor any failure to exercise the same, shall operate as a waiver of, or otherwise affect, any right, power or privilege of Landlord under this Guaranty, nor shall any single or partial exercise thereof preclude the further exercise of, or the exercise of any other, right, power or privilege of Landlord under this Guaranty.

11. The validity and enforcement of this Guaranty shall be governed by and construed in accordance with the internal laws of the State in which the Premises (as defined in the Lease) are located without regard to principles of conflicts of laws, and such laws shall apply in any action or proceeding arising out of or under this Guaranty.

12. All remedies afforded to Landlord by reason of this Guaranty are separate and cumulative remedies and it is agreed that no one remedy, whether exercised by Landlord or not, shall be deemed to be exclusion of any other remedy available to Landlord and shall not limit or prejudice any other legal or equitable remedy which Landlord may have.

13. If any provision of this Guaranty or the application thereof to any person or circumstance shall to any extent be held void, unenforceable or invalid, then the remainder of this Guaranty or the application of such provision to persons or circumstances other than those as to which it is held void, unenforceable or invalid, shall not be affected thereby and each provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

14. Guarantor hereby irrevocably:

(a) submits to the jurisdiction of the state courts of the State of Illinois and to the jurisdiction of the United States District Court for the Northern District, Eastern Division, for the purposes of each and every suit, action or other proceeding arising out of or based upon this Guaranty or the subject matter hereof brought by landlord, it being expressly understood and agreed that this consent to jurisdiction

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shall be self-operative and no further instrument or action, other than service of process in one of the manners specified in this Guaranty or as otherwise permitted by law, shall be necessary in order to confer jurisdiction upon Guarantor in any such court; and

(b) waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding brought in any such court, any claim that Guarantor is not subject personally to the jurisdiction of the above named courts, that Guarantor's property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court, and further agrees to waive, to the fullest extent permitted under applicable law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which Landlord or its successors or assigns are entitled pursuant to the final judgment of any court having jurisdiction; and

(c) consents to service of process by certified or registered mail at Guarantor's address as set forth herein, or in any other manner permitted by law, service in the foregoing manner to be deemed, in every respect, effective service of process upon Guarantor and be taken and held to be valid personal service upon, and personal delivery to, Guarantor. Guarantor agrees that Guarantor's submission to jurisdiction and consent to service of process by mail is made for the express benefit of Landlord.

The headings of sections or paragraphs in this Guaranty are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof. As used in this Guaranty, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable where the context so requires. If this Guaranty is executed by more than one person or entity, then references to "Guarantor" herein shall be deemed to refer to each such person or entity, and the liability of each such person or entity shall be joint and several, and the release by Landlord of any of them shall not release or affect in any manner the obligations of any other of them, and this Guaranty shall not be revoked, discharged or impaired as to any such persons or entities by reason of the death or incapacity or insolvency of any other of them. All payments to be made hereunder shall be made in currency and coin of the United States of America which is legal tender for public and private debts at the time of payment. This Guaranty constitutes the entire agreement between Guarantor and Landlord with respect to the subject matter hereof and supersedes all prior such agreements and understandings, both written and oral. If this Guaranty is executed in several counterparts, each of those counterparts shall be deemed an original, and all of them together shall constitute one and the same instrument.

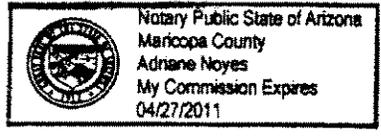
IN WITNESS WHEREOF, Guarantor has duly executed this Agreement on this 19th day of June, 2007.

John Roumanas  
JOHN ROUMANAS

STATE OF ARIZONA )  
 ) SS.  
COUNTY OF MARICOPA )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that JOHN ROUMANAS personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act and deed for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19th day of June, 2007.  
My Commission Expires: 4/27/11 Notary Public: Adriane Noyes



COPIES OF THIS INSTRUMENT

**EXHIBIT F**

**PROHIBITED USES**

1. Funeral establishment;
2. Automobile sale, leasing, repair or display establishment or used car lot, including body repair facilities;
3. Auction or bankruptcy sale;
4. Pawn shop;
5. Outdoor circus, carnival or amusement park, or other entertainment facility;
6. Outdoor meetings;
7. Bowling alley;
8. Primarily pool or billiard establishment;
9. Shooting gallery;
10. Off-track betting (provided that state sponsored lottery tickets shall not be prohibited);
11. Refinery;
12. Adult bookstore or facility selling or displaying or selling access to pornographic books, literature, websites or videotapes (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality), massage parlor, steam bath, nude modeling, establishment with nude or semi-nude waiters, waitresses or entertainers;
13. Any residential use, including, but not limited to living quarters, sleeping apartments or lodging rooms;
14. Theater including, but not limited to, an x-rated theater;
15. Auditorium, meeting hall, ballroom, school, educational facilities (including, but not limited to, beauty schools, barber colleges, reading rooms or libraries, or other place of public assembly);
16. Unemployment agency, service or commission;
17. Gymnasium, health club, exercise or dance studio;
18. Dance hall;
19. Cocktail lounge, bar, disco or night club;
20. Bingo or similar games of chance, but lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business;
21. Video game or amusement arcade, except as an incidental part of another primary business;
22. So called "head shop" which sells drug paraphernalia;
23. Skating or roller rink;
24. Car wash, car repair or car rental agency;
25. Second hand store, auction house, or flea market, Army/Navy-type store or governmental surplus;
26. Non-retail use (which shall not prohibit in the Shopping Center such uses commonly referred to as "quasi-retail" or "service retail" such as a travel agency, real estate office, insurance agency, accounting service, etc., so long as same do not exceed ten percent (10%) of the Leasable Square Feet of the Shopping Center); or
27. Any uses which conflict with the uses of existing tenants.
29. Tenant may not install an Automatic Teller Machine in or on the Premises without the express written consent of Landlord which consent Landlord may deny in its sole discretion.

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Tenant's Initials

Landlord's

**EXHIBIT G**

**RULES AND REGULATIONS**

1. Tenant shall advise and cause its vendors to deliver all merchandise before noon on Mondays through Fridays, not at other times.

2. All deliveries are to be made to designated service or receiving areas and Tenant shall request delivery trucks to approach their service or receiving areas by designated service routes and drives.
3. Tractor-trailers which must be unhooked or parked must use steel plates under dolly wheels to prevent damage to the asphalt paving surface. In addition, wheel blocking must be available for use. Tractor trailers are to be removed from the loading areas after unloading. No parking or storing of such trailers will be permitted in the Shopping Center.
4. Tenant shall not dispose of the following items in sinks or commodes: plastic products (plastic bags, straws, boxes); sanitary napkins; tea bags; cooking fats, cooking oils; any meat scraps or cutting residue; petroleum products (gasoline, naphtha, kerosene, lubricating oils); paint products (thinner, brushes); or any other time which the same are not designed to receive.
5. Tenant shall not permit or suffer any advertising medium to be placed on exterior walls or windows, on the sidewalks or on the parking lot areas or light poles. No permission, expressed or implied, is granted to exhibit or display any banner, pennant, sign and trade or seasonal decoration of any size, style or material within the Shopping Center, outside the Premises.
6. Tenant shall not permit or suffer the use of any advertising medium which can be heard or experienced outside of the Premises, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios, or television. No radio, television, or other communication antenna equipment or device is to be mounted, attached, or secured to any part of the roof, exterior surface, or anywhere outside the Premises, unless Landlord has previously given its written consent.
7. Tenant shall not permit or suffer any portion of the Premises to be used for lodging or extended stay purposes.
8. Tenant shall not, in or on any part of the Common Area:
  - a. Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever.
  - b. Exhibit any sign, placard, banner, notice or other written material, except for activities as approved in writing by Landlord.
  - c. Distribute any circular, booklet, handbill, placard or other material, except for activities as approved in writing by Landlord.
  - d. Solicit membership in any organization, group or association or contribution for any purpose.
  - e. Create a nuisance.
  - f. Throw, discard or deposit any paper, glass or extraneous matter of any kind except in designated receptacles, or create litter or hazards of any kind.
  - g. Deface, damage or demolish any sign, light standard or fixture, landscaping materials or other improvement within the Shopping Center, or the property of customers, business invitees or employees situated within the Shopping Center.
9. Tenant shall not locate furnishings or cabinets adjacent to mechanical or electrical access Panels or over air-conditioning outlets so as to prevent operating personnel from servicing such units as routine or emergency access may require. Cost of moving such furnishings for Landlord's access will be at Tenant's cost. The lighting and air-conditioning equipment of the Shopping Center will remain in the exclusive control of the building designated personnel.
10. Tenant shall comply with parking rules and regulations as may be posted and/or distribution from time to time.
11. Prior written approval, which shall be at Landlord's sole discretion, must be obtained for installation of window shades, blinds, drapes or any other window treatment of any kind

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whatsoever.

12. Tenant shall keep the Premises at a temperature compatible with comfortable occupancy during business hours and at all times sufficiently high to prevent freezing of water in pipes and fixtures.
13. Tenant shall keep the signs, exterior lights and display window lights of the Premises lighted each and every day of the Term during the hours designated by Landlord.
14. No animals shall be brought into or kept in or about the Shopping Center other than as handicap aids.
15. In the event any violation of any of the above rules and regulations continues after five (5) days following written notice to Tenant of such violation, beginning on such fifth day Tenant shall be in default of the Lease. In addition to all other remedies of Landlord provided in the Lease for Tenant's default, Tenant shall pay liquidated damages of One Hundred Dollars (\$100.00) per day for each day such violation continues.
16. Except as otherwise provided herein, Landlord reserves the right to modify or rescind any of these rules and regulations and to make such other or further reasonable rules and regulations as it deems in its reasonable judgment shall from time to time be necessary or advisable for the operation of the Shopping Center, which rules and regulations shall be binding upon Tenant upon their notification of said further rules and regulations.

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EXHIBIT "H"

Gateway Pavilions  
(5033)

Exclusive Use

Tenant

Costco Wholesale Corp. – No part of the project may be used for other than retail sales (except) to the extent permitted pursuant to Section 5.2 (x); provided, however, that business operations conducted under the "Costco Wholesale" trade name, or such other name as is utilized by a majority of the stores in Arizona operated by Costco Wholesale Corporation or its successor by merger, acquisition or corporate reorganization shall be deemed to be "retail," sales; and provided further, however that a theatre or cinema shall be permitted other than is limited by Sections 5.2 (bb) and 5.4 below.

- (a) No portion of the Project other than the Costco Block shall be used or operated as a wholesale or retail general merchandise facility which has a merchandising concept based upon a relatively limited number of stock keeping units in a large number of product categories substantially similar to the facilities operated under the trade name "Costco" or any successor trade name. The foregoing shall not prohibit (i) the operation of a general merchandise, discount or department store with a large number of stock-keeping units such as a "Target," "Kmart," or "Wal-Mart" (other than Sam's Club) store, or (ii) the operation of specialty stores with a large or small number of stock-keeping units such as a home improvement center, linen store, toy store, office supply store, furniture store (including Ikea or KC, Willey) or the like.
- (b) No portion of the Project other than the Harkins Block may be used as a theater, playhouse, cinema, movie theater or other form of motion picture presentation. The foregoing shall not prohibit screens not to exceed 60" in retail and food service businesses and shall not apply to Occupants whose primary business is the sale of retail goods.
- (c) The respective exclusives under Section 5.4 (a) and (b) above shall lapse if after the initial opening of such exclusive use, such exclusive use ceases more than twelve (12) months plus (i) periods of remodeling, renovation or reconstruction and (ii) the duration of any event(s) described under Section 1.1.20.

Sportmart – Neither Landlord nor any affiliate of Landlord (i.e., any individual or entity that controls, is controlled by, or is under common control with Landlord) will authorize or permit any premises or space in, or portion of, the Shopping Center, or, from and after the date that landlord or any such affiliate acquires title thereto, any other property within the Project, other than the Premises, to be used for the retail sale and/or rental of sporting goods, sports apparel or athletic footwear, provided that such exclusive will not apply to (i) the incidental sale of sporting goods by an occupant so long as the retail display space in such occupant's premises that is used for the display

07 JUL 31 09P, LIT, PM 411

of such merchandise is of a size not greater than the lesser of five hundred (500) Leasable Square Feet or ten percent (10%) of such occupant's total Leasable Square Feet; or (ii) the incidental sale of sports apparel or athletic footwear by an occupant so long as the retail display space in such occupant's premises that is used for the display of such merchandise is of a size not greater than the lesser of one thousand (1,000) Leasable Square Feet or ten percent (10%) of such occupant's total Leasable Square Feet; (iii) the operation of a Kohl's, Kmart, Ross, Marshall's or similar department store that does not sell primarily sporting goods, sports apparel or athletic footwear; or (iv) the sale by one occupant (in addition to Tenant) of billiard and pool tables and related equipment. As used herein, "athletic footwear" means footwear associated with sports and sport purposes (including, without limitation, running, jogging and aerobic activity).

**Port of Subs** – Landlord shall not execute and deliver any lease for space in the part of the Center designated Shop2, Shop 3, Shop 4, Pad A, Pad B, Pad C, Pad D and Pad K [As shown on Exhibit B (Site Plan)] (collectively, the "Exclusive Area") pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail sale of submarine sandwiches ("Exclusive Use").

Notwithstanding any provision of this lease to the contrary, the Exclusive Use shall not restrict, in any manner whatsoever, the incidental use of any portion of the Exclusive Area for the conduct of business in conflict with the Exclusive Use. The Exclusive Use shall not apply to any portion of the Exclusive Area in excess of 5,000 square feet of floor area leased to, or occupied or owned by, a single person or entity.

**Kyoto Bowl Restaurant** – Landlord shall not execute and deliver any lease for space in the part of the Center designated Shop 2, Shop 3, [As shown on Exhibit A(Site Plan)] (collectively, the "Exclusive Area") pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail sale of prepared Japanese, Thai or Chinese food (collectively, "Exclusive Use").

Notwithstanding any provision of this Lease to the contrary, the Exclusive Use shall not restrict, in any manner whatsoever, the use of any portion of the Exclusive Area for the conduct of the business in conflict with the Exclusive Use, not exceeding 10% of such portion's gross sales during any calendar year.

**Studio 101, Inc.** – Landlord shall not execute and deliver any lease for space in the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail operation of a photography studio ("Exclusive Use").

Notwithstanding any provision of this Lease to the contrary, the Exclusive Use shall not restrict, in any manner whatsoever, the incidental use of any portion of the Center for the conduct of the business in conflict with the Exclusive Use.

**Liberty Fitness** - Landlord shall not execute and deliver any lease for space in the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail operation of a women's fitness studio ("Exclusive Use").

Notwithstanding any provision of this Lease to the contrary, the Exclusive Use shall not restrict, in any manner whatsoever, the incidental use of any portion of the Center for the conduct of the business in conflict with the Exclusive Use.

*Help-U-Sell West Valley Specialists, LLC* -  
No Exclusive

*Johnny Rockets* - Landlord shall not execute and deliver any lease for space in the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail sale of cooked hamburgers ("Exclusive Use").

Notwithstanding any provision of this Lease to the contrary, the Exclusive Use shall not restrict, in any manner whatsoever, the incidental use of any portion of the Center for the conduct of the business in conflict with the Exclusive Use.

*Native New Yorker* - Landlord shall not execute and deliver any lease for space in the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail operation of sports-themed restaurant which includes multiple television sets with multiple channels tuned to sporting events, with decorations consisting primarily of sports memorabilia, which serves beer, wine and liquor for on-Premises consumption only, and which serves food primarily prepared on the Premises (collectively, the "Sports Bar Exclusive"), and (b) specializing in the sale of prepared chicken wings (the "Chicken Wing Exclusive") (the Sports Bar Exclusive and the Chicken wing Exclusive are, collectively, the "Exclusive Use").

Notwithstanding any provision of this Lease to the contrary, only with respect to the Chicken Wing Exclusive, the Exclusive Use shall not restrict, in any manner whatsoever, the incidental use of any portion of the Center for the conduct of the business in conflict with Chicken Wing Exclusive, as long as such incidental use does not exceed 10% of any occupant's gross sales during any 12-month period.

*LA Nails* - Landlord shall not execute and deliver any lease for space in the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: a nail salon ("Exclusive Use").

Notwithstanding any provision of this Lease to the contrary, the Exclusive Use shall not restrict, in any manner whatsoever, the incidental use of any portion of the Center for the conduct of the business in conflict with the Exclusive Use.

*Sunny Smile Dental* - Landlord shall not execute and deliver any lease for space in the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail providing of general dental services ("Exclusive Use").

Notwithstanding any provision of this Lease to the contrary, the Exclusive Use shall not restrict, in any manner whatsoever, the incidental use of any portion of the Center

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for the conduct of the business in conflict with the Exclusive Use.

**Cold Stone Creamery** - Landlord shall not execute and deliver any lease for space in the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail sale of ice cream ("Exclusive Use").

Notwithstanding any provision of this Lease to the contrary, the Exclusive Use shall not restrict, in any manner whatsoever, the incidental use of any portion of the Center, of ice cream, where such sale of ice cream constitutes less than 50% of such occupant's gross sales during any calendar year.

**Mor Furniture for Less** - Landlord shall not execute and deliver any lease for space in the Shopping Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail sale of discount furniture ("Exclusive Use").

Notwithstanding any provision of this Lease to the contrary, the Exclusive Use shall not restrict, in any manner whatsoever, the incidental use of any portion of the Center, for the conduct of the business in conflict with the Exclusive Use.

**Circuit City** - No other tenant or occupant of the Shopping Center shall be entitled to sell or rent (or rent to own) any of the "Products" [As defined below], subject only to rights granted any such tenants under leases in existence as of the date of the Lease. The Incidental Sale (as hereinafter defined) of the Products in connection with the overall business of another occupant or tenant shall not be deemed a violation of the preceding sentence. As used herein, "Incidental Sale" shall mean the lesser of (i) three hundred (300) square feet, or (ii) ten percent (10%) of such occupant's or tenant's display area.

Definition of the "Products" - The sale of consumer, office and automotive electronic products (which include, but shall not be limited to, televisions, stereos, speakers, video and audio recorders and players and cameras), computer hardware and software and related software services, including internet access services, entertainment software and entertainment media (which include, but shall not be limited to, records, game cartridges, video tapes, cassettes, compact discs, DVD's and DVD equipment), cellular and wireless telephones and telecommunication devices, and related goods and the sale and installation of motor vehicle audio, stereo and telephone systems and technological evolutions of the foregoing (all of such items are collectively referred to as the "Products")

**Baja Fresh** - From and after the Effective Date, provided that Tenant is "primarily selling" Mexican food from the Premises Landlord shall not execute and deliver any lease for space in the part of the Center or permit any tenant in the Center shown as hatched on Exhibit A [Site Plan], Sheet No. 1, hereto ("exclusive Area") pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail sale of Mexican food as would be typically sold under the trade name Baja Fresh Mexican Grill ("Exclusive Use"). "Primarily selling" Mexican food from

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the Premises shall mean at least seventy percent (70%) of tenant's gross sales are from Mexican Food.

Further notwithstanding anything in this Lease to the contrary, the Exclusive Use shall not apply; (i) to any portion of the Exclusive Area not owned, or the use of which is not controlled, by landlord as of the date of the Lease, (ii) to any portion of the Exclusive Area in excess of five thousand (5,000) square feet of floor area leased to, or occupied or owned by, a single person or entity, (iii) to any part of the Center outside of the Exclusive Area, (iv) to any leases in existence as of the Effective Date, and any amendments, extensions, renewals, subleases and assignments thereof to the extent that if Landlord were to withhold its consent for such occupant to sell any of the items included in the Exclusive Use, such withholding would cause Landlord to be in default of such lease.

**Bed Bath & Beyond**—Landlord shall not lease, rent or occupy or permit any other premises in the Shopping center or on any Related Land (defined in Subsection 13.1.2 above) (except to the extent otherwise permitted under any lease for space on the Related Land as of the date the Other Tract became Related Land hereunder) to be occupied, whether by a tenant, sublessee, assignee, licensee or other occupant or itself, for the sale, rental or distribution, either singly or in any combination, of items contained in any of the following respective categories of merchandise: (a) linens and domestics; (b) bathroom items (excluding plumbing hardware); (c) housewares (including, but not limited to, kitchen utensils, kitchen appliances and kitchen "gadgets," cleaning appliances and supplies, cookware, bakeware, dishes and china, glassware, garbage pails, ironing boards and other laundry items, mops and brooms, candles and candle holders, ready-to-assemble furniture and artificial flowers but excluding any furniture, and major appliances or "white goods"); (d) frames and wall art (provided that (i) a custom framing store comprising not more than 2,500 square feet of Floor Area shall be permitted, and (ii) a fine art gallery shall not be precluded); (e) window treatments (provided that a custom blind store that does not sell window treatments comprising no more than 3,000 square feet of Floor Area shall be permitted); and/or (f) closet, shelving and storage items (which items, either singly or in any combination, are hereinafter referred to as the "Exclusive Items"). Notwithstanding the foregoing, any tenant, occupant or subtenant in the Shopping Center or the Related Land shall have the right to utilize its respective premises for the sale, rental and/or distribution of Exclusive Items within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed (x) for premises comprising less than five thousand (5,000) square feet, seven and one-half percent of the Floor Area of such tenant's or subtenant's premises, or (y) for premises comprising five thousand (5,000) square feet of Floor Area or more, the lesser of (x) five (5%) percent of the Floor Area of such tenant's, occupant's or subtenant's premises, or (y) two thousand (2,000) square feet of Floor Area within such tenant's occupant's or subtenant's premises. For example only, a tenant occupying premises containing a total of five thousand (5,000) square feet of Floor Area could sell Exclusive Items (either singly or in any combination) so long as the aggregate area within its entire demised premises in which any and all Exclusive Items are sold shall not exceed two hundred fifty (250) square feet. This Section 13.2.1 shall not apply to the sale, rental or distribution of the Exclusive Items on Related Land

07 JUL 31 1997 11:41 AM

owned or controlled by a person or entity which: (i) was previously, but is no longer, the Landlord hereunder, or (ii) already owned or controlled such Related Land at the time it became Landlord hereunder (excluding, however, the Landlord originally named herein and its affiliates, excluding any Mortgagee of Landlord's interest in the Shopping Center.

13.2.2 The restrictions set forth in Subsection 13.2.1 above shall not apply to (i) a full-line national or regional department store [for example, Wal-Mart, Macy's, or Target], (ii) a full-line national or regional discount club [for example, Costco, BJ's Wholesale Club, or Sam's Club], (iii) a full-line national or regional home improvement center [for example Home Depot or Lowe's], commonly located in shopping centers in the state in which the Shopping Center is located similar to the Shopping Center, each occupying at least 80,000 square feet of Floor Area within the Shopping Center, as such stores are currently operated (as of the Effective Date), or (iv) to any building on the Other Tracts, unless such Other Tract or Tracts become Related Land for the purposes of this Article 13 as set forth above. Tenant hereby agrees at the request of Landlord to enter into Tenant's standard letter agreement modifying the restrictions set forth in Subsection 13.2.1 hereof with Borders, Micheals Stores, JoAnn Fabrics, TJ Maxx and Marshalls (but not Mega Marshalls, Homegoods, or Maxx & More), and one of either Pier 1 or Cost Plus in the forms attached hereto as Exhibit P.

**Carrabba's Italian Grill** – LANDLORD agrees that it shall not operate or permit the operation of any "Italian" restaurants in the Developer Block. An "Italian" Restaurant shall mean any restaurant where Italian food collectively constitutes twenty-five percent (25%) or more of its entrée items or twenty five percent (25%) or more of its entrée sales computed on a dollar basis. In the event TENANT is no longer operating as Carrabba's Italian Grill, LANDLORD agrees that, on the Developer Block, it shall not operate or permit the operation of any restaurant form which duplicates the primary featured food concept of the restaurant then being operated on the Premises, except for occupants which have the right, as of the Effective Date, to use their premises, or change the use of the Premises, to such concept. LANDLORD agrees and represents to TENANT that all tenants of the Developer Block shall be bound by the terms of this Section.

**McDonald's** – Landlord covenants and agrees that the property described on Exhibit D [Site Plan] now owned, leased or controlled, directly or indirectly, by Landlord or, if Landlord is a corporation, any subsidiary of Landlord, (whether or not such other property is subsequently voluntarily conveyed by Landlord) shall not, during the term of this Lease and any extensions, be leased, used or occupied as a restaurant or food service establishment. The term "restaurant or food service establishment" for the purposes of this restriction, shall mean any type of food service establishment that contains a drive-thru service window and that sells hamburgers; provided, however the incidental sale of hamburgers to the main menu items shall be permitted. In addition, and not by way of example, the following restaurants, with a drive-thru, operating under the listed trade names, or operating under any successor trade names, are prohibited within the areas, and for the time period specified in this Article; Burger Chef, Burger King, Carl's Jr., Fat Burger, In and Out Burgers, Jack-in-the-Box, Rally's, Sonic, Wendy's and White Castle.

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**Vitamin Shoppe Industries** - Landlord shall not execute and deliver any lease for space in the Landlord's Parcel or Affiliated Land (defined below) pursuant to which Landlord authorizes the use of any premises in Landlord's Parcel or on such Affiliated Land, as applicable, primarily for the sale, either singly or in any combination, of vitamins, mineral supplements, nutritional products and herbs ("Exclusive Use"). As used in this Section 10.8, the term "Affiliated Land" means any land contiguous or immediately adjacent to the Center now or in the future owned by Gateway Pavilions, L.L.C. (or its corporate successor) acquires such land.

Notwithstanding any provision of this Lease to the contrary, any tenant or occupant of Landlord's Parcel shall be permitted to use up to ten percent (10%) of its premises (not to exceed five hundred (500) square feet of Floor Area for the sale of the Exclusive Items, which Floor Area shall include an allocable portion of the aisle space adjacent to such sales area.

**Saba's Western Wear** - Use of premises: The Premises shall be used only for the retail sale of western wear, western accessories, work wear, western gifts and western furnishing (but not furniture) and for no other use or purpose. (Article 10)

(r) (i) Landlord shall not execute and deliver any lease for space in the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: western apparel and western merchandise ("Exclusive Use".)

**VoiceStream PCS III** - Landlord shall not execute and deliver any lease for space in the part of the Shopping Center shown as hatched on Exhibit A [Site Plan] - the "Exclusive Area" - pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail sale of wireless telephones and services ("Exclusive Use"). Additionally, Landlord will use its best efforts to prohibit all tenants in the Center under 10,000 square feet from selling VoiceStream cellular service.

**Great Clips** - Landlord shall not execute and deliver any lease for space in the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail operation of a family, no-appointment, hair-cutting business ("Exclusive Use").

**Gamestop, Inc** - Landlord shall not execute and deliver any lease for space in the Shopping Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail sale of entertainment software, video software and video game cartridges ("Exclusive Use").

**The UPS Store** - Landlord shall not execute and deliver any lease for space in the part of the Center designated Shop 5, Shop 6 and Shop 7 (collectively, the Exclusive Area)[As shown on Exhibit A (Site Plan)] pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail offering of postal services, including mail box services, packaging services and shipping services, and retail sales of related products; office supplies, fax, e-mail and Internet services; fingerprinting services; printing and laminating services; and photocopying services ("Exclusive Use"). In

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addition, Kinkos, or any other name derivative of Kinkos or FedEx (including drop boxes) shall not be allowed in the Exclusive Area.

**Starbucks** – Landlord shall not lease to or knowingly permit any other person or entity in the Shopping Center (except Tenant) occupying less than ten thousand (10,000) square feet of the Shopping Center the right to sell the items listed in (i), (ii) or (iii) below.

- (i) freshly ground or whole coffee beans;
- (ii) espresso, espresso-based coffee drinks or coffee-based drinks;
- (iii) gourmet, brand-identified brewed coffee (such as Coffee Bean, Peets, Diedrich Coffee); provided, that the sales of items listed in this item (iii) by any occupation of the Shopping Center are not subject to Tenant's exclusive as long as the sale of such items does not exceed ten percent (10%) of such occupant's gross sales.

This restriction shall also apply to kiosks and carts. Notwithstanding anything to the contrary contained herein, full service, sit-down restaurants that serve a complete dinner menu may sell brewed coffee or hot espresso drinks for on-premises consumption only and shall not be subject to the above sales percentage restrictions. Notwithstanding the foregoing, other tenants in the Shopping Center may sell non-gourmet, non-brand identified brewed coffee. Notwithstanding the foregoing, the exclusive restrictions set forth herein shall not apply to any occupant of Major "A" through Major "F" as shown on the Site Plan [Exhibit B].

In addition, the exclusive right set forth in Section 5.4 shall not prohibit the sale of (i) whole coffee beans, (ii) espresso or espresso-based coffee drinks or (iii) coffee-based drinks provided items (i) through (iii) are made from private label proprietary coffee beans, and are sold on a purely incidental basis (i.e., the sale of whole beans, espresso or espresso-based coffee drinks or coffee-based drinks does not equal more than five percent (5%) of gross sales during any calendar year and such products do not comprise more than five percent (5%) of the premises area) by Krispy Kreme Doughnut Corporation, a North Carolina corporation, its affiliates and/or franchisees and licensees.

**Gear 2 – (a.k.a. Quizno's)** - Landlord shall not execute and deliver any lease for space in the part of the Center designated Shop 5, Shop 6 and Shop 7 and Pad E (collectively, the Exclusive Area") pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail sale of submarine sandwiches ("Exclusive Use").

**Tan Frenzee** - Landlord shall not execute and deliver any lease for space in the part of the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail operation of a tanning salon ("Exclusive Use").

**Panda Express** - Landlord shall not execute and deliver any lease for space in the part of the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: a quick-serve restaurant which sells Asian food or uses a wok ("Exclusive Use"). For purposes hereof, (a) the term "Asian food" includes those foods that are Chinese, Japanese, Vietnamese, Thai, Mongolian, Hawaiian, Cajun or Korean

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cuisine; (b) primary use shall mean ten percent (10% of the gross sales or menu items of such business, and (c) quick-serve shall mean a restaurant that does not have waiters/waitresses that both take orders tableside and deliver food tableside.

**Eagle Flooring.** - Landlord shall not execute and deliver any lease for space in the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail sale of flooring ("Exclusive Use").

**Mattress Outlet** - Landlord shall not execute and deliver any lease for space in the Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for: the retail sale of mattresses ("Exclusive Use").

**Peter Piper Pizza** - Landlord shall not execute and deliver any lease for space in the Center, nor consent to a change in the permitted use defined in any lease for space in the Center executed and delivered by Landlord prior to the Effective Date (provided Landlord's withholding of such consent would not be a default under such lease), pursuant to which Landlord authorizes (a) the use of the premises demised by said lease primarily for: the retail sale of cooked pizza, or (b) the operation of more than ten video or arcade-type games in the premises demised by said lease (collectively, "Exclusive Use").

**Petco** - Landlord covenants and agrees that during the term of this Lease, Tenant shall have the exclusive right to sell pet food, pet supplies, live animals, pet grooming, pet training, and veterinary services in the Shopping Center. Landlord agrees not to sell to, lease to, nor approve any sublease or assignment of lease, or change in use, unless prevented by the terms of any lease then currently in force and effect, for any competing tenant, sub-tenant, assignee or user except for the incidental sale of such items or services. Incidental Sales shall mean the sale or display of such items or services not as the primary use of the competing tenant and taking up no more than five hundred (500) square feet of the floor area in such premises.

**Borders**- Landlord will not lease, rent or occupy, or permit any premises in the Shopping Center or any property contiguous with or adjacent to the Shopping Center that is owned or leased by Landlord to be used or occupied for the sale of (A) books, (B) periodicals, (C) video products, or (D) music products (pre-recorded music media such as CD's, tapes, and records, and related accessories)(in any current or future format of such enumerated items) unless that subject matter of such items is directly related and ancillary to the primary use of such other tenant's premises (e.g., a computer store which sells books or periodicals dealing with computer products), and not more than the lesser of (1) 200 square feet of surface display area, or (2) five percent (5%) of the total gross leasable area of such tenant's premises is devoted to the retail display of such related items (the "Merchandise Exclusive").

(i) The Merchandise Exclusive shall not be binding or enforceable by Tenant with respect to Costco or its assignees or sublessees.

(ii) The Merchandise Exclusive shall not be binding or enforceable by Tenant.

07 JUL 31 11:41 AM '42

with respect to Harkins or its assignees or sublessees.

(iii) The Merchandise Exclusive shall not restrict the incidental sale of books, periodicals, music products or video products within premises primarily used for operation of a supermarket, grocery store, drugstore or pharmacy, or a national department store such as Kohl's or Target.

(iv) As between Tenant Circuit City, the Merchandise Exclusive will be modified as set forth in the letter agreement attached to this Lease as Exhibit N, as such letter may hereafter be modified.

(v) As between Tenant and Bed Bath & Beyond, the Merchandise Exclusive will be modified as set forth in the letter agreement attached to this Lease as Exhibit O, as such letter may hereafter be modified.

(vi) As between Tenant and TJX Companies (on behalf of Marshalls and TJ Maxx), the Merchandise Exclusive will be modified as set forth in the letter agreement attached to this Lease as Exhibit P, as such letter may hereafter be modified.

(vii) The Merchandise Exclusive shall not restrict the incidental sale of books, periodicals or music products by a Starbucks located within the Shopping Center so long as the quantity and merchandise mix of such items is substantially similar to that carried in the majority of other Starbucks stores in the metropolitan Phoenix area.

If Tenant ceases to use the demised premises for any specific use encompassed by the Merchandise Exclusive, and if such cessation continues uninterrupted for a period of twelve (12) consecutive months (excluding any period in which the demised premises or any portion thereof are not open to the public due to repair or restoration following casualty or condemnation, remodeling, Force Majeure or other reason beyond Tenant's reasonable control), then, at the end of such twelve (12) month period, the Merchandise Exclusive shall be deemed to have been modified by the deletion of such specific use (e.g., if Tenant does not sell music products for a twelve (12) month period, then the Merchandise Exclusive shall not include an exclusive right to sell music products, but the Merchandise Exclusive shall continue to include the exclusive right to sell books and periodicals).

**Marshall's**-(B) Subject to the provisions of Section 4(C) below, Landlord agrees that, during the term of this lease, no other premises in the Developer Block shall at any time contain more than fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of brand-name off-price apparel, including in the computation of such floor area one-half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of soft goods. For purposes hereof, the sale or display of "brand-name off-price apparel" shall mean the sale of brand-name apparel on an every day basis at prices reduced from those charged by typical apparel retailers, but does not include apparel sales events by a typical apparel retailer at prices discounted from that retailer's every day prices. Notwithstanding the foregoing, the provisions of this Paragraph 4(B) shall not apply to a store, such as Gart Sports, Sportmart or Oshman's which primarily sells sporting goods, sports apparel

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or athletic footwear.

**Jamba Juice** - Landlord agrees that during the term of the Lease or any extension thereof, Tenant shall have the exclusive right to operate within the Shopping Center a business with a primary use that is the retail sales of juices, blended juice based drinks and juice related equipment and supplies (collectively, the "Exclusive Uses").

**Krispy Kreme**

28.14 **NO IMPLICATION OF EXCLUSIVE USE.** Nothing contained in this Lease shall be deemed to give Tenant an express or implied exclusive right to operate any particular type of business in the Center.

**Red Robin**

28.14 **NO IMPLICATION OF EXCLUSIVE USE.** Nothing contained in this Lease shall be deemed to give Tenant an express or implied exclusive right to operate any particular type of business in the Center.

**Peter Piper Pizza**

10.8 **Exclusive.**

1. From and after the Effective Date, Landlord shall not execute and deliver any lease for space in the Center, nor consent to a change in the permitted use defined in any lease for space in the Center executed and delivered by Landlord prior to the Effective Date (provided Landlord's withholding of such consent would not be a default under such lease), pursuant to which Landlord authorizes: (a) the use of the premises demised by said lease primarily for the retail sale of cooked pizza, or (b) the operation of more than ten video or arcade-type games in the premises demised by said lease (collectively, "Exclusive Use")

2. Intentionally omitted.

2. Further notwithstanding anything in this Lease to the contrary, the Exclusive Use shall not apply: (i) to any portion of the Center not owned, or the use of which is not controlled, by Landlord as of the date of the Effective Date, (ii) to any space in the Center containing 15,000 square feet of floor area or more which space is leased to or occupied or owned by a single person or entity, provided, however, that the lease(s) for such space(s) were in existence prior to the Effective Date or, whether or not in existence prior to the Effective Date, are applicable to any occupant of those spaces identified on Exhibit A as Major A, Major B, Major C, Major D, Major E or Major F, (iii) to one (1) Italian-style restaurant whose principal menu items are not cooked pizza, (iv) to one (1), full-service pizza restaurant serving alcoholic beverages, for example, without limitation, Pizzeria Uno and California Pizza Kitchen, and (v) to one pizza delivery operation, not exceeding 2,000 square

6. Except as expressly set forth in this Lease, Tenant shall have no exclusive right, express or implied, to conduct business of any nature whatsoever in the Center.

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feet of Floor Area, (vi) as to the retail sale of cooked pizza only, to any pad space occupied by a single tenant where such tenant's Gross Sales (as such are defined in section 6.3 (c) above) from the sale of cooked pizza in any calendar year does not exceed ten percent (10%) of such tenant's total Gross Sales in such calendar year, and (vii) to any leases in existence as of the Effective Date (which leases are listed on Exhibit O attached hereto and made apart hereof), and any amendments, extensions and renewals thereof, provided, however, that Landlord's consent to a change in the use permitted under such leases is not required by such leases...

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**Gateway Pavilions  
(5033)**

**Prohibited Use**

**Tenant**

**Costco Wholesale Corp.** – No use or operation will be made, conducted or permitted on or with respect to all or any part of the Project, which use or operation is the following:

- a) any public or private nuisance;
- b) any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- c) any obnoxious odor;
- d) any excessive quantity of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or general merchandise store;
- e) any fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks, but the forgoing shall not prohibit the operations of a gas station or propane sales facility in accordance with applicable law;
- f) except as provided in Subsection (x) below, any primary use as a storage warehouse operation, and any assembling, manufacturing, distillation, refining, smelting, agriculture or mining operations;
- g) any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising. Notwithstanding the foregoing, pet shops shall be permitted within the Project. This prohibition shall not, however, be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance;
- h) any drilling and/or removal of subsurface substances;
- i) any dumping of garbage or refuse, other than in enclosed receptacles intended for such purpose (but the same does not prohibit government-required consumer recycling facilities);
- j) any cemetery; veterinary hospital, mortuary or similar service establishment;
- k) any car washing establishment on the North Center Zone;
- l) any automobile body and fender repair work;
- m) without the consent of all the Approving Owners, which may be withheld in their respective sole and absolute discretion, any entertainment, recreation or amusement use, whether directed to children or adults ("Entertainment Uses"), except (i) that arcade and video games uses shall be permitted without such consent in the locations and aggregate sizes described in Section 4.12 (c), and (ii) that Entertainment Uses shall be permitted without such consent, after that date which is seven years after the initial opening of the Building on the Costco Block solely within those areas on the Costco Block that may be used for wholesale uses or warehousing under Section 52(x) below. "Entertainment Uses" shall include,

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without limitation, any one or more of the following: skating rink, bowling alley, teenage discotheque, discotheque, dance hall, video game parlor, pool room, massage parlor, off-track betting facility, casino, card club, bingo parlor, facility containing gaming equipment planned play environment, arcade games, amusement gallery, rides, video or redemption games, play for fun casino games, golf simulations, rodeo simulations, other sport simulations and carnival activities;

- n) (1) without the consent of all the Approving Owners which may be withheld in their respective sole and absolute discretion, health spas, health clubs, gyms, exercise studios, dance studios, yoga or martial arts schools or similar facilities ("Health Clubs") of over 25,000 square feet of Floor Area in size.  
(2) In addition to the limitation under clause (1) above, without the consent of the Approving Owner of the Costco Block which may be withheld in its sole and absolute discretion, any Health Club in the North Center Zone, North West Major Area, Satellite Zone A or Satellite Zone B except that a Health Club shall be permitted on the Northwest Major Area so long as it has no entrance closer than eight hundred feet (800') to the Costco Block;
- o) any use violation of Section 5.4 below;
- p) any fire sale, flea market, bankruptcy sale (unless pursuant to court order) or auction operation;
- q) any automobile, truck, trailer, or recreational vehicle sales, leasing or display which is not entirely conducted inside of a Building, except as provided in Section 5.3 (c) below;
- r) without the consent of the Approving Owner of the Costco Block which may be withheld in its sole and absolute discretion, any bar, tavern, restaurant or other establishment whose annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds fifty percent (50%) of the gross revenues of such business on the North Center Zone, North West Major Area, Satellite Zone A or Satellite Zone B.
- s) without the consent of all Approving Owners which may be withheld in their respective sole and absolute discretion, any school, training, educational or day care facility, including but not limited to: beauty schools, barber colleges, nursery schools, diet centers, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers ("Schools"); provided however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business at the Project;
- t) except as provided in Section 4.12(a) above, without the consent of the Approving Owner of the Costco Block which may be withheld in its sole and absolute discretion, any Restaurant, Fast Food facility, Snack Shop, bar, tavern, or other establishment serving prepared food or drink for on-premises or immediate off-premises consumption on the North Center Zone or North West Major Area;
- u) any industrial or office use (except that not more than 10% of the Floor Area on each of the Costco Block, Developer Block, and Harkins Block [As defined in the REA] may be used for small retail office use);
- v) any church, synagogue, mosque or other place of worship;
- w) any hotel, motel or lodging facility;
- x) subject to the following Limitations, the Costco Block may be utilized for

07 JUL 31 10:47 AM '12

wholesale sales or warehousing uses which do not constitute "retail" sales under Section 5.1 above from and after that date which is seven (7) years after the initial opening of the Building on the Costco Block so long as: (i) the eighty foot (80') depth of the eastern side, except for the northern thirty feet (30') of such eastern side, of any Building(s) located on the Costco Block are utilized, if at all, for uses permitted under Section 5.1 - without regard to this subsection (x) and (ii) all truck access to any such uses is limited to 9gm Avenue. If the Costco Block is utilized for wholesale sales of warehousing as aforesaid, then the Buildings within the northerly Envelope Areas on the North Center Zone or North West Major Area (i.e., excluding those Envelope Areas designated "Major F" and "Major G" on the Site Plan) may be utilized for wholesale sales or warehousing so long as (i) the southern one hundred foot (100') depth (along the entire southern frontage) of any such Buildings utilized, if at all, for uses permitted under Section 5.1 without regard to this subsection, (ii) no buck access to such uses occurs on the Costco Block or Harkins Block and (iii) the Approving Owners with respect to the Developer Block and Harkins Block, in the sole and absolute discretion of each, have approved such use;

- y) any apartment, home or residential use;
- z) any dry cleaners having an on-premises plant which utilizes perchloroethylene, trichloroethelene, petroleum hydrocarbons or any distillate or compound thereof of any "Hazardous Substance" (as defined in 42 USC 960 1 (14) or any successor statute) or which is within four hundred feet (400') of the Building on the Harkins Block;
- aa) the sale or distribution of popcorn for off-premises consumption shall be prohibited in Shops 1, 2, 3, and 4, and the Northwest Major Area; in Shops 1, 2, 3, and 4 and the Northwest Major Area, no Occupant shall advertise the sale of candy, shall sell candy to the extent such sales shall exceed 5% of its total sales or shall sell any individual packages of candy exceeding 3.5 ounces;
- ab) without the consent of the Approving Owner of the Costco Block which may be withheld in its sole and absolute discretion, any theatre or cinema on the Developer Block. The foregoing is in addition to the "exclusive" under Section 5W below;
- ac) without the consent of all of the Approving Owners, any bar, tavern, restaurant or other establishment which derives more than 50% of the gross revenues of such business from the sale of alcoholic beverages for on-premises consumption which is not operated by nationally or regional recognized user (e.g., as of the Effective Date, Houlihan's, Dave and Buster's, Gian's, Gameworks, and Rock Bottom Brewery and similar users.

07 JUL 21 09:16: PM 412

Cold Stone Creamery – The Premises (a) shall not have a drive-through lane or windows, (b) shall not sell alcoholic beverages, (c) shall not provide waiter or waitress service, and (d) shall not be a “Fast Food” or “Restaurant”

Circuit City – (viii) Prohibited Activities – Landlord shall not operate or lease (or permit to be operated or leased) any building or tenant space in the Shopping Center and Tenant shall not use the Premises for any uses prohibited by the terms of the REA and as set forth in Exhibit “F”.

1. Any use prohibited under the REA.
2. Any use requiring, under the provisions of the REA, parking greater than 4.5 spaces per 1,000 square feet of floor area;
3. Any “second hand” store, “surplus” store (it being agreed that the foregoing restriction shall not prohibit a single “second-hand” store of the type commonly located in first-class shopping centers in Avondale, Arizona, such as Consign and Design, Play-It-Again Sports and Once Upon a Child);
4. Any so-called “head shop,” or other establishment primarily selling or exhibiting drug-related paraphernalia;
5. Any central laundry, dry cleaning plant, or Laundromat (except that a dry cleaner that performs all dry cleaning outside the Shopping center shall be permitted);
6. Any automobile, truck, trailer, boat or recreational vehicle sales, leasing or display;
7. Any “Pornographic Use,” which shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or “X” or unrated by the Motion Picture Rating Association, or any successor thereto. The parties hereto acknowledge and agree the sale of books, magazines and other publications by a national bookstore or the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Border’s and Barnes & Noble, as said stores currently operate) shall not be deemed a “Pornographic use” hereunder;
8. Any massage parlor;
9. Any medical offices, other than those typically located in first class shopping centers and then not located in the buildings identified as “Majors” on the Site Plan, or medical clinics or family planning facilities, e.g., Planned Parenthood;
10. Any office use, other than: (x) office space used in connection with and ancillary to a permitted retail use hereunder; and (y) retail offices providing services commonly found in similar first-class shopping centers in the Phoenix metropolitan area (for example, financial services, real estate brokerage, insurance agency, banking, travel agency).
11. Any pawn shop, gun shop, or tattoo parlor;
12. Any car wash located in the areas labeled “Majors,” “Shops 4,” “Pad K” or “Pad

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- L" on the Site Plan [Exhibit A];
13. Any catering or banquet hall;
  14. Any bowling alley or skating rink;
  15. Any live performance theater, auditorium, meeting hall, sporting event, or other entertainment use "Entertainment Use" as defined in the REA);
  16. Any training or education facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business at the Shopping Center;
  17. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video; video poker/black-jack/keno machines or similar devises; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to such gambling activities, so long as such activities are incidental to the business operation being conducted by the occupant;
  18. Any carnival, amusement park or circus;
  19. Any daycare center located in the areas labeled "Majors," "Shops 4," "Pad K" or "Pad L" on the Site Plan;
  20. Any children's entertainment or activity facility (such as "Discovery Zone," or "Chuck E. Cheese's") in the areas "Pad L" "Shops 4," or "Majors," on the Site Plan;
  21. Any beauty parlor or nail salon located in the areas labeled "Majors," "Pad K" or "Pad L" on the Site Plan;
  22. Any health spa, exercise facility or similar type business located in the areas labeled "Majors," "Pad K" or "Pad L"

**Port of Subs** – Use of premises: The Premises shall be used only for the retail operation of a submarine sandwich shop, and for no other use or purpose. As further restrictions, (a) the Premises shall not be used for the sale of alcoholic beverages, and (b) waiter or waitress service shall not be provided in the Premises.

**Bed Bath & Beyond** – Prohibited uses – Landlord shall construct, lease, operate, maintain and manage the Shopping Center as a shopping center comparable to similar shopping centers in the State of Arizona. Landlord shall not lease, rent or occupy or permit any portion of the Shopping Center or on either of the Other Tracts [Defined as the "Costco Block" and the "Harkins Block"] to the extent that either or both of the Other Tracts are now or hereafter owned or controlled by Landlord or its Affiliate(s) (the Other Tracts, from the date that Landlord or its Affiliate(s) has any ownership interest therein of control thereof being hereinafter referred to as the "Related Land"), to be occupied (except to the extent otherwise permitted under any lease for space in the Shopping Center existing as of the Effective Date or for space on the Related Land as of the date of Other Tract became Related Land hereunder) for any of the "Prohibited Uses" (defined in Exhibit M hereto annexed).

Exhibit M – As used in this Lease, the term "Prohibited Uses" shall mean: (i) any of

07 JUL 31 09:04 PM 412

the uses prohibited or restricted (but only to the extent so restricted), as of the Effective Date, by the REA; (ii) any use requiring, under Section 4.8 (ii) of the REA, parking greater than 5.5 spaces per 1,000 square feet of Floor Area or under Section 4.10 (i) of the REA, parking greater than 4.5 spaces per 1,000 square feet of Floor Area (as defined in the REA); and (iii) the following uses:

- 1 Any "second hand" store, "surplus" store (it being agreed that the foregoing restriction shall not prohibit a "second-hand" store of the type commonly located in first-class shopping centers in Avondale, Arizona, such as Consign and Design, Play-It-Again Sports and Once Upon a Child); provided that same shall be located at least one hundred (100) linear feet from the perimeter of the Premises and maintain approximately the same hours of operation as other stores located in the Shopping Center);
- 2 Any so-called "head shop," or other establishment primarily selling or exhibiting drug-related paraphernalia;
- 3 Any central laundry, dry cleaning plant, or Laundromat (except that a dry cleaner that performs all dry cleaning outside the Shopping center shall be permitted); so long as its on-site premises are not located in the premises labeled "Majors" on Exhibit B [Site Plan];
- 4 Any automobile, truck, trailer, boat or recreational vehicle sales, leasing or display shall be a prohibited use on the Shopping Center notwithstanding that such use is permitted inside any building under the REA;
- 5 Any "Pornographic Use," which shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto. The parties hereto acknowledge and agree the sale of books, magazines and other publications by a national bookstore of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Border's and Barnes & Noble, as said stores currently operate) shall not be deemed a "Pornographic use" hereunder; or massage parlor;
- 6 Any medical offices, other than those typically located in first class shopping centers and then not located in the buildings identified as "Majors", or medical clinics or family planning facilities;
- 7 Any supermarket, except that a first class supermarket shall be permitted if located at least two hundred (200) feet away from the Premises and the door to the supermarket is located at least two hundred and fifty (250) feet away from the Premises;
- 8 Any office use, other than: (x) office space used in connection with and ancillary to a permitted retail use hereunder; and (y) retail offices providing services commonly found in similar first-class shopping centers in the Phoenix metropolitan area (for example, financial services, real estate brokerage, insurance agency, banking, travel agency); provided that such uses are located at least

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seventy-five (75) feet away from the Premises, contain not more than thirty thousand (30,000) square feet in the aggregate in the Shopping Center shall be devoted to such uses, and such uses shall not be located in "Majors," or "Pad L" on Exhibit B; or comprise more than five thousand square feet of Floor Area on "Pad K" on Exhibit B.

- 9 Any pawn shop, gun shop, or tattoo parlor;
- 10 Any car wash located in the areas labeled "Majors," "Shops 4," "Pad K" or "Pad L" on the Exhibit B

In addition, while the following uses are permitted under the REA with the consent of certain parties, Landlord hereby agrees not to use, permit or consent to any of the following uses on any part of the Shopping Center or the Other Tracts to the extent the Landlord may withhold consent under the REA without being in default thereunder;

- 1 Any bar, tavern, or other establishment selling alcoholic beverages for on- or off-premises consumption, except a restaurant as other permitted herein;
- 2 Any catering or banquet hall;
- 3 Any amusement or vide arcade (other than in "Shops 3" or "Pad K" on Exhibit B, except that such use on "Pad K" shall be incidental to a restaurant and the entrance/exit to such premises shall not face east), pool or billiard hall, night club, discotheque, or dance hall;
- 4 Any bowling alley or skating rink;
- 5 Any live performance theater, auditorium, meeting hall, sporting event, or other entertainment use "Entertainment Use" as defined in the REA);
- 6 Any training or education facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business at the Shopping Center;
- 7 Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devises; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Occupant;
- 8 Any carnival, amusement park or circus;
- 9 daycare center
- 10 children's entertainment or activity facility (such as "Discovery Zone," or "Chuck E. Cheese's") in the areas "Pad L" "Shops 4," or "Majors," on Exhibit B
- 11 Restaurant serving meals for on-or off-premises consumption in the areas labeled "Pad L" "Shops 4" or Majors" on Exhibit B and, the sale of alcohol from restaurants in the Shopping Center shall not exceed 40% of each such restaurant's gross sales;
- 12 beauty parlor or nail salon located in the areas labeled "Majors," on Exhibit B; or
- 13 health spa, exercise facility or similar type business located in the areas

17 JUL 31 11:41 AM '82

labeled "Majors," or "Pad L" on Exhibit B.

Carrabba's Italian Grill – LANDLORD covenants and agrees that it will not operate or permit any other tenant in any portions of the Restricted Area (As shown on the Site Plan) to operate (i) any Restaurant, Fast Food Restaurant, or Snack Shop (all as defined in the REA), in excess of 4,500 square feet.; (ii) any facility utilizing an on-premises alcoholic beverage license or (iii) any use prohibited in the REA.

Marshall's- 4. (A) Landlord agrees that as long as any retail sales activity shall be conducted in the Demised Premises the Developer Block shall not be used (a) for any entertainment purposes such as a bowling alley or skating rink (b) or for any establishment which sells or displays pornographic materials (other than as an incidental use in a non-pornographic bookstore) or (c) for any establishment which sells or displays used merchandise or second hand goods. Notwithstanding the provisions of clause (b) above, a bar, nightclub, discoteque, amusement gallery, poolroom, sporting event, sports or game facility, off-track betting club and similar entertainment uses shall be permitted so long as the primary use of the tenant in question is a Restaurant. For purposes of the immediately preceding sentence only, the primary use of a tenant shall be deemed to be a Restaurant if at least fifty percent (50%) of its revenues comes from the sale of food and non-alcoholic beverages, and not from any of the entertainment uses described in the immediately preceding sentence. Health clubs shall not be permitted within "Shop 4," the buildings identified as "Major A" through "Major F." No offices shall be permitted within Pad K, Pad L, or those buildings identified as "Major A" through "Major F" on the Lease Plan [Schedule A] other than offices which are incidental to a retail use. Up to two (2) spaces within "Shop 4" may be used as either offices or fast food or quick service restaurants, provided that such spaces do not exceed 2,500 square feet individually or 5,000 square feet in the aggregate. Except as set forth in the immediately preceding three sentences, and subject to the terms of the REA, restaurants and offices shall be permitted within the Developer Block [Defined in REA]. Notwithstanding the foregoing, the provisions of this Paragraph 4(A) shall not prohibit tenants such as "Play It Again Sports," "Terri's Consign and Design," or similar uses.

## **Jamba Juice**

### Prohibited Use

#### Tenant

Costco Wholesale Corp. – No use or operation will be made, conducted or permitted on or with respect to all or any part of the Project, which use or operation is the following:

- o) any public or private nuisance;
- p) any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- q) any obnoxious odor;
- r) any excessive quantity of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or general merchandise store;
- s) any fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of

- explosives or fireworks, but the forgoing shall not prohibit the operations of a gas station or propane sales facility in accordance with applicable law;
- t) except as provided in Subsection (x) below, any primary use as a storage warehouse operation, and any assembling, manufacturing, distillation, refining, smelting, agriculture or mining operations;
  - u) any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising. Notwithstanding the foregoing, pet shops shall be permitted within the Project. This prohibition shall not, however, be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance;
  - v) any drilling and/or removal of subsurface substances;
  - w) any dumping of garbage or refuse, other than in enclosed receptacles intended for such purpose (but the same does not prohibit government-required consumer recycling facilities);
  - x) any cemetery; veterinary hospital, mortuary or similar service establishment;
  - y) any car washing establishment on the North Center Zone;
  - z) any automobile body and fender repair work;
  - aa) without the consent of all the Approving Owners, which may be withheld in their respective sole and absolute discretion, any entertainment, recreation or amusement use, whether directed to children or adults ("Entertainment Uses"), except (i) that arcade and video games uses shall be permitted without such consent in the locations and aggregate sizes described in Section 4.12 (c), and (ii) that Entertainment Uses shall be permitted without such consent, after that date which is seven years after the initial opening of the Building on the Costco Block solely within those areas on the Costco Block that may be used for wholesale uses or warehousing under Section 52(x) below. "Entertainment Uses" shall include, without limitation, any one or more of the following: skating rink, bowling alley, teenage discotheque, discotheque, dance hall, video game parlor, pool room, massage parlor, off-track betting facility, casino, card club, bingo parlor, facility containing gaming equipment planned play environment, arcade games, amusement gallery, rides, video or redemption games, play for fun casino games, golf simulations, rodeo simulations, other sport simulations and carnival activities;
  - ab) (1) without the consent of all the Approving Owners which may be withheld in their respective sole and absolute discretion, health spas, health clubs, gyms, exercise studios, dance studios, yoga or martial arts schools or similar facilities ("Health Clubs") of over 25,000 square feet of Floor Area in size.  
(2) In addition to the limitation under clause (1) above, without the consent of the Approving Owner of the Costco Block which may be withheld in its sole and absolute discretion, any Health Club in the North Center Zone, North West Major Area, Satellite Zone A or Satellite Zone B except that a Health Club shall be permitted on the Northwest Major Area so long as it has no entrance closer than eight hundred feet (800') to the Costco Block;
  - c) any use violation of Section 5.4 below;
  - p) any fire sale, flea market, bankruptcy sale (unless pursuant to court order) or auction operation;
  - ab) any automobile, truck, trailer, or recreational vehicle sales, leasing or display which is not entirely conducted inside of a Building, except as provided in Section 5.3 (c) below;
  - ac) without the consent of the Approving Owner of the Costco Block which may be withheld in its sole and absolute discretion, any bar, tavern, restaurant or other establishment whose annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds fifty percent (50%) of the gross revenues of such business on the North Center Zone, North West Major Area, Satellite Zone A or Satellite Zone B.
  - ad) without the consent of all Approving Owners which may be withheld in their respective sole and absolute discretion, any school, training, educational or day care facility, including but not limited to: beauty schools, barber colleges, nursery schools, diet centers, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers ("Schools"); provided however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business at the Project;
  - ae) except as provided in Section 4.12(a) above, without the consent of the Approving Owner of the Costco Block which may be withheld in its sole and absolute discretion, any Restaurant, Fast Food facility, Snack Shop, bar, tavern, or other establishment serving prepared food or drink for on-premises or immediate off-premises consumption on the North Center Zone or North West Major Area;
  - af) any industrial or office use (except that not more than 10% of the Floor Area on each of the Costco

07 JUL 31 14: 06: 34 13

- Block, Developer Block, and Harkins Block may be used for small retail office use);
- ag) any church, synagogue, mosque or other place of worship;
  - ah) any hotel, motel or lodging facility;
  - ai) subject to the following Limitations, the Costco Block may be utilized for wholesale sales or warehousing uses which do not constitute "retail" sales under Section 5.1 above from and after that date which is seven (7) years after the initial opening of the Building on the Costco Block so long as: (i) the eighty foot (80') depth of the eastern side, except for the northern thirty feet (30') of such eastern side, of any Building(s) located on the Costco Block are utilized, if at all, for uses permitted under Section 5.1 – without regard to this subsection (x) and (ii) all truck access to any such uses is limited to 9<sup>th</sup> Avenue. If the Costco Block is utilized for wholesale sales of warehousing as aforesaid, then the Buildings within the northerly Envelope Areas on the North Center Zone or North West Major Area (i.e., excluding those Envelope Areas designated "Major F" and "Major G" on the Site Plan) may be utilized for wholesale sales or warehousing so long as (i) the southern one hundred foot (100') depth (along the entire southern frontage) of any such Buildings utilized, if at all, for uses permitted under Section 5.1 without regard to this subsection, (ii) no truck access to such uses occurs on the Costco Block or Harkins Block and (iii) the Approving Owners with respect to the Developer Block and Harkins Block, in the sole and absolute discretion of each, have approved such use;
  - aj) any apartment, home or residential use;
  - ak) any dry cleaners having an on-premises plant which utilizes perchloroethylene, trichloroethylene, petroleum hydrocarbons or any distillate or compound thereof of any "Hazardous Substance" (as defined in 42 USC 9601 (14) or any successor statute) or which is within four hundred feet (400') of the Building on the Harkins Block;
  - al) the sale or distribution of popcorn for off-premises consumption shall be prohibited in Shops 1,2,3, and 4, and the Northwest Major Area; in Shops 1,2,3, and 4 and the Northwest Major Area, no Occupant shall advertise the sale of candy, shall sell candy to the extent such sales shall exceed 5% of its total sales or shall sell any individual packages of candy exceeding 3.5 ounces;
  - ab) without the consent of the Approving Owner of the Costco Block which may be withheld in its sole and absolute discretion, any theatre or cinema on the Developer Block. The foregoing is in addition to the "exclusive" under Section 5.w below;
  - ac) without the consent of all of the Approving Owners, any bar, tavern, restaurant or other establishment which derives more than 50% of the gross revenues of such business from the sale of alcoholic beverages for on-premises consumption which is not operated by nationally or regional recognized user (e.g., as of the Effective Date, Houlihan's, Dave and Buster's, Gian's, Gameworks, and Rock Bottom Brewery, and similar users.

Cold Stone Creamery – The Premises (a) shall not have a drive-through lane or windows, (b) shall not sell alcoholic beverages

Circuit City – (viii) Prohibited Activities – Landlord shall not operate or lease (or permit to be operated or leased) any building or tenant space in the Shopping Center and Tenant shall not use the Premises for any uses prohibited by the terms of the REA and as set forth in Exhibit "F".

- 23. Any use prohibited under the REA.
- 24. Any use requiring, under the provisions of the REA, parking greater than 4.5 spaces per 1,000 square feet of floor area;
- 25. Any "second hand" store, "surplus" store (it being agreed that the foregoing restriction shall not prohibit a single "second-hand" store of the type commonly located in first-class shopping centers in Avondale, Arizona, such as Consign and Design, Play-It-Again Sports and Once Upon a Child);
- 26. Any so-called "head shop," or other establishment primarily selling or exhibiting drug-related paraphernalia;
- 27. Any central laundry, dry cleaning plant, or Laundromat (except that a dry cleaner that performs all dry cleaning outside the Shopping center shall be permitted);
- 28. Any automobile, truck, trailer, boat or recreational vehicle sales, leasing or display;
- 29. Any "Pornographic Use," which shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs,

07 JUL 31 09:10: PM 4:15

drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto. The parties hereto acknowledge and agree the sale of books, magazines and other publications by a national bookstore or the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Border's and Barnes & Noble, as said stores currently operate) shall not be deemed a "Pornographic use" hereunder;

30. Any massage parlor;
31. Any medical offices, other than those typically located in first class shopping centers and then not located in the buildings identified as "Majors" on the Site Plan, or medical clinics or family planning facilities, e.g., Planned Parenthood;
32. Any office use, other than: (x) office space used in connection with and ancillary to a permitted retail use hereunder; and (y) retail offices providing services commonly found in similar first-class shopping centers in the Phoenix metropolitan area (for example, financial services, real estate brokerage, insurance agency, banking, travel agency).
33. Any pawn shop, gun shop, or tattoo parlor;
34. Any car wash located in the areas labeled "Majors," "Shops 4," "Pad K" or "Pad L" on the Site Plan;
35. Any catering or banquet hall;
36. Any bowling alley or skating rink;
37. Any live performance theater, auditorium, meeting hall, sporting event, or other entertainment use "Entertainment Use" as defined in the REA);
38. Any training or education facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business at the Shopping Center;
39. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video; video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to such gambling activities, so long as such activities are incidental to the business operation being conducted by the occupant;
40. Any carnival, amusement park or circus;
41. Any daycare center located in the areas labeled "Majors," "Shops 4," "Pad K" or "Pad L" on the Site Plan;
42. Any children's entertainment or activity facility (such as "Discovery Zone," or "Chuck E. Cheese's") in the areas "Pad L" "Shops 4," or "Majors," on the Site Plan;
43. Any beauty parlor or nail salon located in the areas labeled "Majors," "Pad K" or "Pad L" on the Site Plan;
44. Any health spa, exercise facility or similar type business located in the areas labeled "Majors," "Pad K" or "Pad L"

Port of Subs – Use of premises: The Premises shall be used only for the retail operation of a submarine sandwich shop, and for no other use or purpose. As further restrictions, (a) the Premises shall not be used for the sale of alcoholic beverages, and (b) waiter or waitress service shall not be provided in the Premises.

Bed Bath & Beyond – Prohibited uses – Landlord shall construct, lease, operate, maintain and manage the Shopping Center as a shopping center comparable to similar shopping centers in the State of Arizona. Landlord shall not lease, rent or occupy or permit any portion of the Shopping Center or on either of the Other Tracts to the extent that either or both of the Other Tracts are now or hereafter owned or controlled by Landlord or its Affiliate(s) (the Other Tracts, from the date that Landlord or its Affiliate(s) has any ownership interest therein of control thereof being hereinafter referred to as the "Related Land"), to be occupied (except to the extent otherwise permitted under any lease for space in the Shopping Center existing as of the Effective Date or for space on the Related Land as of the date of Other Tract became Related Land hereunder) for any of the "Prohibited Uses" (defined in Exhibit M

07 JUL 2019 10:43 AM

hereto annexed).

Exhibit M – As used in this Lease, the term “Prohibited Uses” shall mean: (i) any of the uses prohibited or restricted (but only to the extent so restricted), as of the Effective Date, by the REA; (ii) any use requiring, under Section 4.8 (ii) of the REA, parking greater than 5.5 spaces per 1,000 square feet of Floor Area or under Section 4.10 (i) of the REA, parking greater than 4.5 spaces per 1,000 square feet of Floor Area (as defined in the REA); and (iii) the following uses:

- 2 Any “second hand” store, “surplus” store (it being agreed that the foregoing restriction shall not prohibit a “second-hand” store of the type commonly located in first-class shopping centers in Avondale, Arizona, such as Consign and Design, Play-It-Again Sports and Once Upon a Child); provided that same shall be located at least one hundred (100) linear feet from the perimeter of the Premises and maintain approximately the same hours of operation as other stores located in the Shopping Center);
- 2 Any so-called “head shop,” or other establishment primarily selling or exhibiting drug-related paraphernalia;
- 11 Any central laundry, dry cleaning plant, or Laundromat (except that a dry cleaner that performs all dry cleaning outside the Shopping center shall be permitted); so long as its on-site premises are not located in the premises labeled “Majors” on Exhibit B [Exhibit currently be collected];
- 12 Any automobile, truck, trailer, boat or recreational vehicle sales, leasing or display shall be a prohibited use on the Shopping Center notwithstanding that such use is permitted inside any building under the REA;
- 13 Any “Pornographic Use,” which shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or “X” or unrated by the Motion Picture Rating Association, or any successor thereto. The parties hereto acknowledge and agree the sale of books, magazines and other publications by a national bookstore of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Border’s and Barnes & Noble, as said stores currently operate) shall not be deemed a “Pornographic use” hereunder; or massage parlor;
- 14 Any medical offices, other than those typically located in first class shopping centers and then not located in the buildings identified as “Majors”, or medical clinics or family planning facilities;
- 15 Any supermarket, except that a first class supermarket shall be permitted if located at least 200 feet away from the Premises and the door to the supermarket is located at least 250 feet away from the Premises;
- 16 Any office use, other than: (x) office space used in connection with and ancillary to a permitted retail use hereunder; and (y) retail offices providing services commonly found in similar first-class shopping centers in the Phoenix metropolitan area (for example, financial services, real estate brokerage, insurance agency, banking, travel agency); provided that such uses are located at least seventy-five (75) feet away from the Premises, contain not more than thirty thousand (30,000) square feet in the aggregate in the Shopping Center shall be devoted to such uses, and such uses shall not be located in “Majors,” or “Pad L” on Exhibit B [Exhibit currently be collected]; or comprise more than five thousand square feet of Floor Area on “Pad K” on Exhibit B [Exhibit currently be collected].
- 17 Any pawn shop, gun shop, or tattoo parlor;
- 18 Any car wash located in the areas labeled “Majors,” “Shops 4,” “Pad K” or “Pad L” on the Exhibit B [Exhibit currently be collected]

In addition, while the following uses are permitted under the REA with the consent of certain parties, Landlord hereby agrees not to use, permit or consent to any of the following uses on any part of the Shopping Center or the Other Tracts to the extent the Landlord may withhold consent under the REA without being in default thereunder;

- 14 Any bar, tavern, or other establishment selling alcoholic beverages for on- or off-premises consumption, except a restaurant as other permitted herein;
- 15 Any catering or banquet hall;

07 JUL 31 11:14 AM '43

- 16 Any amusement or vide arcade (other than in "Shops 3" or "Pad K" on Exhibit B [Exhibit currently be collected], except that such use on "Pad K" shall be incidental to a restaurant and the entrance/exit to such premises shall not face east), pool or billiard hall, night club, discotheque, or dance hall;
- 17 Any bowling alley or skating rink;
- 18 Any live performance theater, auditorium, meeting hall, sporting event, or other entertainment use "Entertainment Use" as defined in the REA);
- 19 Any training or education facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business at the Shopping Center;
- 20 Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devises; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Occupant;
- 21 Any carnival, amusement park or circus;
- 22 daycare center
- 23 children's entertainment or activity facility (such as "Discovery Zone," or "Chuck E. Cheese's") in the areas "Pad L" "Shops 4," or "Majors," on Exhibit B [Exhibit currently be collected],
- 24 Restaurant serving meals for on-or off-premises consumption in the areas labeled "Pad L" "Shops 4" or Majors" on Exhibit B [Exhibit currently be collected] and, the sale of alcohol from restaurants in the Shopping Center shall not exceed 40% of each such restaurant's gross sales;
- 25 beauty parlor or nail salon located in the areas labeled "Majors," on Exhibit B [Exhibit currently be collected]; or
- 26 health spa, exercise facility or similar type business located in the areas labeled "Majors," or "Pad L" on Exhibit B [Exhibit currently be collected].

Carrabba's Italian Grill - Landlord covenants and agrees that it will not operate or permit any other tenant in any portions of the Restricted Area (as shown on the Site Plan) to operate (i) any Restaurant, Fast Food Restaurant, or Snack Shop (all as defined in the REA), in excess of 4,500 square feet; (ii) any facility utilizing an on-premises alcoholic beverage license or (iii) any use prohibited in the REA.

Marshall's- 4. (A) Landlord agrees that as long as any retail sales activity shall be conducted in the Demised Premises the Developer Block shall not be used (a) for any entertainment purposes such as a bowling alley or skating rink (b) or for any establishment which sells or displays pornographic materials (other than as an incidental use in a non-pornographic bookstore) or (c) for any establishment which sells or displays used merchandise or second hand goods. Notwithstanding the provisions of clause (b) above, a bar, nightclub, discoteque, amusement gallery, poolroom, sporting event, sports or game facility, off-track betting club and similar entertainment uses shall be permitted so long as the primary use of the tenant in question is a Restaurant. For purposes of the immediately preceding sentence only, the primary use of a tenant shall be deemed to be a Restaurant if at least fifty percent (50%) of its revenues comes from the sale of food and non-alcoholic beverages, and not from any of the entertainment uses described in the immediately preceding sentence. Health clubs shall not be permitted within "Shop 4," the buildings identified as "Major A" through "Major F." No offices shall be permitted within Pad K, Pad L, or those buildings identified as "Major A" through "Major F" on the Lease Plan other than offices which are incidental to a retail use. Up to two (2) spaces within "Shop 4" may be used as either offices or fast food or quick service restaurants, provided that such spaces do not exceed 2,500 square feet individually or 5,000 square feet in the aggregate. Except as set forth in the immediately preceding three sentences, and subject to the terms of the REA, restaurants and offices shall be permitted within the Developer Block. Notwithstanding the foregoing, the provisions of this Paragraph 4(A) shall not prohibit tenants such as "Play It Again Sports," "Terri's Consign and Design," or similar uses.

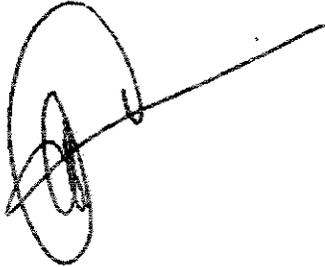
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EXHIBIT "I"

SITE PLAN FOR OUTDOOR SEATING AREA

Subject to LL Sole Approval and Conditions.

Subject to any existing lease restrictions.

A handwritten signature or set of initials, possibly 'A', enclosed in a circle with a long horizontal line extending to the right.

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**RIDER**

MADE PART OF THAT CERTAIN SHOPPING CENTER

June 27, 2007 BY AND BETWEEN

LLC, AS MANAGING AGENT

CENTER COMMONLY KNOWN AS

LLC, AS TENANT

THIS RIDER IS ATTACHED TO AND IS  
LEASE (THE "LEASE") DATED

INLAND SOUTHWEST MANAGEMENT,

FOR THE OWNER OF THE SHOPPING

GATEWAY PAVILIONS AND JC DINING

This Rider is dated and is effective the same date as the Lease. All capitalized terms, unless expressly defined herein, shall have the same meaning as in the Lease. In the event of a conflict between the terms of the Lease and those contained in this Rider, this Rider shall prevail.

R-1. EXCLUSIVE USE. Provided that Tenant has not committed an event of default and further provided that the following uses do not interfere with any exclusivity provisions of other tenants in the Shopping Center or with the prohibitions set forth in Exhibit F attached to the Lease, and except for existing tenants of the Shopping Center under their existing leases for premises in the Shopping Center (which leases may be renewed, extended or replaced) and which permit such existing tenant to engage in any use which would otherwise be prohibited hereunder, Landlord covenants and agrees that during the Term, as such terms may be extended pursuant to the provisions of the Lease, Tenant has the exclusive right ("Tenant's Exclusive Right") in the Shopping Center to the use of the Premises for the following purposes: Excluding any existing Tenants in the Shopping Center, outparcels not in the Landlord's control, or anchor tenants, so long as Tenant is open and operating and not in default, Tenant will have the exclusive right within the Shopping Center to operate a full-service, sit-down restaurant serving traditional Greek food..

Tenant's Exclusive Right is subject to the following express limitations:

- AB. Tenant acknowledges that the use clauses in the existing tenants' leases do not violate Tenant's Exclusive Right;
- AC. Tenant's Exclusive Right shall only limit competing uses that are the primary business of competing tenants and shall not be construed as prohibiting ancillary uses of such competing tenants;
- AD. Tenant's Exclusive Right shall only be effective so long as Tenant continuously operates its exclusive business in the entire Premises;
- AE. Any lease of space for the greater of two times the square footage of the premises or 5,000 square feet in the Shopping Center is excluded from the Tenant's Exclusive Right set forth herein;
- AF. Tenant's Exclusive Right shall automatically terminate and be of no further force or effect upon the occurrence of an event of default by Tenant.
- AG. Tenant's Exclusive Right automatically shall terminate and shall be of no further force or effect upon the sublease by Tenant of the Premises or any part thereof (unless otherwise agreed to by Landlord in writing at the time of Tenant's request for Landlord's consent to such a sublease, which may be withheld in Landlord's sole discretion), or the assignment of Tenant's interest under this Lease (unless otherwise agreed to by Landlord in writing at the time of Tenant's request for Landlord's consent to such an assignment, which may be withheld in Landlord's sole discretion).
- AH. Tenant's Exclusive Right automatically shall terminate and shall be of no further force or effect upon the failure of Tenant to timely or properly exercise its rights to renew the Term as provided in Section 3.1(B) of this Lease.

07 JUL 31 11:49:12 AM '07





with the kitchen operation, whether located in or outside of the Building, shall be maintained by Tenant in good condition so as to meet the highest standard of cleanliness and health. Tenant shall establish a quarterly (or more frequent as Landlord may require) cleaning program with respect thereto with a reputable contractor. Tenant shall provide Landlord with a copy of its cleaning contract for the exhaust system prior to opening for business and thereafter as requested by Landlord. Tenant shall do whatever is necessary in order to properly maintain the exhaust system. In the event of discharge, Tenant shall be responsible for all costs of clean up, including all costs of repair, restoration or replacement of property damaged by such discharge. Tenant's cleaning contract shall provide for grease deposit removal from all surfaces (powder coating is not permitted).

(d) Tenant shall store all trash and other waste in odor and vermin proof containers, such containers to be kept in temperature controlled areas not visible to members of the public. Tenant shall, at Tenant's expense, attend to the frequent disposal of such materials. Trash removal must be done by Tenant using containers approved by Landlord and at such times and in such manner as Landlord may reasonably direct and subject to such rules and regulations in respect thereto as Landlord may, from time to time, adopt.

(e) Tenant shall make the following items part of a continuing maintenance program in order to reduce the possibility of fire:

(i) Cooking hood filters and/or grease extractors should be cleaned weekly.

(ii) The entire exhaust system should be inspected by a properly trained, qualified, and certified company or person quarterly.

(iii) After inspection, if components are found to be contaminated with deposits from grease laden vapors, the entire exhaust system (hoods, grease removal devices, fans, ducts, and other included appurtenances) should be cleaned by a properly trained, qualified and certified company or person. The cleaning should be to bare metal using mechanical means (scraping, washing, steam cleaning, etc.) and not coated with chemicals or powder. A certificate of service should be provided by any contracted service.

R-3. FAIR MARKET RENT: Fair Market Rent for the extension terms shall be determined by Landlord in relation to comparable (in quality, location and size) space located in the Shopping Center market ("Fair Market Rent"). If Tenant disputes Landlord's determination of Fair Market Rent, Tenant will deliver notice of such dispute together with Tenant's proposed Fair Market Rent to Landlord within 15 days of Tenant's receipt of Landlord's determination. If the Tenant disputes the Fair Market Rent submitted by Landlord the parties will attempt, in good faith, to agree upon the Fair Market Rent. If the parties fail to agree within 30 days, then Tenant's option to extend the term (as may have been extended) shall be deemed null and void and of no further force or effect. Tenant's failure to object to the Fair Market Rent submitted by Landlord within such 15 day period will conclusively be deemed Tenant's approval thereof. Notwithstanding the above provisions to the contrary, in no event will the adjusted monthly Minimum Rent for any option period be lower than the monthly Minimum Rent for the immediately preceding period.

R-4. OUTDOOR SEATING: Tenant shall be permitted to use an outdoor seating area immediately adjacent to the Premises (as shown on Exhibit I attached hereto) provided such is not in conflict with existing tenants in Shopping Center, and as permitted by local government regulations and municipalities or other governing bodies. Landlord reserves the right to determine placement and size of any such outdoor seating area. Such outdoor seating area shall be at no additional rent. This use is subject to all other terms and conditions in the Lease as if the outdoor seating area was a part of the Premises. If nuisance objections are repetitively received by Landlord from other tenants in the shopping center because of loitering, trash or smoking, this right can be revoked. Tenant shall be solely responsible for the maintenance and security of the outdoor seating and Tenant shall obtain, for the outdoor seating, the same insurance coverage as is required in this Lease for the remainder of the Premises. Landlord reserves the right to revoke this privilege if such use impairs the visibility of or access to other tenants' premises or is pedestrian traffic is hindered or at risk of harm because of the lack of delineation of outside space.

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R-5. CONSTRUCTION ALLOWANCE: Landlord will reimburse Tenant in the amount of One Hundred Twenty Thousand (\$120,000.00), which amount shall be payable within fifteen (15) days after the date Tenant's Work is completed in accordance with the terms of this Lease and Tenant has submitted to Landlord a written statement requesting such payment, provided that at the time of such request and scheduled payment:

- A. Tenant shall not be in default under any provision of this Lease;
- B. the Premises have been opened for business to the public in accordance with the requirements of this Lease for at least three (3) consecutive business days;
- C. Tenant shall have paid its full first month's Minimum Rent; and
- D. Tenant certifies that the Shopping Center is free and clear of all mechanics' liens and other encumbrances relating to Tenant's Work and provides to Landlord waivers, affidavits, copies of paid invoices and releases of lien in form and substance satisfactory to Landlord covering Tenant's Work.

R-6. SIGNAGE: Tenant shall have the right to install, at Tenant's sole cost and expense, one (1) sign above the Premises. If available, Landlord will grant Tenant one panel on pylon/monument sign. Said signage is subject to Landlord's sign criteria (Exhibit D), Landlord's review and prior written approval, city and other governmental agencies approvals prior to fabrication and installation.

R-7. TENANT'S ADDITIONAL COVENANT: Tenant shall not engage in any use or uses that conflict with the exclusive or prohibited uses granted to other tenants.

If the terms and conditions of this Rider conflict in any way with the terms and conditions of the Lease to which this Rider is attached, the terms and conditions of this Rider shall control.

Tenant

Landlord

~~JE DINING LLC~~

INLAND SOUTHWEST MANAGEMENT,

LLC

as managing agent for the Owner

d/b/a My Big Fat Greek Restaurant

By: John Roumanas

By: Frank Nataneh

Print Name: John Roumanas

Print Name: Frank Nataneh

Its: Member

Its: V.P. Leasing

Dated: June 20, 07

Dated: 6/27/07

07 JUL 31 11:49 AM '07

**SECTION 7 Corporation/Limited Liability Co.:**

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$29 FEE FOR EACH CARD.

CORPORATION *Complete questions 1, 2, 3, 5, 6, 7, 8.*

L.L.C. *Complete questions 1, 2, 4, 5, 6, 7 and attach copy of Articles of Org. and Operation Agreement.*

- Name of Corporation/L.L.C.: OCEAN DINING L.L.C.  
(Exactly as it appears on Articles of Inc. or Articles of Org.)
- Date Incorporated/Organized: 7/06 State where Incorporated/Organized: AZ
- AZ Corporation Commission File No.: \_\_\_\_\_ Date authorized to do business in AZ: \_\_\_\_\_
- AZ L.L.C. File No: L-1298703-0 Date authorized to do business in AZ: 7/06
- Is Corp./L.L.C. non-profit?  YES  NO If yes, give IRS tax exempt number: \_\_\_\_\_
- List all directors,/ officers, controlling stockholders or members in Corporation/L.L.C.:

Last	First	Middle	Title	Residence Address	City State Zip
Roumanas	John		Mgr	9011 N. 67 <sup>th</sup> St. Paradise Valley AZ	85253

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)

- List stockholders or controlling members owning 10% or more:

Last	First	Middle	% Owned	Residence Address	City State Zip
Roumanas	John		100%	9011 N. 67 <sup>th</sup> St. Paradise Valley AZ	85253

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)

- If the corporation/L.L.C. is owned by another entity, attach an ownership, and director/officer/members disclosure for the parent entity. Attach additional sheets as necessary in order to disclose real people.

**SECTION 8 Club Applicants:**

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$29 FEE FOR EACH CARD.

- Name of Club: \_\_\_\_\_ Date Chartered: \_\_\_\_\_  
(Exactly as it appears on Club Charter or Bylaws) (Attach a copy of Club Charter or Bylaws)
- Is club non-profit?  YES  NO If tax exempt, give IRS tax exempt number: \_\_\_\_\_
- List officer and directors:

Last	First	Middle	Title	Residence Address	City State Zip

ATTACH ADDITIONAL SHEET(S) IF NECESSARY



**SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)**

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE. *NOT IN 21 Lic. Lic. PN 4 114*

1. Current Business: Name \_\_\_\_\_  
(Exactly as it appears on license) Address \_\_\_\_\_
2. New Business: Name \_\_\_\_\_  
(Do not use PO Box Number) Address \_\_\_\_\_
3. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_ Last Renewal Date: \_\_\_\_\_
4. What date do you plan to move? \_\_\_\_\_ What date do you plan to open? \_\_\_\_\_

**SECTION 13 Questions for all in-state applicants:**

1. Distance to nearest school: \_\_\_\_\_ ft. Name of school: \_\_\_\_\_  
(Regardless of distance) Address \_\_\_\_\_
2. Distance to nearest church: \_\_\_\_\_ ft. Name of church: \_\_\_\_\_  
(Regardless of distance) Address \_\_\_\_\_
3. I am the:  LESSEE  SUBLESSEE  OWNER  PURCHASER (of premises)
4. If the premises is leased give lessors: Name \_\_\_\_\_  
Address \_\_\_\_\_
- 4a. Monthly rental/lease rate \$ \_\_\_\_\_ What is the remaining length of the lease? \_\_\_\_\_ yrs. \_\_\_\_\_ mos.
- 4b. What is the penalty if the lease is not fulfilled? \$ \_\_\_\_\_ or other \_\_\_\_\_  
(give details - attach additional sheet if necessary)
5. What is the total **business** indebtedness of the applicant for this license/location excluding lease? \$ \_\_\_\_\_

Does any one creditor represent more than 10% of that sum?  YES  NO If yes, list below. Total must equal 100%.

Last	First	Middle	% Owed	Residence Address	City	State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for? (BE SPECIFIC) \_\_\_\_\_
7. Has a license, or a transfer license for the premises on this application been denied by the state within the past one (1) year?  
 YES  NO If yes, attach explanation.
8. Does any spirituous liquor manufacturer, wholesaler, or employee, have any interest in your business?  YES  NO
9. Is the premises currently licensed with a liquor license?  YES  NO If yes, give license number and licensee's name:  
License # \_\_\_\_\_ (Exactly as it appears on license) Name Amy S. Nations

**AMENDMENT**

**SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)**

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE.

1. Current Business: Name 107 III Pl Lior, Lic, PH 4104  
 (Exactly as it appears on license) Address \_\_\_\_\_
2. New Business: Name \_\_\_\_\_  
 (Do not use PO Box Number) Address \_\_\_\_\_
3. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_ Last Renewal Date: \_\_\_\_\_
4. What date do you plan to move? \_\_\_\_\_ What date do you plan to open? \_\_\_\_\_

**SECTION 13 Questions for all in-state applicants:**

1. Distance to nearest school: 2640 ft. Name of school: Rio Vista Element  
 (Regardless of distance) Address 10237 W. Encanto Blvd  
Avondale AZ 85323
2. Distance to nearest church: 5280 ft. Name of church: First Baptist Church  
 (Regardless of distance) Address 2517 N. 107th Ave  
Avondale AZ 85323

3. I am the:  LESSEE  SUB LESSEE  OWNER  PURCHASER (of premises)

4. If the premises is leased give lessors: Name Gateway Pavillions LLC C/O Kitchell Dev  
 Address 1707 E. Highland #200 Phoenix AZ 85016

4a. Monthly rental/lease rate \$ \$9100.00 What is the remaining length of the lease? 5 yrs. \_\_\_\_\_ mos.

4b. What is the penalty if the lease is not fulfilled? \$ Balance or other \_\_\_\_\_  
 (give details - attach additional sheet if necessary)

5. What is the total **business** indebtedness of the applicant for this license/location excluding lease? \$ 0

Does any one creditor represent more than 10% of that sum?  YES  NO If yes, list below. Total must equal 100%.

Last	First	Middle	% Owed	Residence Address	City	State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for? (BE SPECIFIC) Restaurant

7. Has a license, or a transfer license for the premises on this application been denied by the state within the past one (1) year?  
 YES  NO If yes, attach explanation.

8. Does any spirituous liquor manufacturer, wholesaler, or employee, have any interest in your business?  YES  NO

9. Is the premises currently licensed with a liquor license?  YES  NO If yes, give license number and licensee's name:

License # 12076064 (Exactly as it appears on license) Name Amy Nations

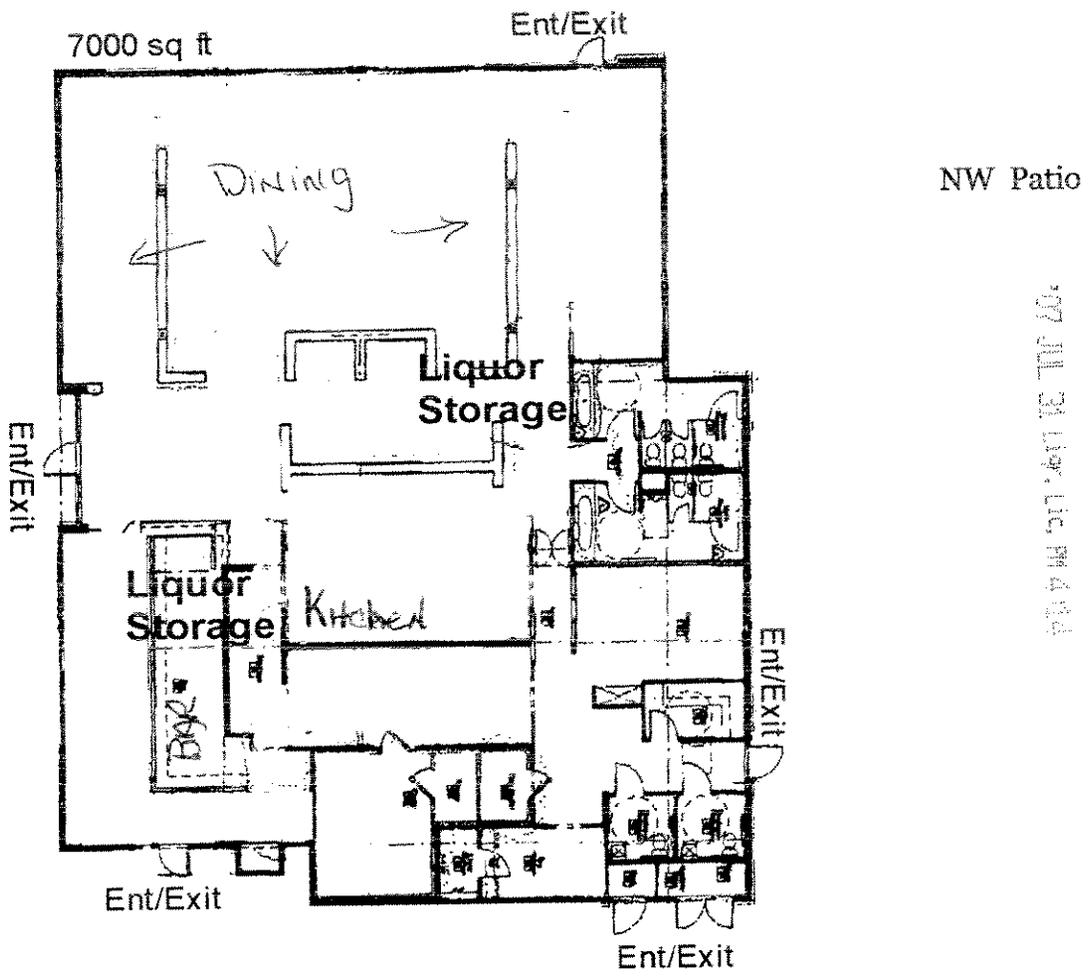
**SECTION 14 Restaurant, or Hotel-Motel Applicants:**

- Is there a valid restaurant or hotel-motel liquor license at the proposed location?  YES  NO If yes, give licensee's name:  
Nations Amy S and license #: 12076064  
Last First Middle
- If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. Section 4-203.01; and complete Section 5 of this application.
- All restaurant applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor.
- Do you understand that **40% of your gross revenue** must be from food sales?  YES  NO

**SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)**

- Check ALL boxes that apply to your licensed premises:  
 Entrances/Exits  Liquor storage areas  
 Drive-in windows  Patio enclosures  
 Service windows  Under construction: estimated completion date \_\_\_\_\_
- Restaurants and Hotel/Motel applicants must explicitly depict kitchen equipment and dining facilities.
- The diagram below is the only area where spirituous liquor is to be sold, served, consumed, dispensed, possessed, or stored. Give the square footage or outside dimensions of the licensed premises.

DO NOT INCLUDE PARKING LOTS, LIVING QUARTERS, ETC.



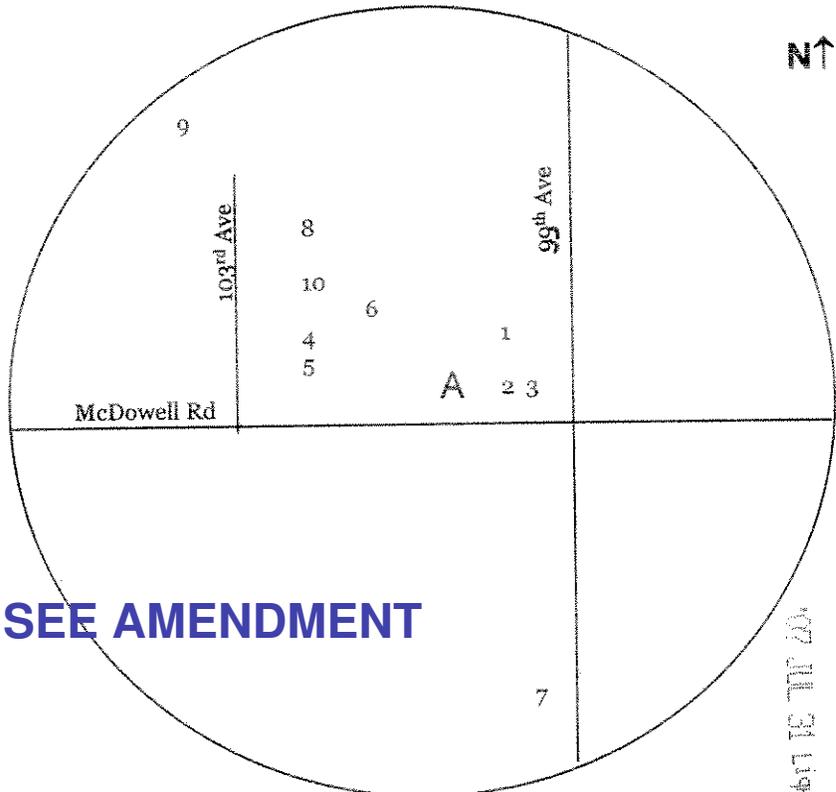
07 JUL 31 1991 LIC M 4114

**YOU MUST NOTIFY THE DEPARTMENT OF LIQUOR OF ANY CHANGES OF BOUNDARIES, ENTRANCES, EXITS, OR SERVICE WINDOWS MADE AFTER SUBMISSION OF THIS DIAGRAM.**

**SECTION 16 Geographical Data: A SAMPLE FOR THIS SECTION IS PROVIDED ON THE NEXT PAGE.**

List below the exact names of all churches, schools, and spirituous liquor outlets within a one mile radius of your proposed location. Ref. A.R.S. 4-201 (B)

1. Costco
2. Village Inn
3. Carrabba's
4. Native New Yorker
5. Red Robin
6. Peter Piper Pizza
7. Pilot Trael Center
8. Rio Vista Elementary
9. First Baptist Church
10. CJ's Film Studio
11. \_\_\_\_\_
12. \_\_\_\_\_
13. \_\_\_\_\_
14. \_\_\_\_\_
15. \_\_\_\_\_



A = Your business name and identify cross streets.

ATTACH ADDITIONAL SHEET(S) IF NECESSARY

**SECTION 17 Signature Block:**

I, Lauren Kay Merrett, declare that: 1) I am the APPLICANT (Owner, Agent, Partner, Stockholder (Print name of APPLICANT/AGENT listed in Section 4 Question 1) (10% or more), Member, Officer (10% or more ownership), or Club Member making this application; 2) I have read the application and the contents and all statements are true, correct and complete; 3) that this application is not being made to defraud or injure any creditor, taxing authority, regulatory authority, or transferor; 4) that no other person, firm, or corporation, except as indicated, has an interest in the spirituous liquor license for which these statements are made; and 5) that to the best of my knowledge and belief, none of the owners, partners, members, officers, directors or stockholders listed have been convicted of a felony in the past five (5) years.

X Lauren Kay Merrett  
(Signature)

State of ARIZONA County of MARICOPA  
The foregoing instrument was acknowledged before me this  
31 day of JULY, 2007  
Day Month Year

My commission expires on: 

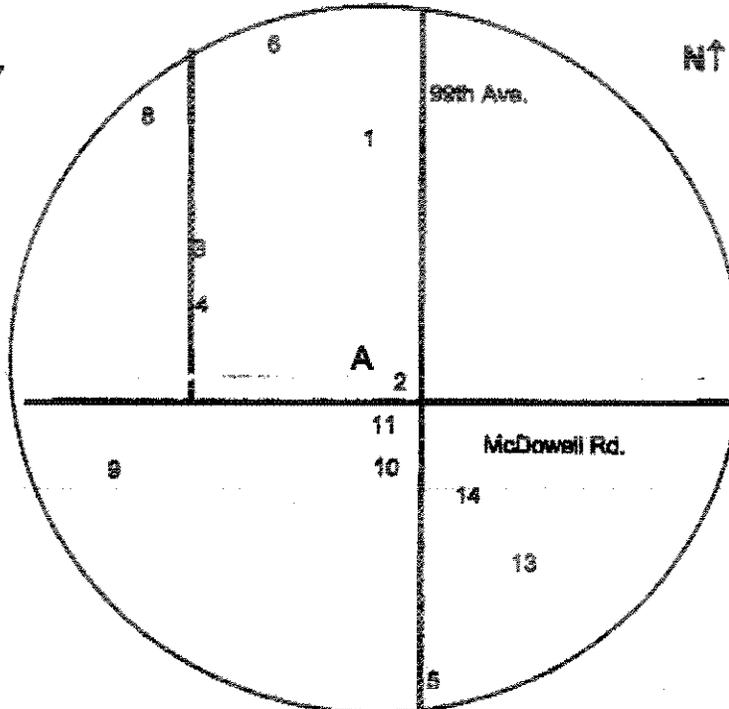
[Signature]  
(Signature of NOTARY PUBLIC)

07 JUL 31 09:44 AM '07

**SECTION 16 Geographical Data: A SAMPLE FOR THIS SECTION IS PROVIDED ON THE NEXT PAGE.**

List below the exact names of all churches, schools, and spirituous liquor outlets within a one mile radius of your proposed location. Ref. A.R.S. 4-201 (B)

- 1. Costco
- 2. Carrabba's
- 3. Native New Yorker
- 4. Red Robin
- 5. Pilot Travel Center
- 6. Rio Vista Elementary
- 7. First Baptist Church
- 8. CJ's Film Studio
- 9. Claim Jumper
- 10. Chipotle
- 11. Rumbi Island Grill
- 12. Chevron
- 13. Dunner's Piza
- 14. Ici Ban Restaurant
- 15. \_\_\_\_\_



07 SEP 4 10:41 AM '07

A = Your business name and identify cross streets.

ATTACH ADDITIONAL SHEET(S) IF NECESSARY

**SECTION 17 Signature Block:**

I, \_\_\_\_\_, declare that: 1) I am the APPLICANT (Owner, Agent, Partner, Stockholder (Print name of APPLICANT/AGENT listed in Section 4 Question 1) (10% or more), Member, Officer (10% or more ownership), or Club Member making this application; 2) I have read the application and the contents and all statements are true, correct and complete; 3) that this application is not being made to defraud or injure any creditor, taxing authority, regulatory authority, or transferor; 4) that no other person, firm, or corporation, except as indicated, has an interest in the spirituous liquor license for which these statements are made; and 5) that to the best of my knowledge and belief, none of the owners, partners, members, officers, directors or stockholders listed have been convicted of a felony in the past five (5) years.

X \_\_\_\_\_  
(Signature)

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this

\_\_\_\_ day of \_\_\_\_\_  
Day Month Year

My commission expires on: \_\_\_\_\_

(Signature of NOTARY PUBLIC)

**AMENDMENT**

# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

107 JUL 31 Lic. Lic. PM 4 114

400 W Congress #521  
Tucson AZ 85701-1352  
(520) 628-6595

## RESTAURANT OPERATION PLAN

PRINT - USE BLACK INK

LICENSE # 12077248

1. List by Make, Model and Capacity of your : See Attached

Grill	
Oven	
Freezer	
Refrigerator	
Sink	
Dish Washing Facilities	
Food Preparation Counter	
Other	
Other	
Other	

2. Print the name of your restaurant: My Big Fat Greek Restaurant

3. Attach a copy of your menu (Breakfast, Lunch and Dinner including prices).

4. List the seating capacity for:

- a. **Restaurant area** of your premises [ 206 ]
- b. **Bar area** of your premises [ 20 ]
- c. **Total area** of your premises [ 226 ]

5. What type of dinnerware and utensils are utilized within your restaurant?  
 Reusable       Disposable

6. Does your restaurant have a bar area that is distinct and separate from the restaurant seating?  
 (If yes, what percentage of the public floor space does this area cover)?  Yes 10 %    No

7. What percentage of your public premises is used primarily for restaurant dining?  
 (Does not include kitchen, bar, cocktail tables or game area.) 90 %

**\*Disabled individuals requiring special accommodations, please call the Department.**

8. Does your restaurant contain any games or televisions?  Yes  No  
If yes, specify what types and how many of each type (Televisions, Pool tables, Video Games, Darts, etc).

2, 30"- 1, 60" Panasonic

9. Do you have live entertainment or dancing?  Yes  No  
(If yes, what type and how often?)

10. Use space below or attach a list of employee positions and their duties to fully staff your business.

- 5 Hostesses
- 6 Bartenders
- 36 Servers
- 4 Bussers
- 6 Runners
- 17 Kitchen Staff

Attach additional sheets if necessary

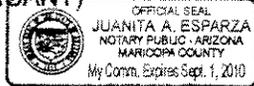
I, Lauren Kay Merrett, being first duly sworn upon oath, hereby depose, swear and declare, that I am the APPLICANT filing this  
(Print full name)

application. I have read this application under penalty of perjury, that I am the applicant named hereof and that the application has been read by me and that the contents herein and all statements contained herein are true, correct and complete.

x Lauren Kay Merrett State of ARIZONA County of MARICOPA  
SUBSCRIBED IN MY PRESENCE AND SWORN TO before me  
The foregoing instrument was acknowledged before me this

(Signature of APPLICANT)

this 31 day of JULY 2007  
Day Month Year



My commission expires on: \_\_\_\_\_

Juanita A. Esparza  
(Signature of NOTARY PUBLIC)

## Appetizers

Flaming Saganaki "OPA Time"	\$6.95
Flaming Feta "OPA Time"	\$6.95
Tzatziti	\$3.95
Hummus	\$3.95
Skordalia	\$3.95
Baba Ganoush	\$3.95
Eggplant Salad	\$3.95
Taramosalata	\$4.25
Dolmades	\$4.95
Spanakorizo	\$4.95
Tyropita	\$4.50
Keftedes	\$4.50
Souzoukia	\$4.50
Zucchini Cakes	\$4.95
Feta & Kalamata Olives	\$4.50
Greek Fries	\$4.95
Calamari	\$6.95
Spinach & Artichoke Dip	\$6.95
Bruschetta	\$4.95
Fat Greek Dips with Pita Tzatziki, Hummus, Skordalia, Taramosalata (caviar spread), Baba Ganoush	\$9.95
Fat Greek Combo with Pita Spanakopita, Tzatziki, Souzoukia,	\$14.95

07 JUL 31 10:44 AM '14

<b>Feta Burger</b>	<b>\$8.99</b>
<b>Chicken Sandwich</b>	<b>\$7.95</b>
<b>Bacon &amp; Swiss Chicken Sandwich</b>	<b>\$8.99</b>
<b>Aegean Club</b>	<b>\$8.95</b>
<b>Gyro Burrito</b>	<b>\$8.75</b>
<b>Roasted Chicken Wrap</b>	<b>\$8.75</b>
<b>Veggie Wrap</b>	<b>\$6.50</b>
<b>Fish &amp; Chips</b>	<b>\$7.50</b>

## **Steaks & Seafood**

<b>Juicy 10oz. Flat Iron Steak</b>	<b>\$14.95</b>
<b>Filet Mignon</b>	<b>\$18.95</b>
<b>Steak &amp; Shrimp</b>	<b>\$17.95</b>
<b>Fresh Salmon</b>	<b>\$14.95</b>
<b>Blackened Salmon &amp; Shrimp</b>	<b>\$14.95</b>
<b>Salmon &amp; Shrimp Baked in Foil</b>	<b>\$16.95</b>
<b>Pistachio Crusted Red Snapper</b>	<b>\$13.95</b>
<b>Snapper Opa</b>	<b>\$15.95</b>

## **Souvlaki Dinners**

<b>Pork Souvlaki</b>	<b>\$11.95</b>
<b>Chicken Souvlaki</b>	<b>\$10.95</b>
<b>Angus Beef Souvlaki</b>	<b>\$13.95</b>
<b>Lamb Souvlaki</b>	<b>\$13.95</b>
<b>Shrimp Souvlaki</b>	<b>\$14.95</b>

07 JUL 31 09:15 AM '14

Blackened Salmon Caesar	\$9.95
Grilled Salmon & Shrimp Salad	\$12.95
Pizza Salad	\$9.95

## Pasta

Athenian Spaghetti	\$7.95
Spaghetti & Meatballs	\$9.95
Fettuccini Alfredo	\$7.95
Stuffed Spinach, Artichoke Feta Rigatoni	\$10.95
<i>Add Chicken to any above</i>	\$2.00
<i>Add Shrimp to any above</i>	\$3.50

## Pita

Gyro	\$4.95
Falafel	\$4.95
Pork Souvlaki	\$4.95
Chicken Souvlaki	\$4.95
Chicken Breast	\$4.95
Add Fries, Greek or Caesar salad	\$2.00
Served with tzatziki, red onions, fresh tomatoes and lettuce on the pita.	

## Traditional Favorites

My Big Fat Burger	\$7.95
Bacon Swiss Burger	\$8.99
Mushroom Burger	\$8.99

07 JUL 31 10:14 PM 4 14

Hummus, Dolmades, Baba Ganoush/Eggplant Salad

Fat Greek Soups

\$2.75 cup

Avgolemono or Soup of the Day

\$3.75 bowl

## Pizza & Calzones

Pizzas	\$8.95
Grecian Delight	\$8.95
Mediterranean	\$8.95
Sausage, Pepperoni	\$8.95
BBQ Chicken	\$8.95
Veggie	
Calzones	
El Greco	\$7.95
Florentine	\$7.95
Veggie Calzone	\$7.95

## Fresh Garden Salad

Greek Salad	\$4.95 regular	\$7.95 large
Our Greek with Gyro		add \$2.00
Our Greek with Chicken		add \$2.00
Village Salad (Horiatiki)		\$7.95
Calamari Salad		\$10.95
Grilled Chicken Salad		\$10.95
Caesar Salad		\$6.95
Add Chicken	\$2.00	
Add Shrimp	\$3.00	

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Mix and match any two, your choice.  
(Priced at higher value)

## Greek Specialties

Award Wining Gyro Dinner	\$9.95
Stuffed Peppers	\$10.95
Spanakopita	\$8.50
Tyropita	\$8.50
Pastitsio	\$12.95
Mousaka	\$12.95
Marinated Chicken Breast	\$9.95
Chicken Riganato	\$9.95
Braised Lamb	\$15.95
Lamb Chops (Paidakia)	\$16.95
Mediterranean Grilled Vegetables	\$10.95
Meat Lovers For Two	\$16.95 per person
"A symposium of ecstasy." Lamb chops, pork, chicken and beef souvlaki, gyro, mousaka, pastitsio and tzatziki, served with Greek salad for two, rice, and roasted lemon potatoes with pita bread. "Definitely a couple pleaser."	

## Desserts

Baklava	\$3.95
Roklava Cheesecake	\$5.95
New York Cheesecake with Strawberry Sauce	\$4.95
Duck Chocolate Cake	\$4.95
Tiramisu	\$4.95

107 301 3144 14 PM 4/15

**Flambe Baklava**

**\$6.95**

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# Equipment List

Item #35	Corner Drain Boards in Bar Area - 2 Each @ 320.00 • Wall Mount Rear • Equipment Mount Ends • 1 Leg in Front	\$ 640.00
Item #21	Carry-Out Counter @ Bar - 1 each • Stainless Steel Work Top W/6" Back Splash • (1) ea. Electrical Outlet for P.O.S. in Splash • (4) ea. Stainless Steel Legs • (2) ea. Adjustable Under Shelves, (1) Lower and (1) Intermediate	\$ 800.00
Item #71	ASF Standard Hand Sinks W/Drain - Code #5129 3 Each @ \$ 165.00 Each	\$ 495.00
Item #53	S/S Corner Guards - 2" x 3" x 92" x 14 GA S/S 35 Each @ \$ 33.00 Each • No Holes • Tuck Edges	\$ 1,155.00

Item #58A Beverage Counter 116" x 30" - 1 Each \$ 1,900.00

- (2) Sets of Rack Slides
- Space for Ice Cream Freezer - By Dealer
- Open Base Table Construction with Adjustable Under Shelf
- Stainless Steel Panel in Front of Freezer
- Hand Sink with Splash Guard
- Dipper Well
- (3) Electrical Outlets in Splash

Item #58B Beverage Counter 63" x 30" - 1 Each \$ 1,100.00

- (2) Sets of Rack Slides
- Space for Trash Can
- Cross Rails at Rear and Front to Back on Ends
- Open Base Construction
- Raised Scrap Hole in Top over Trash Can
- (2) Electrical Outlets in Back Splash

Item #73 Chef's Counter W/Refrigerated Base - 1 Each \$ 32,000.00

Chef's Side includes: 25'-6" x 36"

- Refrigerated Base, (8) ea. Drawers, (3) ea. Doors
- Opening for Heated Cabinet
- Raised Refrigerated and Heated Rail on Top
- Plate Pass Thru Storage under Hot Wells
- Hand Sink W/Splash Guard
- Raised Trash Chute Hole
- Top Notched back at Right end to allow for Steamer on Stand - By Dealer

Waitress Side includes: 25'-6" x 18"

- Recessed Section for Rice Cookers W/Fold Down Doors Below
- (4) Sets of Double Doors W/Plate Storage behind
- (1) Door W/Electric Panel behind
- Back Splash/Chase from top to over shelf also supported with (4) post on Chef's Side
- Second Over Shelf W/Heat Lamps supported with (8) posts
- Unit to be Pre-Wired to Control Panel
- Fold up Toe Kick on Waitress Side

07 JUL 31 09: 05: PM 405

Item #112 & 112A S/S Wall Covering	1 Section - 33' x 6'-6" 1 Section - 18' x 6'-6"	\$ 2,071.00
Item #129	Work Table • Same as Outback Steakhouse #129	\$ 275.00
Item #127	Mobile Worktable 30" x 24" W/2" Down on Front 1 Each • 1-1/2" Down on Ends • 1-1/2" up on Rear • 4 Casters 2 with 5" Brakes N.S.F. • 1 Under Shelf Adjustable • Similar to Outback Steakhouse Standard #114	\$ 347.00
Item #144	Two Compartment Sink and Prep Table 30" x 120" 1 Each • Back Splash on Rear • "V" Edge on Front and Both Ends • 2 ea. 24" x 24" Sink Bowls • Same as Carrabba's #090	\$ 1,900.00
Item #144B	S/S Wall Shelf 120" W/Integral Brackets X 12" Front to Back - 1 Each	\$ 250.00
Item #141A	Wall Mounted Shelf W/Utensil Rack 96" x 15" - 1 Each • Shelf Above • Single Bar below • Similar to Outback Steakhouse #136	\$ 350.00
Item #141	Prep Table 30" x 96" - 1 Each • Back Splash Rear • Front and End 2" Down • Area at Left below Top to be open for Roll-ins • Approximately 36" at right below Top to have Double Under Shelves • 6 Legs and 1 Cross Rail • Similar to Outback Steakhouse #141	\$ 825.00

07 JUL 31 10:45 AM '45

Item #113 & 122	Work Table 30" x 108" – 1 Each	\$ 9,550.00
	<ul style="list-style-type: none"> <li>• Refrigerated Base W/4 Drawers</li> <li>• Refrigerated Top Rail W/Lids</li> <li>• Double Under Shelves on Left End</li> <li>• Cutout on Top left End for Hot Food Wells W/Apron and Controls</li> <li>• Remote Refrigeration – By Dealer</li> <li>• Pass Over Shelf "L" Shapes at Right and Wall Mount</li> <li>• Shelves Wall Mounted – 2 Each - #122</li> </ul>	
Item #70 & 70A	Back Counter at Carry Out Approx. 89" x 36" 1 Each Includes:	\$ 6,500.00
	<ul style="list-style-type: none"> <li>• (1) Set of Double Wall Shelves 12" x 72" - #70A</li> <li>• Open Base Construction with Refrigerated Base Remote</li> <li>• Refrigerator has (2) ea. Drawers, (1) ea. Door And is 57" Long</li> <li>• Space for Under Counter Heating Cabinet – By Dealer</li> <li>• Table is cut short to allow for Free Standing Soda Tower – By Dealer</li> <li>• (1) ea. P.O.S. Receptacle in Back Splash</li> </ul>	
Item #139B	Ice Scoop Holder – ASF Standard – Code #8256 1 Each	\$ 19.00
Item #55	Floor Drain Trough and Grate 54" x 12" – 1 Each	\$ 972.00
	<ul style="list-style-type: none"> <li>• S/S Anti Splash Trough</li> <li>• S/S Removable Bar Grate</li> <li>• Similar to Flemings #006 – Code #5804</li> <li>• Includes Crate of Earlier Shipment</li> </ul>	
Item #149	Chemical Shelf 54" x 15" – 1 Each	\$ 143.00
	<ul style="list-style-type: none"> <li>• Integral End Brackets</li> <li>• Same as Outback Steakhouse/Carrabba's #149 and #135</li> </ul>	
Item #103	Hose Rack – ASF Standard – Code #8185	\$ 53.00

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Item #150	Mop and Broom Rack – ASF Standard – Code #8204	\$ 39.00
Item #96	Soiled Dish Table "U" Shaped Approx. 96" x 108" x 40" • Same as Outback Steakhouse Standard #096	\$ 3,000.00
Item #98	Booster Heater Shelf • Same as Flemings #056	\$ 341.00
Item #99	Dishwasher Duct Risers W/Collar 4" x 16" x 60" – 2 each @ \$ 160.00 Each	\$ 320.00
Item #100	Clean Dish Table W/Over Shelf 30" x 72" – 1 Each • Over Shelf W/Integral Brackets • Same as Carrabba's #129 Plus Shelf	\$ 1,263.00
Item #136	Wall Shelf 12" x 126" – 1 Each • Shelf to have Integral Ends • Similar to Outback Steakhouse #144A	\$ 250.00
Item #135	3-Compartment Sink 30" x 126" – 1 Each • 24" x 24" Bowls – 3 Each • Twist Handle Drains – 3 Each • Integral Drain Boards • Same as Outback Steakhouse #135	\$ 2,000.00
Item #94	Pot Rack 24" x 42" – 4 Tier – 1 Each • Shelf Type Construction – 4 Each • Uprights 4 Each W/Adjustable Legs • 78" High	\$ 650.00
TOTAL		\$ 69,208.00

JUL 31 11:41 AM '15

# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141



400 W Congress #521  
Tucson AZ 85701-1352  
(520) 628-6595

## HOTEL-MOTEL AND RESTAURANT LICENSES RECORDS REQUIRED FOR AUDIT OF SERIES #11 & #12 LICENSES

### MAKE A COPY OF THIS DOCUMENT AND KEEP IT WITH YOUR DLLC RECORDS

In the event of an audit, you will be asked to provide to the Department any documents necessary to determine compliance with A.R.S. §4-205.02(G). Such documents requested may include however, are not limited to:

1. All invoices and receipts for the purchase of food and spirituous liquor for the licensed premises. If you do not have all food or liquor invoices, please contact your vendors immediately and request copies of missing invoices. These must be available for pick-up at the time of the Audit Interview Appointment. **If all food invoices are not available at that time, you may not be given credit for all food sales.**
2. A list of *all* food and liquor vendors
3. The restaurant menu used during the audit period
4. A price list for alcoholic beverages during the audit period
5. Mark-up figures on food and alcoholic products during the audit period
6. A recent, *accurate* inventory of food and liquor (taken within two weeks of the Audit Interview Appointment)
7. Monthly Inventory Figures - beginning and ending figures for food and liquor
8. Chart of accounts (copy)
9. Financial Statements-Income Statements-Balance Sheets
10. General Ledger
  - A. Sales Journals/Monthly Sales Schedules
    - 1) Daily sales Reports (to include the name of each waitress/waiter, bartender, etc. with sales for that day)
    - 2) Daily Cash Register Tapes - Journal Tapes and Z-tapes
    - 3) Guest Checks
    - 4) Coupons/Specials
    - 5) Any other evidence to support income from food and liquor sales
  - B. Cash Receipts/Disbursement Journals
    - 1) Daily Bank Deposit Slips
    - 2) Bank Statements and canceled checks
11. Tax Records
  - A. Transaction Privilege Sales, Use and Severance Tax Return (copies)
  - B. Income Tax Return - city, state and federal (copies)
  - C. Any supporting books, records, schedules or documents used in preparation of tax returns

07 JUL 31 09P. LIC. RM 415

12. Payroll Records

- A. Copies of all reports required by the State and Federal Government
- B. Employee Log (A.R.S. §4-119)
- C. Employee time cards (actual document used to sign in and out each work day)
- D. Payroll records for all employees showing hours worked each week and hourly wages

The sophistication of record keeping varies from establishment to establishment. Regardless of each licensee's accounting methods, the amount of gross revenue derived from the sale of food and liquor must be substantially documented.

**REVOCAION OF YOUR LIQUOR LICENSE MAY OCCUR IF YOU FAIL TO COMPLY WITH A.R.S. §4-210(A)7 AND A.R.S. §4-205.02(G).**

**A.R.S. §4-210(A)7**

The licensee fails to keep for two years and make available to the department upon reasonable request all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of spirituous liquors and, in the case of a restaurant or hotel-motel licensee, all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of food.

**A.R.S. §4-205.02(G)**

For the purpose of this section:

1. "Restaurant" means an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.
2. "Gross revenue" means the revenue derived from all sales of food and spirituous liquor on the licensed premises, regardless of whether the sales of spirituous liquor are made under a restaurant license issued pursuant to this section or under any other license that has been issued for the premises pursuant to this article.

I, (print licensee name):

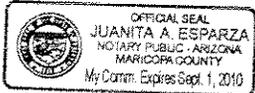
Merrett                      Laured                      Kay  
 Last                              First                              Middle

have read and fully understand all aspects of this statement.

State of ARIZONA County of MARICOPA

The foregoing instrument was acknowledged before me this

X Laura Kay Merrett                      31 day of JULY, 2007  
 (Signature of Licensee)                      Day                      Month                      Year

My commission Expires on:  \_\_\_\_\_  
 Day      Month      Year

\_\_\_\_\_  
 (Signature of NOTARY PUBLIC)

**MAKE A COPY OF THIS DOCUMENT AND KEEP IT WITH YOUR DLLC RECORDS**

DO NOT FURNISH THIS SECTION

AZ Corp. Commission



01685621

ARIZONA CORPORATION COMMISSION

ARTICLE 1

The company name shall contain an ending which may be "limited liability company," "limited company," or its abbreviations "LLC," "L.C.," "L.C." or "L.C." If you are the holder or assignee of a trademark or trade name, attach Declaration of Trademark Holder form.

FILED

JUL 18 2008

ARTICLES OF ORGANIZATION

FILE NO. 1298703-G

A.R.S. §29-632

ARTICLE 2

May be in care of the statutory agent.

ARTICLE 3

The statutory agent must provide a street address. If statutory agent has P.O. Box, they must also provide a street address/location. The agent must sign the Articles or provide a consent to acceptance of appointment.

- Name.** The name of the limited liability company is:  
Ocean Dining L.L.C.
- Known Place of Business.** The address of the company's known place of business in Arizona is:  
2303 N. 44<sup>th</sup> St. Ste 12.  
Phoenix, AZ. 85008
- Statutory Agent.** (In Arizona) The name and street address of the statutory agent of the company is:  
Chris Tsirikis.  
2303 N. 44<sup>th</sup> St Suite 12.  
Phoenix, AZ. 85008.

Acceptance of Appointment By Statutory Agent

I, Chris Tsirikis, having been designated to act as (Print Name) Statutory Agent, hereby consent to act in that capacity until removed or resignation is submitted in accordance with the Arizona Revised Statutes.

Chris Tsirikis  
Signature of Statutory Agent

The agent must consent to the appointment by executing the consent.

[If signing on behalf of a company serving as statutory agent, print company name here]

ARTICLE 4

Complete this section only if you desire to select a date or occurrence when the company will dissolve. If perpetual duration is desired, leave this section blank.

- Dissolution.** The latest date, if any, on which the limited liability company must dissolve is:  
NO DATE

07 JUL 31 11:47 AM '08

FD WR Rev.

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

400 W Congress #521  
Tucson AZ 85701-1352  
(520) 628-6595

QUESTIONNAIRE

Attention all Local Governing Bodies: Social Security and Birthdate information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with black ink. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

Eff. 10/01/03 there is a \$29.00 processing fee for each fingerprint card submitted.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

Liquor License #  
12077248  
(If the location is currently licensed)

1. Check appropriate box ->  Owner  Partner  Stockholder  Member  Officer  Agent  Manager(Only)  Other (Complete Questions 1-20 & 24) Licensee or Agent must complete # 25 for a Manager (Complete All Questions except # 14, 14a & 25) Licensee or Agent must complete # 25

2. Name: Merrett Lauren Kay Date of Birth: [Redacted]  
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: [Redacted] Drivers License #: [Redacted] State: AZ  
(This Will Not Become a Part of Public Records)

4. Place of Birth: Phoenix AZ USA Height: 5'8" Weight: 135 Eyes: HZ Hair: BR  
City State Country (not county)

5. Marital Status  Single  Married  Divorced  Widowed Residence (Home) Phone: ( ) Unlisted -

6. Name of Current or Most Recent Spouse: Morrow James Quincy Date of Birth: [Redacted]  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? AZ If Arizona, date of residency: 12/58

8. Telephone number to contact you during business hours for any questions regarding this document. (602) 738 - 1421

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: My Big Fat Greek Restaurant Premises Phone: ( ) pending

11. Licensed Premises Address: 10040 W McDowell Road Avondale Maricopa 85232  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
1/96	CURRENT	Owner	Mereco Inc. 736 s. Longmore St Chandler AZ 85224

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address (If rented, attach additional sheet giving name, address and phone number of landlord)	City	State	Zip
1/96	CURRENT		[Redacted]	[Redacted]	[Redacted]	[Redacted]

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? \_\_\_\_\_, answer #14a below. If NO, skip to #15.  YES  NO
- 14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof)  YES  NO  
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.
15. Have you EVER been detained, cited, arrested, indicted or summoned into court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related.  YES  NO
16. Have you EVER been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related.  YES  NO
17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved?  YES  NO
18. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state?  YES  NO
19. Has anyone EVER filed suit or obtained a judgment against you in a civil action, the subject of which involved fraud or misrepresentation of a business, professional or liquor license?  YES  NO
20. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director, or manager on any other liquor license in this or any other state?  YES  NO

**If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement. Give complete details including dates, agencies involved and dispositions.**

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

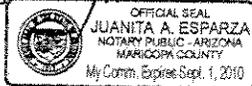
**Manager Section**

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof)  YES  NO  
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.
22. Do you make payments to the licensee?  YES  NO If "yes", how much? \$ \_\_\_\_\_ per month. Total debt to licensee \$ \_\_\_\_\_
23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business?  YES  NO If "yes", attach a copy of such agreement

24. I, Lauren Kay Merrett, hereby declare that I am the APPLICANT filing this questionnaire.  
(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

X Lauren Kay Merrett  
(Signature of Applicant)



State of ARIZONA County of MARICOPA  
The foregoing instrument was acknowledged before me this 31 day of JULY 2008  
Day Month Year  
Juanita A. Esparza  
(Signature of NOTARY PUBLIC)

My commission expires on: \_\_\_\_\_  
Day Month Year

**FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION**  
**Licensee or Agent Approval of Manager**

25. I, (Print Licensee/Agent's Name): \_\_\_\_\_  
Hereby authorize the applicant to act as manager for the named liquor license.  
State of \_\_\_\_\_ County of \_\_\_\_\_  
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ Year

X \_\_\_\_\_  
(Signature of LICENSEE/AGENT)

My commission expires on: \_\_\_\_\_  
Day Month Year (Signature of NOTARY PUBLIC)

#20

I am currently Licensee on several licenses in the state of Arizona. I am licensee in an administrative capacity only, and do not have any interest in or authority for the day-to-day operations of this or any other liquor licensed business.

Lauren Kay Merrett M.Ed.

07 JUL 31 11:41:16 AM '15

**ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL**

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

400 W Congress #521  
Tucson AZ 85701-1352  
(520) 628-6595

**QUESTIONNAIRE**

*FP CURRENT*  
*204300*

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with black ink. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

Eff. 10/01/03 there is a \$29.00 processing fee for each fingerprint card submitted.  
A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

Liquor License #  
*12077248*  
(If the location is currently licensed)

1. Check appropriate box →

<input type="checkbox"/> Owner	<input type="checkbox"/> Partner	<input checked="" type="checkbox"/> Stockholder	<input checked="" type="checkbox"/> Member	<input type="checkbox"/> Officer	<input type="checkbox"/> Agent	<input type="checkbox"/> Manager(Only)
<input type="checkbox"/> Other _____ (Complete Questions 1-20 & 24)						(Complete All Questions <b>except</b> # 14, 14a & 25)
Licensee or Agent must complete # 25 for a Manager						Licensee or Agent must complete # 25

2. Name: Roumanas John  Date of Birth: [REDACTED]  
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: [REDACTED] Drivers License #: [REDACTED] State: CA  
(This Will Not Become a Part of Public Records)

4. Place of Birth: Pittsburg PA USA Height: 5'8" Weight: 160 Eyes: BR Hair: BR  
City State Country (not county)

5. Marital Status  Single  Married  Divorced  Widowed Residence (Home) Phone: [REDACTED]

6. Name of Current or Most Recent Spouse: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? Arizona If Arizona, date of residency: 2001

8. Telephone number to contact you during business hours for any questions regarding this document: [REDACTED]

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: My Big Fat Greek Restaurant Premises Phone: (\_\_\_\_) \_\_\_\_\_ Pending

11. Licensed Premises Address: 10040 W MCDowell Road Avondale Maricopa 85232  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
4/00	CURRENT	My Big Fat Greek Restaurants	525 S. Mill Ave. Tempe AZ 85281

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION 12 OR 13

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address if rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
3/05	CURRENT		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4/00	3/05		7801 N. 65th St	Paradise Valley	AZ	85253

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the the licensed premises? If you answered YES, how many hrs/day? 8, answer #14a below. If NO, skip to #15.  YES  NO
- 14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof)  YES  NO  
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.
15. Have you **EVER** been detained, cited, arrested, indicted or summoned into court for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related.  YES  NO
16. Have you **EVER** been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related.  YES  NO
17. Are there **ANY** administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses **PENDING** against you or **ANY** entity in which you are now involved?  YES  NO
18. Have you or any entity in which you have held ownership, been an officer, member, director or manager **EVER** had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state?  YES  NO
19. Has anyone **EVER** filed suit or obtained a judgment against you in a civil action, the subject of which involved fraud or misrepresentation of a business, professional or liquor license?  YES  NO
20. Are you **NOW** or have you **EVER** held ownership, been a controlling person, been an officer, member, director, or manager on any other liquor license in this or any other state?  YES  NO

**If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement. Give complete details including dates, agencies involved and dispositions.**

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

**Manager Section**

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof)  YES  NO  
If the answer to #21 is "NO" course must be completed **BEFORE ISSUANCE** of a new license **OR APPROVAL** on an existing license.
22. Do you make payments to the licensee?  YES  NO If "yes", how much? \$\_\_\_\_\_ per month. Total debt to licensee \$\_\_\_\_\_
23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business?  YES  NO If "yes", attach a copy of such agreement

24. I, John Koumanas, hereby declare that I am the APPLICANT filing this questionnaire.  
(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

X [Signature]



State of Ar County of Maricopa  
The foregoing instrument was acknowledged before me this 31 day of July, 2007  
Lauren Merrett  
(Signature of NOTARY PUBLIC)

My commission expires on \_\_\_\_\_  
Day Month Year

**FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION Licensee or Agent Approval of Manager**

25. I. (Print Licensee/Agent's Name): \_\_\_\_\_  
Hereby authorize the applicant to act as manager for the named liquor license.

State of \_\_\_\_\_ County of \_\_\_\_\_  
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

X \_\_\_\_\_  
(Signature of LICENSEE/AGENT)

My commission expires on \_\_\_\_\_  
Day Month Year

\_\_\_\_\_  
(Signature of NOTARY PUBLIC)

#15 & #16

In 2005 I received a DUI. All court requirements were met and all fines paid.

#18

I am owner of other My Big Fat Greek Restaurants, at least one of which has received a liquor violation in the past.

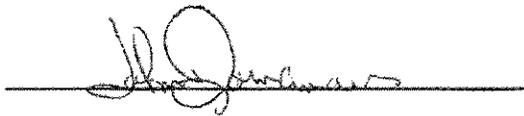
2003 2 counts unauthorized ID & minor

2004 1

2004 1 Possesion after 1:30

#20

I have ownership in several My Big Fat Greek Restaurants.

A handwritten signature in black ink, appearing to read "John Roumanas", is written over a solid horizontal line.

John Roumanas

07 JUL 31 04:45 PM '15



ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL  
STATE OF ARIZONA

800 W WASHINGTON FIFTH FLOOR PHOENIX, ARIZONA 85007-2934  
Tucson AZ 85710 Congress #150

JANET A. NAPOLITANO  
GOVERNOR (602) 542-5141

LESLIE MORRISON  
DIRECTOR (520) 628-5395



07 JUDGE UP, DE PRINCE

CERTIFICATION OF COMPLETED ALCOHOL TRAINING PROGRAM(S)

PRINT NAME (UNDERLINE) OR TYPE NAME FROM GLE-048 NOT PREVIOUSLY DOCUMENTED COMPUTER GENERATED, TYPE OR PRINT WITH BLACK INK.

ALCOHOL TRAINING PROGRAM INDIVIDUAL INFORMATION

John Rounovics  
Individual Name (Print)

[Signature]  
Trainer Signature

TYPE OF TRAINING COMPLETED  
TRAINER MUST CHECK YES OR NO FOR EACH TYPE

- YES  NO BASIC
- YES  NO ON SALE
- YES  NO MANAGEMENT
- YES  NO OFF SALE
- YES  NO BOTH
- YES  NO OTHER

Date Training Completed

IF TRAINEE IS EMPLOYED BY A LICENSEE:

NAME OF THE LICENSEE BUSINESS NAME LIQUOR LICENSE NUMBER

ALCOHOL TRAINING PROGRAM PROVIDER INFORMATION

A B C, ALCOHOL AWARENESS TASK FORCE

Company or Individual Name  
9022 S. ASH AVE., Suite 118  
Address

Tomb, A., 8882 (480) 777-2885  
City State Zip

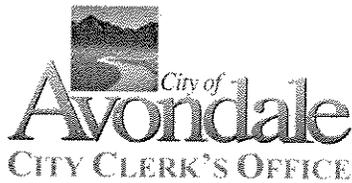
I Certify the above named individual has successfully completed the specified program(s).

[Signature] Trainer Signature  
JARED REPUSKE Trainer Name (Print)  
1-18-03 Date

Trainer give original of completed form to trainee, photocopy and retain completed document for your records.

Mandatory Liquor Law Training for all new applications submitted after Nov. 1, 1997, A.R.S. Section 9-112(G)(2).  
Completion of the Liquor License Training Course is required at the issuance of a license.  
The person(s) required to attend both the Basic Liquor Law and Management Training (either on-site or off-site), will include all of the following:  
owner(s), owner(s) or manager(s) who are actively involved in the day to day operation of the business.  
Proof of attendance within the last five years for the required courses must be submitted to the Department before the license application is considered complete.  
Before acceptance of a Manager's Checkbook and/or Agent Change for an existing license, proof of attendance for the Basic Liquor Law and Management Training (either on-site or off-site) will be required.

LC 981 10/98 Created individuals requiring special accommodations please call (602) 542-9081



**DEPARTMENTAL REVIEW FORM**

**TYPE OF LICENSE:**

- OFF TRACK BETTING
- LIQUOR LICENSE SERIES # 16
- EXTENSION OF PREMISES

**ROUTING:**

- POLICE DEPARTMENT
- DEVELOPMENT SERVICES
- FIRE DEPARTMENT



**APPLICANT'S NAME:** LAUREN MERRETT

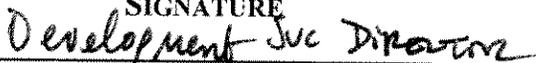
**BUSINESS NAME:** MY BIG FAT GREEK RESTAURANT

**ADDRESS:** 10040 WEST McDOWELL ROAD

**CITY:** AVONDALE      **STATE:** AZ      **ZIP CODE:** 85323

**DEPARTMENTAL COMMENTS:**

- APPROVED
- DENIED

  
 \_\_\_\_\_  
 SIGNATURE  
  
 \_\_\_\_\_  
 TITLE

9/4/07  
 \_\_\_\_\_  
 DATE

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: SEPTEMBER 17, 2007**  
**PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: SEPTEMBER 3, 2007**



## DEVELOPMENT SERVICES

### MEMORANDUM

---

---

**DATE:** August 30, 2007

**TO:** Linda Farris, City Clerk

**PREPARED BY:** Ken Galica, Planner II (623) 333-4019

**SUBJECT:** Series 12 Liquor License for My Big Fat Greek Restaurant  
Northwest corner of McDowell Road and 99<sup>th</sup> Avenue

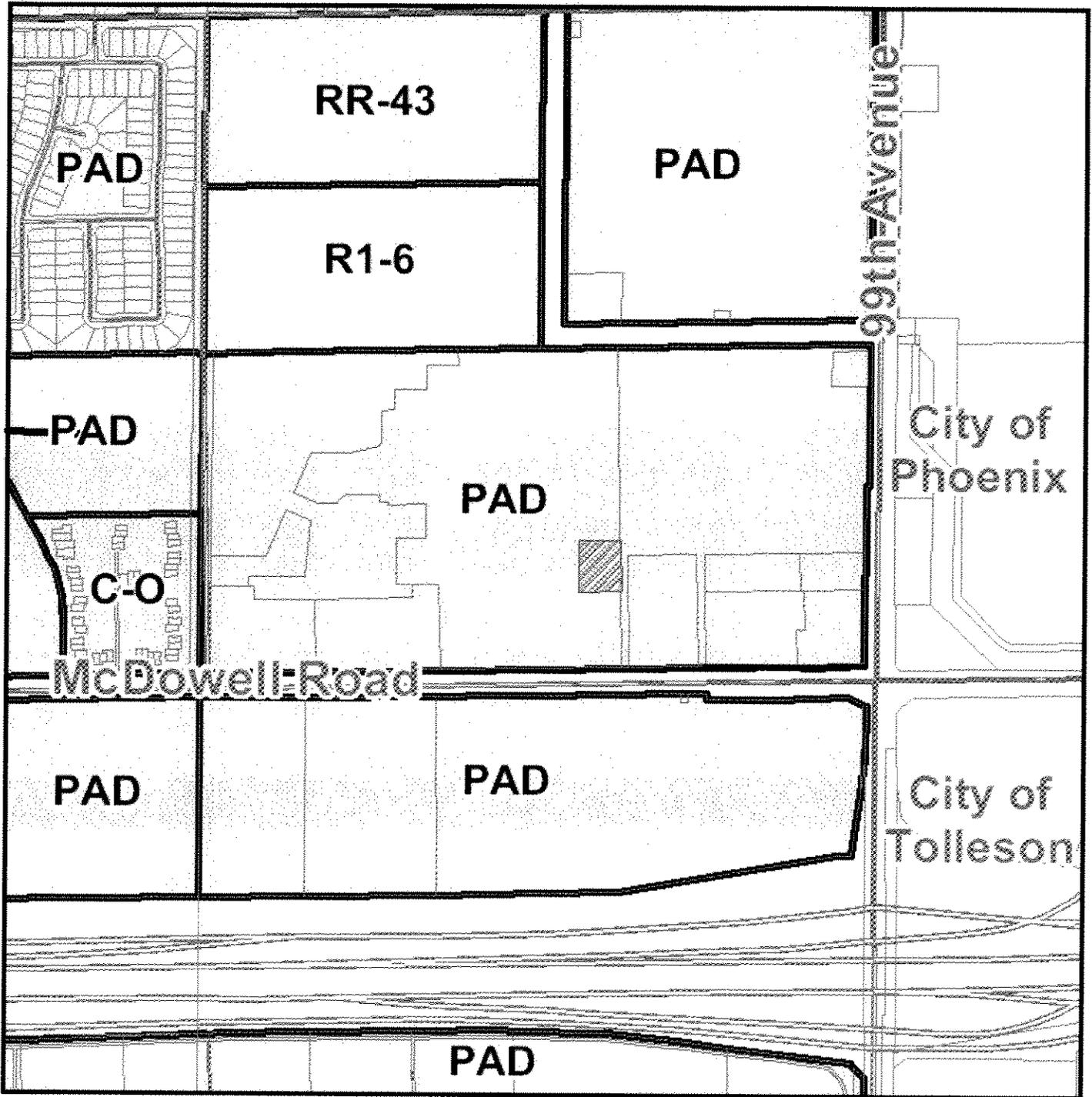
The proposed location is at the northeast corner of 99<sup>th</sup> Avenue and McDowell Road on "Pad E" of the Gateway Pavilions shopping center. The building is existing and has previously been occupied by a restaurant tenant, Paul Lee's Chinese Kitchen.

Series 12 liquor licenses are exempt from any separation requirements from churches, schools, or fenced school recreational areas.

The General Plan designates the property as Freeway Commercial and the site is zoned PAD (Planned Area Development), part of the Avondale Gateway PAD approved by the City Council in May 1986 and amended on October 1, 2001. Restaurants are permitted uses in this PAD.

There are no zoning or separation issues with the site.

Attachment: Zoning Vicinity Map  
Aerial of Gateway Pavilions

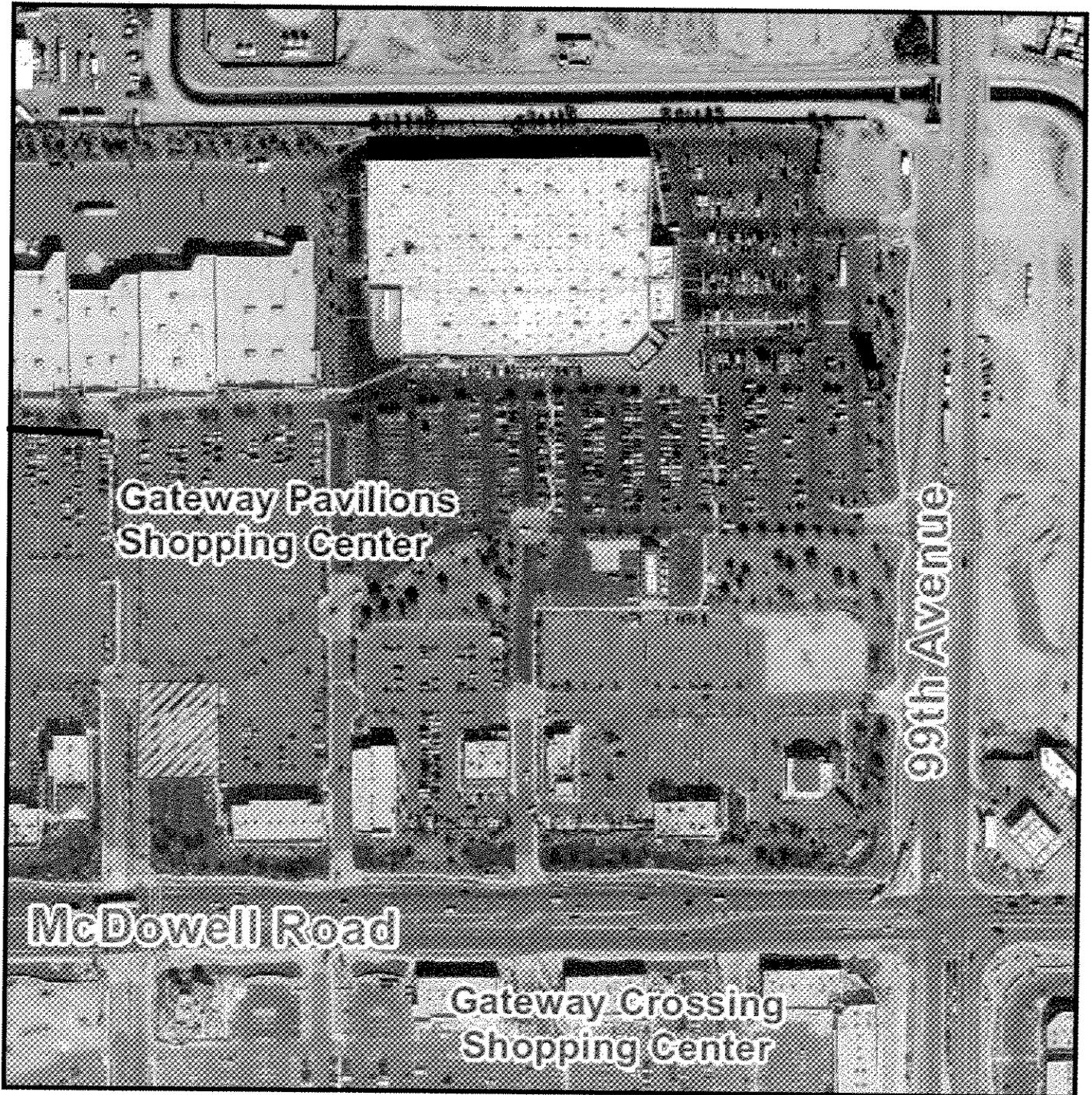


## Zoning Vicinity Map



Proposed "My Big Fat  
Greek Restaurant"



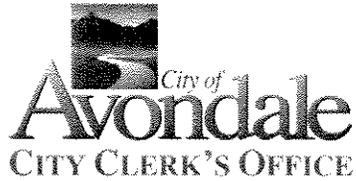


## 2007 Aerial Photograph



Proposed "My Big Fat  
Greek Restaurant"





**DEPARTMENTAL REVIEW FORM**

**TYPE OF LICENSE:**

- OFF TRACK BETTING
- LIQUOR LICENSE SERIES # 16
- EXTENSION OF PREMISES

**ROUTING:**

- POLICE DEPARTMENT
- DEVELOPMENT SERVICES
- FIRE DEPARTMENT

**APPLICANT'S NAME:** LAUREN MERRETT

**BUSINESS NAME:** MY BIG FAT GREEK RESTAURANT

**ADDRESS:** 10040 WEST McDOWELL ROAD

**CITY:** AVONDALE      **STATE:** AZ      **ZIP CODE:** 85323

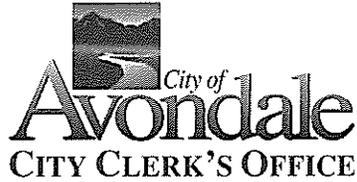
**DEPARTMENTAL COMMENTS:**

- APPROVED
- DENIED

  
 \_\_\_\_\_  
 SIGNATURE  
 FIRE MARSHAL  
 \_\_\_\_\_  
 TITLE

8/29/07  
 \_\_\_\_\_  
 DATE

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: SEPTEMBER 17, 2007**  
**PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: SEPTEMBER 3, 2007**



**DEPARTMENTAL REVIEW FORM**

**TYPE OF LICENSE:**

- OFF TRACK BETTING
- LIQUOR LICENSE SERIES # 16
- EXTENSION OF PREMISES

**ROUTING:**

- POLICE DEPARTMENT
- DEVELOPMENT SERVICES
- FIRE DEPARTMENT

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**APPLICANT'S NAME:** LAUREN MERRETT

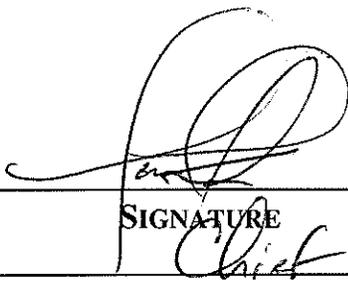
**BUSINESS NAME:** MY BIG FAT GREEK RESTAURANT

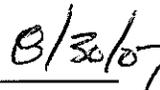
**ADDRESS:** 10040 WEST MCDOWELL ROAD

**CITY:** AVONDALE      **STATE:** AZ      **ZIP CODE:** 85323

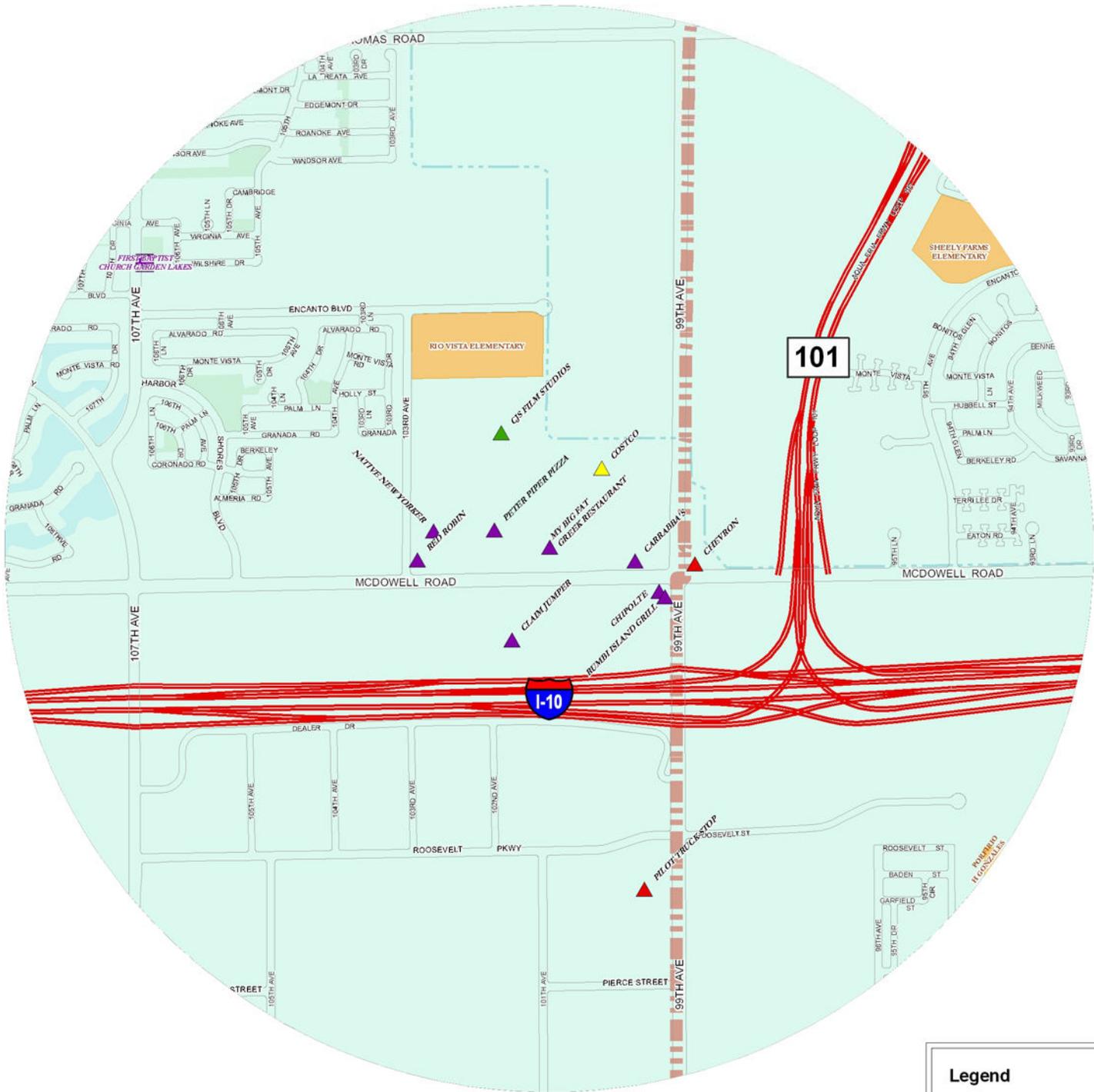
**DEPARTMENTAL COMMENTS:**

- APPROVED
- DENIED

  
\_\_\_\_\_  
SIGNATURE  
  
\_\_\_\_\_  
TITLE

  
\_\_\_\_\_  
DATE

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: SEPTEMBER 17, 2007**  
**PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: SEPTEMBER 3, 2007**



0 312.5 625 1,250 1,875 2,500 Feet  
 Avondale GIS Division of Water Resources

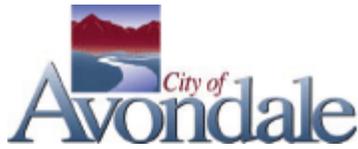
**My Big Fat Greek Restaurant  
 1 Mile Buffer**

**Legend**

**LIQUOR LICENSE**

- ▲ SERIES 6
- ▲ SERIES 7
- ▲ SERIES 9
- ▲ SERIES 10
- ▲ SERIES 12
- ▲ SERIES 14
- ▲ SERIES 16
- SCHOOLS
- PLACE OF WORSHIP





# CITY COUNCIL REPORT

**SUBJECT:**  
Purchase of Skid Loader

**MEETING DATE:**  
September 17, 2007

**TO:** Mayor and Council

**FROM:** Cindy Blackmore, Deputy Field Operations Director (623)333-4717

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting City Council authorization to attach to the Houston-Galveston Area Council (H-GAC) Contract for the purchase of one Case 570M XT Loader from Falcon Power for a total of \$51,327.38.

**BACKGROUND:**

Each year the fleet services division coordinates the purchase of replacement and additional vehicles for each city department. During the fiscal year 2007/2008 budget, Council authorized the purchase of one additional skid loader for the wastewater treatment plant.

**DISCUSSION:**

Fleet services staff coordinated with staff from the water resources department to determine the type of equipment options that would best fit their needs. It was determined the unit listed below is best suited for the support required to accomplish the commitments of the wastewater treatment plant division.

**BUDGETARY IMPACT:**

The 580M XT Case Loader is available on the H-GAC contract through Falcon Power for \$51,327.38. Funding for this piece of equipment was approved in the 2007/2008 budget in the amount of \$50,000. The water resources department will fund the remaining balance of \$1,327.38 from their operating budget.

**RECOMENDATION:**

Staff recommends that the City Council authorize attachment to the Houston-Galveston Area Council (H-GAC) Contract for the purchase of one Case 570M XT Loader from Falcon Power for a total of \$51,327.38.

**ATTACHMENTS:**

Click to download

[HGAC contract pricing worksheet](#)



**CONTRACT PRICING WORKSHEET**  
For Standard Equipment Purchases

Contract No.:

EM06-07

Date Prepared:

8/3/2007

*This Form must be prepared by Contractor and given to End User. End User issues PO to Contractor, and MUST also fax a copy of PO, together with completed Pricing Worksheet, to H-GAC @ 713-993-4548. Please type or print legibly.*

Buying Agency:	City of Avondale	Contractor:	Falcon Power, Inc.
Contact Person:	Russel Ellis	Prepared By:	Juan Mayoral
Phone:		Phone:	602-269-3221
Fax:		Fax:	
Email:		Email:	sales@falconpower.com

Product Code:	D025	Description:	CASE 570M XT Loader/Landscaper-2WD w/ ROPS, 3-Point
---------------	------	--------------	---

**A. Product Item Base Unit Price Per Contractor's H-GAC Contract:** \$37,413.71

**B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.**  
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
		#618-4E - 19.5 Drive Tires	\$182.00
		82" Quick Attach Bucket	\$1,869.70
		#618-6C - Suspension Seat	\$348.00
		Subtotal From Additional Sheet(s):	
		<b>Subtotal B:</b>	\$2,399.70

**C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.**  
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
Manual Quick Coupler	\$1,941.28	Tube Covers	\$88.00
Additional Rear Weights	\$792.00	Set of 60" Forks	\$2,995.00
		Subtotal From Additional Sheet(s):	
		<b>Subtotal C:</b>	\$5,816.28

**Check:** Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: 15%

**D. Other Cost Items Not Itemized Above (e.g. Installation, Freight, Delivery, Etc.)**

Description	Cost	Description	Cost
		Additional Freight to Arizona	\$900.00
		Additional Freight for attachments	\$250.00
		<b>Subtotal D:</b>	\$1,150.00

**E. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C+D)** \$46,779.69

Quantity Ordered:	1	X Subtotal of A + B + C + D:	\$46,779.69	= Subtotal E:	\$46,779.69
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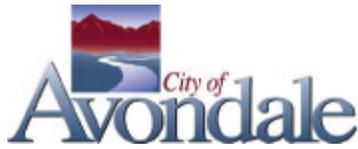
**F. H-GAC Fee Calculation (From Current Fee Tables)** Subtotal F: \$701.70

**G. Trade-Ins / Other Allowances / Special Discounts**

Description	Cost	Description	Cost
		<b>Subtotal G:</b>	\$0.00

**Delivery Date:** 30 - 90 Days **H. Total Purchase Price (E+F+G):** \$47,481.39

8.1% TAX 3,848.99  
# 5127738



# CITY COUNCIL REPORT

**SUBJECT:**

Amendment No. 2 to the Professional Services agreement with Coe and Van Loo Construction Services for the Thomas (Fulton) Estates lift station

**MEETING DATE:**

September 17, 2007

**TO:** Mayor and Council

**FROM:** Wayne Janis, Water Resources Director (623)333-4444

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve Amendment No. 2 to the professional services agreement with Coe and Van Loo Construction Services, LLC., for additional construction management services associated with the Fulton Estates lift station, in an amount not to exceed \$28,876.84 for a revised total contract amount of \$85,814.84, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**BACKGROUND:**

On April 19, 2004 the City Council awarded a contract to Coe and Van Loo Construction Services (CVLCSS) to provide construction management services for the Fulton Estates Lift Station project. The lift station is located in the Southeast corner of the Fulton Estates residential housing development. The facility includes a 25 foot deep wet well, two 7.5 hp submersible pumps, odor control equipment, an emergency generator and facility controls. City Council approved Amendment No. 1 to the agreement on September 19, 2006. This amendment addressed additional stipulations mandated by Maricopa County Environmental Services regarding the construction of a backup connection to Litchfield Park Service Company's collection system, in the event the forcemain which connects the liftstation to Avondale's collection system ever failed. Amendment No. 1 addresses additional reviews and inspections associated with the County requirements.

**DISCUSSION:**

Additional services from Coe and Van Loo's construction inspectors were required, which had not been included in the original scope of services. Additional inspection services, shop drawing reviews and meetings associated with change orders were required during the construction phase of the project. This amendment also covers additional time for contract administration caused by delays during the project. Staff has worked with the contractor and has reduced the final construction contract amount by \$20,884.73 to compensate for the delays directly related to the additional time.

**BUDGETARY IMPACT:**

Funding for Amendment No. 2 is available in the Capital Improvement Budget (513-1047-00-8610)

**RECOMENDATION:**

Staff recommends that the City Council approve Amendment No. 2 to the Professional Services Agreement with Coe and Van Loo Construction Services, LLC., for additional construction management services associated with the Fulton Estates lift station, in an amount not to exceed \$28,876.84 for a revised total contract amount of \$85,814.84, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

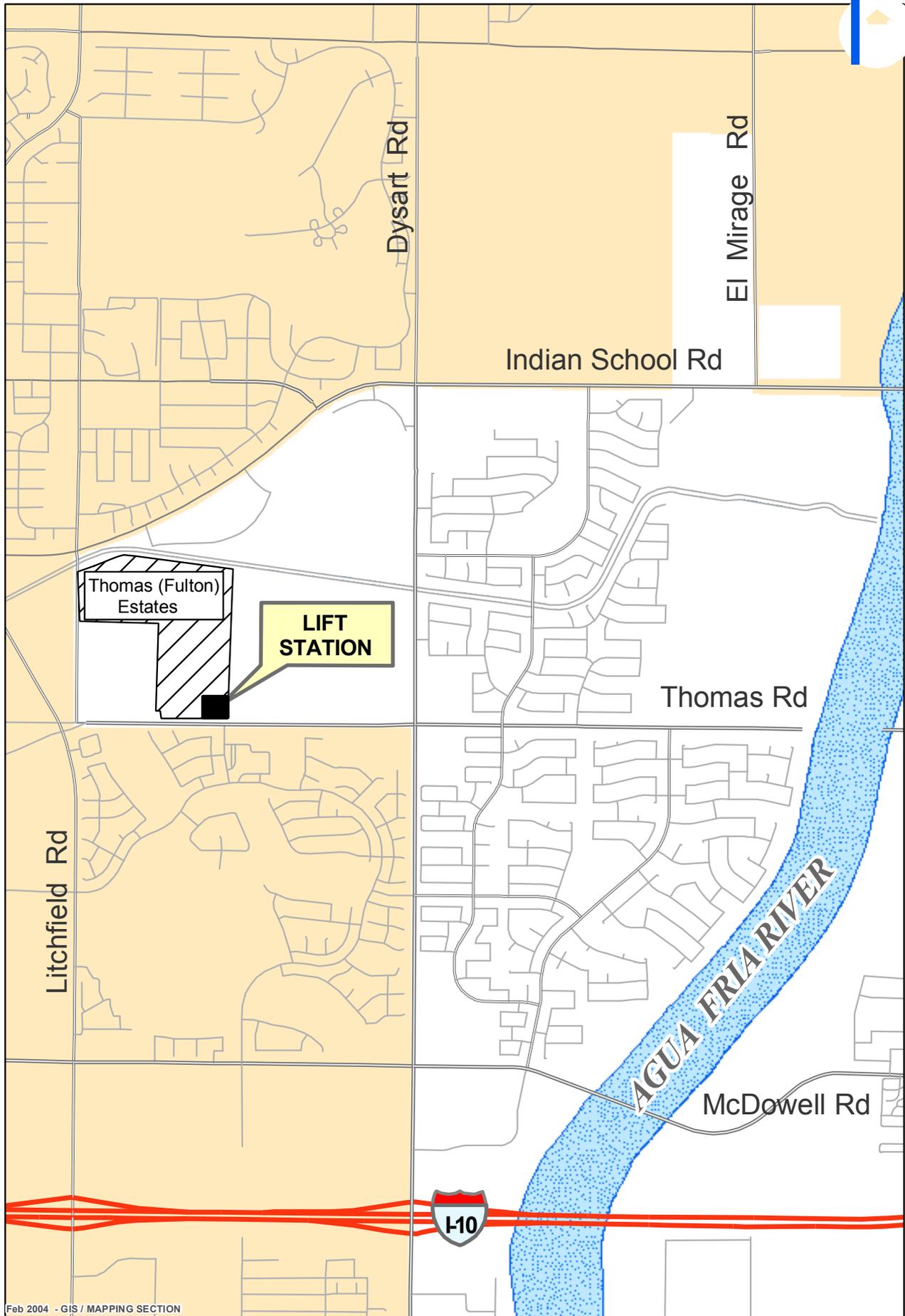
**ATTACHMENTS:**

[Click to download](#)

 [Vicinity map](#)

 [PSA - CVL](#)

VICINITY MAP



Feb 2004 - GIS / MAPPING SECTION

**CITY OF AVONDALE**  
Thomas Estates  
Wastewater Lift Station

**SECOND AMENDMENT  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
CVL CONSTRUCTION SERVICES, LLC**

THIS SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (this "Second Amendment") is made as of September 17, 2007, between the City of Avondale, an Arizona municipal corporation (the "City") and CVL Construction Services, LLC, an Arizona limited liability company (the "Consultant").

RECITALS

A. The City and the Consultant entered into that certain Professional Services Agreement dated April 19, 2004, as amended by that certain First Amendment to Professional Services Agreement dated as of October 17, 2005 (as amended, the "Agreement") for the City's Fulton Estates Lift Station Project.

B. The City has determined that additional services by the Consultant are necessary to complete the project (the "Additional Services").

C. The City and the Consultant desire to amend the Agreement to provide for the Additional Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the following mutual covenants and conditions, the City and the Consultant hereby agree to amend the Agreement as follows:

1. Scope of Work. The Consultant shall provide the Additional Services as set forth in the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference.

2. Compensation. The City shall pay the Consultant an amount not to exceed \$28,876.84 as consideration for the Additional Services as set forth in Exhibit A. The Consultant's total compensation under the Agreement shall not exceed \$85,814.84.

3. Effect of Amendment. In all other respects, the Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

4. Non-Default. By executing this Second Amendment, the Consultant affirmatively asserts that the City is not currently in default, nor has been in default at any time prior to this Second Amendment, under any of the terms or conditions of the Agreement.

5. Conflict of Interest. This Second Amendment may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

**“City”**

CITY OF AVONDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Charles P. McClendon, City Manager

ATTEST:

\_\_\_\_\_  
Linda M. Farris, City Clerk

**“Consultant”**

CVL CONSTRUCTION SERVICES,  
LLC, an Arizona limited liability company

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_



EXHIBIT A  
TO  
SECOND AMENDMENT  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
CVL CONSTRUCTION SERVICES, LLC

[Scope of Work]

See following pages.

# CVL Construction Services, LLC

## CITY OF AVONDALE THOMAS ESTATES LIFT STATION AMENDMENT NO. 2

CVL Construction Services, LLC (CCS) contracted with the City of Avondale to provide Inspection Services, including construction observation, administration and certification services for the Thomas Estates Lift Station, Project No. LSCI 04, Contract No. 0304180. ("The Project")

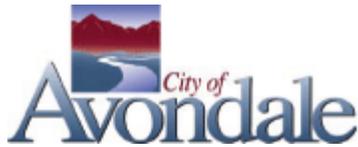
This Project has included:

The Project was contracted for completion on December 14, 2004. The Contractor, Highland Engineering, did not complete The Project until February, 2007 (111 weeks). CCS' contract included provisions for time extension compensation in the amount of \$590 / week. The calculated delay fees less the earlier Contract Amendment and Purchase Order totaled approximately \$ 44,000.

In the best business practices and mutual interests of the parties, CCS has agreed to present and request for consideration only those fees equal to CCS' additional costs. Those additional fees result from the Contractor's untimely incomplete and often unacceptable installation to industry construction standards.

As a result of the Contractor's performance, CCS provided additional services for:

<input type="checkbox"/> Additional meetings	\$ 1,589.05
<input type="checkbox"/> Additional shop drawing reviews	\$ 2,939.97
<input type="checkbox"/> Additional responses to requests for information	\$ 1,480.50
<input type="checkbox"/> Additional change order reviews	\$ 3,432.65
<input type="checkbox"/> Additional field visits due to the extended duration and increased levels of inspection due to contractor's unacceptable installation not previously included in Amendment No. 1 to the Contract	\$ 862.63
<input type="checkbox"/> Extensive additional coordination responsibilities between CCS, the Contractor's staff, City personnel and other Subconsultants, Manufacturers and Suppliers to gather review and obtain acceptable Operation & Maintenance Manuals, complete the punch list, receive equipment guarantees and manufacturer's installation certifications, receive spare parts and complete the facility's Start-Up and Commissioning, including the additional reimbursable fees for printing, distribution, deliveries and mileage.	\$ 18,572.04
<b>TOTAL ADDITIONAL SERVICES REQUEST</b>	<b>\$ 28,876.84</b>



# CITY COUNCIL REPORT

**SUBJECT:**

Approval to re-plot parcels along Western Avenue between 4th street and 5th street for the Old Town Library

**MEETING DATE:**

September 17, 2007

**TO:** Mayor and Council

**FROM:** Daniel Davis, Director of Parks, Recreation & Libraries (623)333-2411

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve the re-plot of parcels along Western Avenue between 4th street and 5th street for the Old Town Library and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**DISCUSSION:**

The design for the Old Town Library combined Sernas Plaza, 5th Street, between Western Avenue and Belmont and newly acquired property west of 5th Street. The site plan provides a functional outdoor space that can be used by Library patrons and residents and serve as a neighborhood park and gathering space. In order to accomplish this objective, the city needs to re-plot the parcels and combined them into one parcel.

Staff notified the area residents, business owners, and property owners of the Old Town Library project and the abandonment of 5th street between Western Avenue and Belmont Drive, and did not receive any adverse comments.

In addition, the Police and Fire Departments have reviewed the plans and have indicated that the abandonment of 5th street will not adversely affect there response times or level of service.

Utility companies such as Cox Communications, Qwest, and APS were contacted and informed staff that they have no objections to this abandonment.

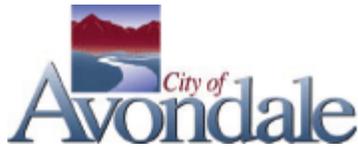
**RECOMENDATION:**

Staff recommends that the City Council approve the re-plot of parcels along Western Avenue between 4th street and 5th street for the Old Town Library and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# DEVELOPMENT SERVICES

**SUBJECT:**  
DR-06-20 Avondale Coldwater I site plan

**MEETING DATE:**  
September 17, 2007

**TO:** Mayor and Council  
**FROM:** Brian Berndt, Development Services Director (623)333-4011  
**THROUGH:** Charlie McClendon, City Manager

---

**REQUEST:** At the September 4, 2007, City Council meeting, the Council voted to continue application DR-06-20 to the September 17, 2007, Council agenda. Staff has been working with the applicant since that meeting to revise the building elevations for the shopping center. The applicant has requested more time to prepare the revised elevations in order to comply with Council's direction. The applicant is requesting that this item be continued to the October 1, 2007, Council agenda.

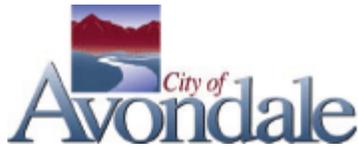
**RECOMMENDATION:**

Staff recommends that this item be continued to the October 1, 2007 Council meeting.

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**

Ordinance 1267-907 Right of Way Dedication - Ryland Homes - Avondale Boulevard and Buckeye Road (MC85)

**MEETING DATE:**

September 17, 2007

**TO:** Mayor and Council

**FROM:** Dave Fitzhugh, P.E., Interim City Engineer (623)333-1014

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council adopt an ordinance accepting the dedication of certain rights-of-way along Avondale Boulevard and Buckeye Road (MC85) adjacent to the Coldwater Ridge subdivision and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

**BACKGROUND:**

On September 3, 2002, Council approved the Final Plat and Map of Dedication for the Coldwater Ridge subdivision. The Coldwater Ridge subdivision was developed during 2003 through 2005. At the time the Final Plat was processed and recorded, right-of-way dedications for Avondale Boulevard and Buckeye Road had to be deferred. This was due to the fact that the required SRP USA Fee Title property exchange had to be completed and precede the right-of-way dedication. The fee title property exchange was required because of the relocation of the existing irrigation facilities as part of the road widening improvements for Avondale Boulevard and Buckeye Road (see the attached Vicinity Map).

**DISCUSSION:**

Once the SRP USA Fee Title property exchange was completed by Ryland Homes, the reassigned and remaining road right-of-way was never dedicated. In order to complete this dedication, the following documents need to be executed, authorized to be accepted and recorded:

- The Buckeye Road right-of-way dedication consists of one parcel:
  - 20 ft wide by approximately 1,267 ft long totaling 25,339± square feet being dedicated by Quit Claim Deed.
- The Avondale Boulevard right-of-way dedication consists of two separate parcels:
  - Dedication of existing right-of-way 33 ft wide by approximately 1,665 ft long totaling 1.32± acres of County right-of-way west of the monument line, being dedicated by Quit Claim Deed.
  - Dedication of the remaining right-of-way 32 ft wide by approximately 1,634 ft long totaling 1.17 ± acres of Ryland property along Coldwater Ridge, being dedicated by Special Warranty Gift Deed.

**BUDGETARY IMPACT:**

No financial impact to the City.

**RECOMENDATION:**

Staff recommends that the City Council adopt an ordinance to accept the dedication of certain rights-of-way along Avondale Boulevard and Buckeye Road (MC85) adjacent to the Coldwater Ridge subdivision and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

## ATTACHMENTS:

Click to download

 [Vicinity Map](#)

 [ORD](#)



0 100 200 400

SCALE: 1"=400

R.O.W. DEDICATION

BUCKEYE ROAD (MC85)

LITTLETON ELEMENTARY SCHOOL

NOT A PART

119TH AVENUE

AVONDALE BOULEVARD (115TH AVENUE)

FUTURE SCHOOL SITE

COCOPAH CIRCLE

FIRE STATION

DURANGO STREET

R.O.W. DEDICATION

-  SCHOOL SITE P.U.E.
-  FIRE STATION P.U.E. AND SRP EASEMENT
-  R.O.W. DEDICATION

P:\Ryd0000-0058\Ryd0058-1\0wg\Sv\RYL.D0058-15\EM12A.DWG mmc Mar 04, 2005 12:34:47pm

SCALE:  
1"=400'

SHEET  
1 OF 1

JOB NO.:  
RYLD0058

### COLDWATER RIDGE DEVELOPMENT PUBLIC UTILITY EASEMENTS AND RIGHT-OF-WAY DEDICATIONS LOCATION MAP



DAVID EVANS  
AND ASSOCIATES INC.  
2141 East Highland Avenue, Suite 200  
Phoenix Arizona 85016  
Phone: 602.578.5181

DRAWN BY: mmc

CHECKED BY:

DATE: 02/05

**ORDINANCE NO. 1267-907**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ACCEPTING THE DEDICATION OF REAL PROPERTY FOR USE AS PUBLIC RIGHT-OF-WAY.

**BE IT ORDAINED** BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That a  $\pm$  1.210 acre parcel of certain real property, generally located along Avondale Boulevard, north of Durango Street, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, is hereby accepted by the City of Avondale (the "City") from The Ryland Group, Inc. ("Ryland"), for use as a public right-of-way.

SECTION 2. That a  $\pm$  1.324 acre parcel of certain real property, generally located along Avondale Boulevard, north of Durango Street, as more particularly described and depicted in Exhibit B, attached hereto and incorporated herein by reference, is hereby accepted by the City from Ryland, for use as a public right-of-way.

SECTION 3. That a  $\pm$  0.582 acre parcel of certain real property, generally located along Buckeye Road, west of Avondale Boulevard, as more particularly described and depicted in Exhibit C, attached hereto and incorporated herein by reference, is hereby accepted by the City from Ryland, for use as a public right-of-way.

SECTION 4. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

**PASSED AND ADOPTED** by the Council of the City of Avondale, September 17, 2007.

---

Marie Lopez Rogers, Mayor

ATTEST:

---

Linda M. Farris, City Clerk

APPROVED AS TO FORM:

---

Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
ORDINANCE NO. 1267-907

[Legal description and map of Right-of-Way Dedication]

See following pages.

**115<sup>th</sup> Avenue  
Roadway Dedication  
Exhibit "A"**

A portion of the east half of the northeast quarter of Section 13, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a Maricopa County Highway Department brass cap in hand-hole, found at the east quarter corner of said Section 13, from which an Arizona Department of Transportation aluminum cap in hand-hole, found at the northeast corner of said Section 13 bears North  $00^{\circ}20'08''$  West, a distance of 2661.62 feet; Thence South  $88^{\circ}48'52''$  West, along the east-west mid-section line of said Section 13, a distance of 65.01 feet, to a point on the west line of the east 65.0 feet of said Section 13; Thence North  $00^{\circ}20'08''$  West, along the west line of the east 65.0 feet of said Section 13, a distance of 30.00 feet to the TRUE POINT OF BEGINNING;

Thence North  $00^{\circ}20'08''$  West, along the west line of the east 65.0 feet of said Section 13, a distance of 999.41 feet;

Thence North  $45^{\circ}20'08''$  West, a distance of 35.36 feet to a point on the west line of the east 90.0 feet of said Section 13;

Thence North  $00^{\circ}20'08''$  West, along the west line of the east 90.0 feet of said Section 13, a distance of 60.00 feet;

Thence North  $44^{\circ}39'52''$  East, a distance of 35.36 feet to a point on the west line of the east 65.0 feet of said Section 13;

Thence North  $00^{\circ}20'08''$  West, along the west line of the east 65.0 feet of said Section 13, a distance of 526.14 feet;

Thence North  $89^{\circ}55'53''$  East, a distance of 32.00 feet to a point on the west line of the east 33.0 feet of said Section 13;

Thence South  $00^{\circ}20'08''$  East, along the west line of the east 33.0 feet of said Section 13, a distance of 96.17 feet;

Thence South  $89^{\circ}56'07''$  West, a distance of 22.00 feet, to a point on the west line of the east 55.0 feet of said Section 13;

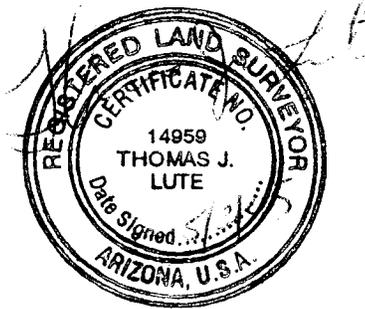
Thence South 00°20'08" East, along the west line of the east 55.0 feet of said Section 13, a distance of 80.00 feet;

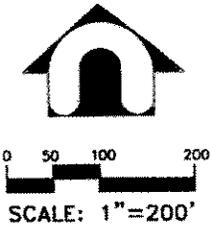
Thence North 89°56'07" East, a distance of 22.00 feet, to a point on the west line of the east 33.0 feet of said Section 13;

Thence South 00°20'08" East, along the west line of the east 33.0 feet of said Section 13, a distance of 1458.75 feet, to a point on the north line of the south 33.0 feet of the northeast quarter of said Section 13;

Thence South 88°48'52" West, along said north line, a distance of 32.00 feet to the TRUE POINT OF BEGINNING.

Said parcel containing 1.210 acres, more or less.

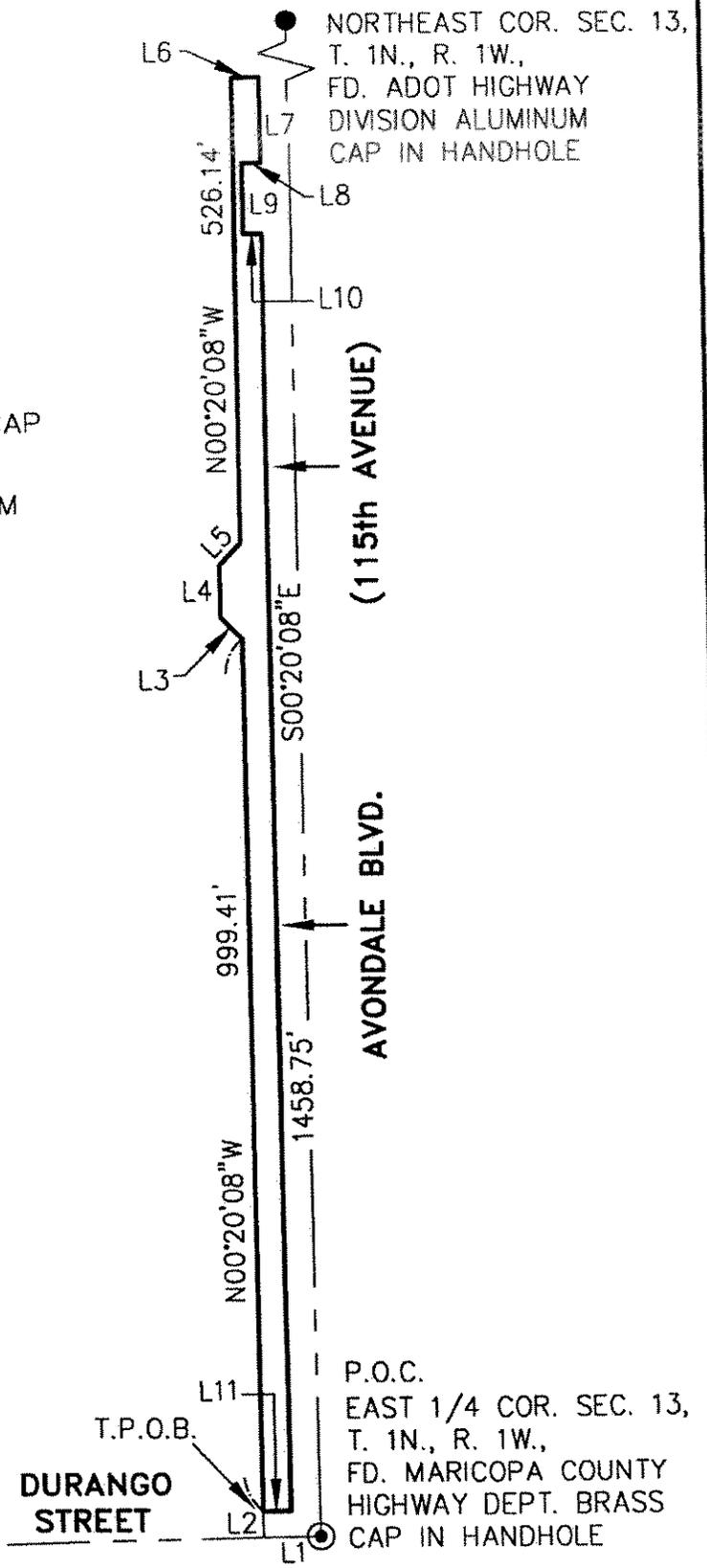




**LEGEND**

-  INDICATES FOUND BRASS CAP AS NOTED
-  INDICATES FOUND ALUMINUM CAP AS NOTED
-  MONUMENT LINE
-  BOUNDARY LINE

LINE TABLE		
LINE	BEARING	LENGTH
L1	S88°48'52"W	65.01'
L2	N00°20'08"W	30.00'
L3	N45°20'08"W	35.36'
L4	N00°20'08"W	60.00'
L5	N44°39'52"E	35.36'
L6	N89°55'53"E	32.00'
L7	S00°20'08"E	96.17'
L8	S89°56'07"W	22.00'
L9	S00°20'08"E	80.00'
L10	N89°56'07"E	22.00'
L11	S88°48'52"W	32.00'



P:\Ryd0000-0058\Ryd0058-1\dwg\Sv\RYLD0058-1SVEM14.dwg AFMC May 03, 2005 12:53:54pm

SCALE: 1"=200'	<b>115th AVENUE ROADWAY DEDICATION EXHIBIT 'A'</b>	 <b>DAVID EVANS AND ASSOCIATES INC.</b> <small>2141 East Highland Avenue, Suite 200 Phoenix Arizona 85016 Phone: 602.678.5151</small>	DRAWN BY: <i>AFMC</i> CHECKED BY: DATE: <i>04/05</i>
SHEET 1 OF 1			
JOB NO.: RYLD0058			

EXHIBIT B  
TO  
ORDINANCE NO. 1267-907

[Legal description and map of Right-of-Way Dedication]

See following pages.

**Avondale Boulevard  
(115<sup>th</sup> Avenue)  
Roadway Quit Claim  
Exhibit "A"**

A portion of the east half of the northeast quarter of Section 13, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at a Maricopa County Highway Department brass cap in hand-hole, found at the east quarter corner of said Section 13, from which an Arizona Department of Transportation aluminum cap in hand-hole, found at the northeast corner of said Section 13 bears North 00°20'08" West, a distance of 2661.62 feet;

Thence South 88°48'52" West, along the east-west mid-section line of said Section 13, a distance of 65.01 feet, to a point on the west line of the east 65.0 feet of said Section 13;

Thence North 00°20'08" West, along the west line of the east 65.0 feet of said Section 13, a distance of 30.00 feet;

Thence North 88°48'52" East, along a line which is 30.0 feet north of and parallel with the east-west mid-section line of said Section 13, a distance of 32.00 feet, to a point on the west line of the east 33.0 feet of said Section 13;

Thence North 00°20'08" West, along the west line of the east 33.0 feet of said Section 13, a distance of 1458.75 feet;

Thence South 89°56'07" West, a distance of 22.00 feet, to a point on the west line of the east 55.0 feet of said Section 13;

Thence North 00°20'08" West, along the west line of the east 55.0 feet of said Section 13, a distance of 80.00 feet;

Thence North 89°56'07" East, a distance of 22.00 feet, to a point on the west line of the east 33.0 feet of said Section 13;

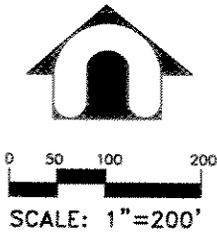
Thence North 00°20'08" West, along the west line of the east 33.0 feet of said Section 13, a distance of 96.17 feet;

Thence North 89°55'53" East, a distance of 33.00 feet, to a point on the east line of said Section 13;

Thence South 00°20'08" East, along the east line of said Section 13, a distance of 1664.28 feet to the TRUE POINT OF BEGINNING.

Said parcel containing 1.324 acres, more or less.

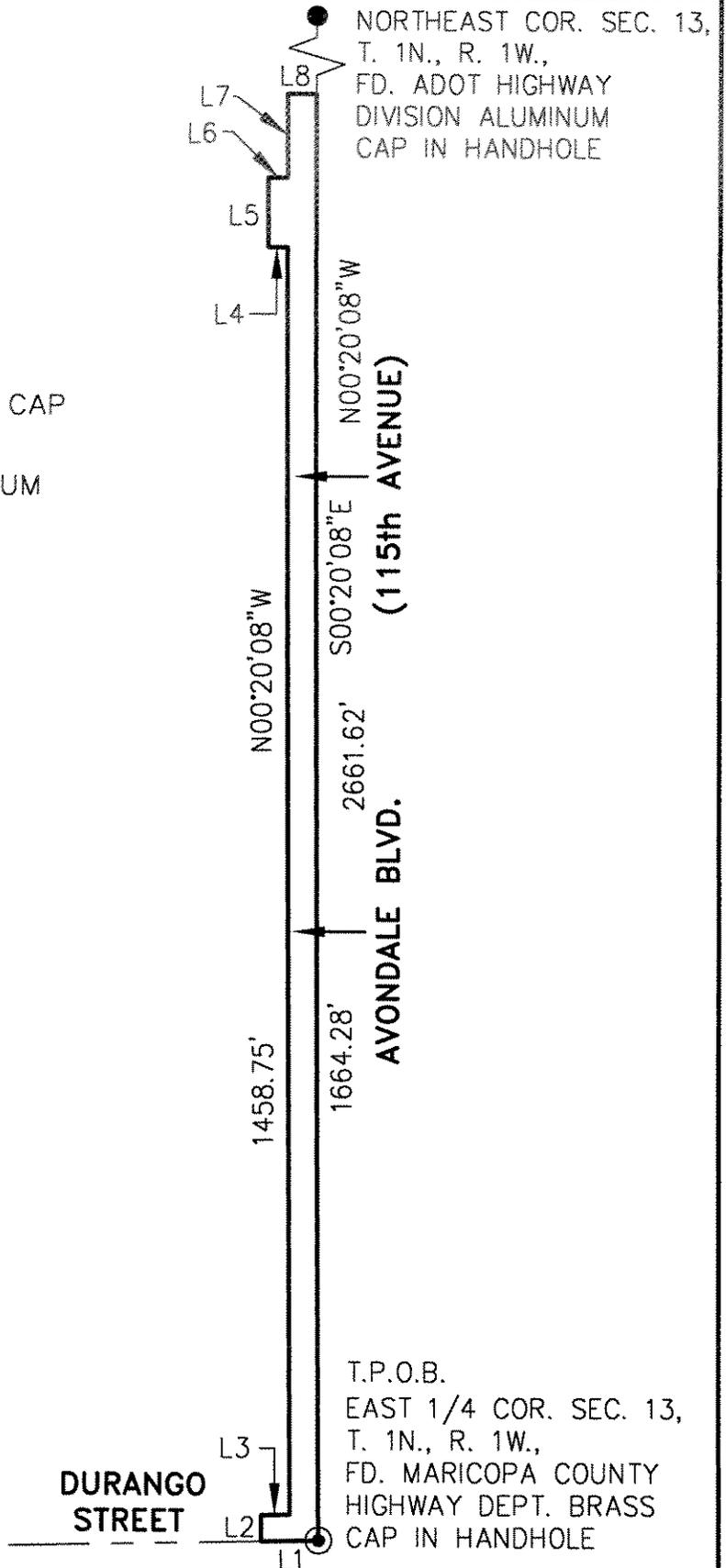




**LEGEND**

- INDICATES FOUND BRASS CAP AS NOTED
- INDICATES FOUND ALUMINUM CAP AS NOTED
- MONUMENT LINE
- BOUNDARY LINE

LINE TABLE		
LINE	BEARING	LENGTH
L1	S88°48'52"W	65.01'
L2	N00°20'08"W	30.00'
L3	N88°48'52"E	32.00'
L4	S89°56'07"W	22.00'
L5	N00°20'08"W	80.00'
L6	N89°56'07"E	22.00'
L7	N00°20'08"W	96.17'
L8	N89°55'53"E	33.00'



P:\Ryd0000-0058\Ryd0058-1\dwg\Sv\RyLD0058-1SVEM15.dwg AFMC May 03, 2005 12:55:12pm

SCALE: 1"=200'	<b>115th AVENUE ROADWAY QUIT CLAIM EXHIBIT 'A'</b>	 <b>DAVID EVANS AND ASSOCIATES INC.</b> 2141 East Highland Avenue, Suite 200 Phoenix Arizona 85016 Phone: 602.678.5151	DRAWN BY: <i>AFMC</i>
SHEET 1 OF 1			CHECKED BY:
JOB NO.: RYLD0058			DATE: <i>04/05</i>

EXHIBIT C  
TO  
ORDINANCE NO. 1267-907

[Legal description and map of Right-of-Way Dedication]

See following pages.

**Buckeye Road  
Roadway Dedication  
Exhibit "A"**

A portion of that 20 foot wide right of way conveyed to the USA, by quitclaim deed recorded in Book 150 of Deeds, page 64, recorded June 11, 1920 and being described as follows:

That certain ditch, known as a sub-lateral of Lateral 25 of the Salt River Valley Canal, as said ditch was located and constructed in June, 1920, through, over and across the North half (N1/2) of Section Thirteen (13), of Township One North (1N), Range One West (1W), Gila & Salt River Base & Meridian, Maricopa County, Arizona, together with a strip of land Twenty feet (20 ft.) wide for right-of-way; the centerline of said ditch and right of way being described, (using as a base the East Half (E1/2) of the North line of said Section Thirteen (13) with an assumed bearing of West) as follows, to wit:

Beginning at a point thirty-two (32) feet South and Thirty-three (33) feet West of the Northeast corner of said Section Thirteen (13), thence South 89°47' West (record), South 89°46'52" West (measured), along a line which terminates, ten (10) feet west of and forty-two (42) feet south of the North Quarter (N1/4) corner of said section, 1340.0 feet to the TRUE POINT OF BEGINNING;

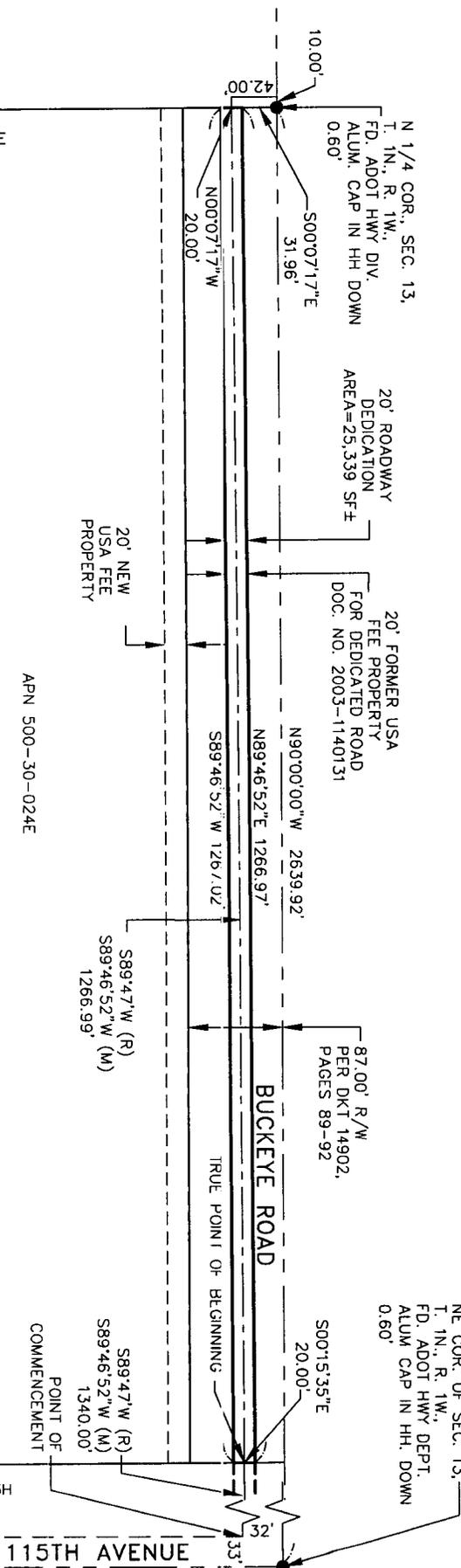
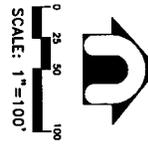
Thence South 89°47' West, (record), South 89°46'52" West (measured), along a line which terminates, ten (10) feet west of and forty-two (42) feet south of the North Quarter (N1/4) corner of said section, a distance of 1266.99 feet to a POINT OF TERMINUS on the north-south mid-section line of said Section 13.

Said parcel containing 25,339 square feet, more or less.



CAMBRIDGE ESTATES  
BOOK 549, PAGE 13  
MCR

N-S MID-SECTION LINE



(R) = RECORD  
(M) = MEASURED

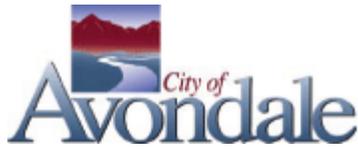
**EXHIBIT FOR  
BUCKEYE ROAD DEDICATION  
SECTION 13, T. 1N., R. 1W.**

**DAVID EVANS  
AND ASSOCIATES INC.**  
2141 East Highland Avenue, Suite 200  
Phoenix Arizona 85016  
Phone: 602.878.5151

DATE	REVISION	BY

DRAWN BY: EAA  
CHECKED BY:  
DATE: 12/03

SCALE: 1"=200'  
SECTION: 13  
TOWNSHIP: 1N  
RANGE: 1W  
SHEET: 1 OF 1  
JOB NO.: RYL00058



# CITY COUNCIL REPORT

**SUBJECT:**

Resolution - Canvass of Votes for the September 11, 2007 Primary Election

**MEETING DATE:**

September 17, 2007

**TO:** Mayor and Council

**FROM:** Linda M. Farris, City Clerk (623)333-1211

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

The purpose of this report is to request that Council adopt a resolution canvassing the vote for the September 11, 2007 Primary Election.

**BACKGROUND:**

The City of Avondale Primary Election was held Tuesday, September 11, 2007. In accordance with State Statutes, not less than six days nor more than fifteen days after a primary or general election, the governing body of the City will meet to canvass the votes.

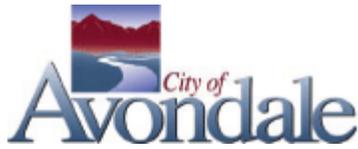
**RECOMENDATION:**

Staff recommends the Council adopt a resolution canvassing the vote for the September 11, 2007 Primary Election.

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**

Resolution 2681-907 - Intergovernmental Agreement -  
Littleton School District

**MEETING DATE:**

September 17, 2007

**TO:** Mayor and Council

**FROM:** Christopher Reams, Deputy Director of Parks, Recreation & Libraries (623)333-2412

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve a resolution authorizing an Intergovernmental Agreement between Littleton Elementary School District #65 and the City of Avondale for the purpose of offering out of school time recreation programs.

**BACKGROUND:**

The City of Avondale, in conjunction with Littleton Elementary School District, has offered the Summer Recreation Program for the past nine years. The Summer Recreation Program is offered to Avondale children who attend school within the Littleton Elementary School District. Staff would like to expand the agreement to cover other out of school time programs in addition to the summer program. The Out of School Time recreation programs include, but are not limited to: summer, before and after school, holiday break programs, and special grant funded programs. The programs are offered for children ages 7-14 years old, and include field trips, arts and crafts, educational guest speakers, computer lab, sports, interactive games, and meals for certain programs.

In addition to the Summer Program for 2007-2008, LESD has received a grant to conduct a program that includes before and after school tutoring and recreation activities. City staff will operate the recreation portion of the program and school staff will provide the tutoring component.

Currently, everytime that the City and the School District plan a program a separate IGA must be approved by the City Council and the District Board of Directors. Combining all out of school programming into one IGA will enhance staff's ability to coordinate the process and ensure that programs are prepared in accordance with the school schedule.

**DISCUSSION:**

The IGA will allow the City and the District to provide out of school time programs to Avondale children. The programs will include a combination of grant funded and self sustaining fee based programs that will be held throughout the entire year. The City and the District shall employ teachers and program staff responsible for agreed upon duties of the program. The City shall coordinate the employment process for program staff.

Program planning and implementation will take place throughout the school year as programs warrant. An annual programming meeting with representatives of the City and the District will be conducted during the summer of each school year to determine the specific programs that will be included in the following year's programming, based on all of the provisions as set forth in the IGA.

The City shall be responsible for programming, equipment procurement, and all program activities other than school tutoring functions. Tutoring will be provided in accordance with District policies. All programming shall be jointly agreed upon at the annual planning meetings. All marketing and promotion will be done jointly by the City and District.

The District shall provide appropriate facilities and transportation for conducting programming and provide sufficient insurance; covering facilities, transportation, and all program participants.

The term of the agreement is for a period of three (3) years and is reviewable every one (1) year during the annual planning meeting.

Staff is exploring the feasibility to expand out of school time programming to other school districts that service the City of Avondale. This IGA will be used as a template for expanding out of school time programs to those other districts.

**BUDGETARY IMPACT:**

All expenses associated with the programs will be included in the fees collected from the participants and set in accordance with the Recreation Cost Recovery Policy approved by Council. The City will be reimbursed from the District for cost associated with the programs, and all reimbursements shall be verified by appropriate documentation. The District will be invoiced at the mid point and the end of each specific program, but no later than 30 days after the end of each program.

The program budgets will include appropriate staffing levels based upon the specific program as developed during the annual planning meeting. Staff members may be added to maintain adequate adult to student ratios before or during the program.

**RECOMENDATION:**

Staff recommends that the City Council approve a resolution authorizing an Intergovernmental Agreement between the City of Avondale and the Littleton Elementary School District #65 for the purpose of offering out of school time recreation programs.

**ATTACHMENTS:**

Click to download

 [RES - 2681-907](#)

**RESOLUTION NO. 2681-907**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH LITTLETON SCHOOL DISTRICT NO. 65 FOR AN OUT OF SCHOOL TIME RECREATION PROGRAM.

**BE IT RESOLVED** BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That the Intergovernmental Agreement with Littleton Elementary School District No. 65 for an out of school time recreation program (the "Agreement") is hereby approved in the form attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Council of the City of Avondale, September 17, 2007.

---

Marie Lopez Rogers, Mayor

ATTEST:

---

Linda M. Farris, City Clerk

APPROVED AS TO FORM:

---

Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 2681-907

[Intergovernmental Agreement]

See following pages.

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
LITTLETON ELEMENTARY SCHOOL DISTRICT #65  
FOR  
OUT OF SCHOOL TIME RECREATION PROGRAMS

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of September 17, 2007, between the City of Avondale, an Arizona municipal corporation (the "City") and Littleton Elementary School District #65, an Arizona school district (the "District"). The City and District are sometimes collectively referred to in this Agreement as the "Parties" and each individually as a "Party".

RECITALS

A. The City and District desire to provide before/after school and summer recreation programs for Avondale youth (the "Programs").

B. The Programs will include a combination of grant funded, District funded and self-sustaining fee based Programs.

C. The Programs include but are not limited to: summer programs, 21st century grant programs, before and after school programs, and holiday break programs.

D. The City and District are authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. § 11-951.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties hereby agree as follows:

1. The District shall employ teachers and program support staff that shall be responsible for agreed-upon duties and responsibilities of the Programs as directed by the City and the District. All teachers used to implement the Programs shall be District employees. The City shall employ program staff that shall be responsible for agreed-upon duties and responsibilities of the Program as directed by the City and the District.

2. The teachers and program staff shall begin implementing the Programs prior to the start date as determined by City and District representatives. An annual programming meeting will be conducted by representatives from the City and the District one month before the anniversary date of this Agreement to discuss the specific programs and activities for the next programming year. No program activities are guaranteed and subject to staff and facility availability from both the City and the District.

3. All expenses, costs, and supplies associated with the Programs shall be the responsibility of the program fees collected by the participants or grant funds; provided, however, that the District shall reimburse the City for costs associated with the Programs.

4. The City shall request reimbursement from the District for costs associated with the Programs. Each reimbursement request shall be verified by appropriate documentation. This documentation shall consist of payroll records, purchase orders for materials, and other appropriate documentation for expenses associated with implementing the Programs. The City must issue the first invoice for reimbursement of program costs by the halfway point of each program and a final invoice no later than 30 days after the end of each program.

5. The City shall be responsible for programming and equipment procurement and provide access to guest speakers for certain activities during the Programs. All programming will be jointly agreed upon at the annual planning meeting between City and District staff.

6. The District shall provide (a) the appropriate facilities and transportation for conducting the Programs and (b) sufficient insurance (i) covering such facilities, transportation, and all of the Programs' participants and (ii) naming the City as additional insured and loss payee, as appropriate.

7. To the fullest extent permitted by law, the District shall indemnify, and hold harmless the City, its agents, representatives, officers, officials and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes in conducting the Program. The District's duty to indemnify and hold harmless the City, its agents, representatives, officers, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any negligent acts, errors, omissions or mistakes, related to the Programs.

8. The Parties understand and specifically agree that the terms of this Agreement may be amended from time to time only upon written agreement by each Party.

9. The Parties understand and specifically agree that the Programs and Programs' activities will be coordinated and modified by both Parties before the start of each program year and that the City will act as the overall program coordinator unless amended upon written agreement of the Parties.

10. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona.

11. This Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

12. This Agreement may be terminated under any of the following conditions:

a. Either Party may terminate this Agreement with or without cause upon giving the other party 60 days written notice of such termination.

b. The provisions of this Agreement for payment of funds by the Parties shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The Parties shall each be the sole judge and authority in determining the availability of funds under this Agreement and each Party shall keep the other fully informed as to the availability of funds for the Program. The obligation of the Parties to make any payment pursuant to this Agreement is a current expense of the Parties, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Parties.

14. This Agreement shall become effective after it is (a) approved by the City Council and the District Board, (b) executed by both Parties and (c) recorded with the Maricopa County Recorder and shall continue in effect for a period of three years and may be renewed every one year thereafter by mutual agreement between the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of the last signature set forth below.

**“City”**

CITY OF AVONDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Marie Lopez Rogers, Mayor

ATTEST:

\_\_\_\_\_  
Linda Farris, City Clerk

**“District”**

LITTLETON ELEMENTARY SCHOOL  
DISTRICT # 65, an Arizona school district

By: \_\_\_\_\_  
Kelli Watson, Board President

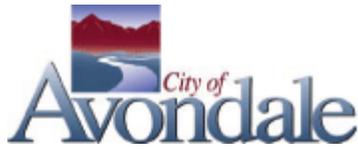
ATTEST:

\_\_\_\_\_  
Dr. Roger Freeman, Superintendent

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

\_\_\_\_\_  
Andrew J. McGuire  
Avondale City Attorney

\_\_\_\_\_  
Attorney for Littleton Elementary School



# CITY COUNCIL REPORT

**SUBJECT:**

Resolution 2679-907 in Support of LTAF II Funding Application

**MEETING DATE:**

September 17, 2007

**TO:** Mayor and Council

**FROM:** Christina Lyons, Acting Grants Administrator (623)333-1025

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council adopt a resolution authorizing the City to submit an application to receive 2008 Local Transportation Assistance Funds (LTAF II) in the amount of \$115,669.58.

**BACKGROUND:**

The Arizona Legislature, under House Bill 2565, authorizes LTAF II funds to provide statewide transit and transportation funding to each city, town and county based upon its percentage of the state's population. In Maricopa County, the Valley Metro/Regional Public Transportation Authority administers these funds. An allocation of \$10,100,000 has been made available for distribution for the current fiscal year and the City of Avondale's eligible portion is \$115,669.58. The funding requires a one-to-one match or \$115,669.58, which the city will need to make available in the FY 2008-2009 budget. The locally-sourced matching funds ratio may not be comprised of federal funds, but can be allocated from LTAF I. The grant funds must be spent within 24 month of the grant's release.

**DISCUSSION:**

LTAF II funding will be used to purchase much needed bus shelters along existing and planned routes throughout Avondale. It is anticipated that the shelters will provide a safer and more comfortable experience for all who use public transit in Avondale. In addition, it is predicted that new shelters will increase appeal and use of public transit in Avondale. Staff recommends that City Council adopt a resolution authorizing the City to submit an application to receive 2008 Local Transportation Assistance Funds (LTAF II) in the amount of \$115,669.58.

**BUDGETARY IMPACT:**

The required matching funds of \$115,669.58 will need to be allocated in the FY 2008-09 budget. LTAF I funds can be used for the required match.

**RECOMENDATION:**

Staff recommends that City Council adopt a resolution authorizing the City to submit an application to receive 2008 Local Transportation Assistance Funds (LTAF II) in the amount of \$115,669.58.

**ATTACHMENTS:**

Click to download

 [RES - 2679-907](#)

**RESOLUTION NO. 2679-907**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING SUBMITTAL OF AN APPLICATION FOR LOCAL TRANSPORTATION ASSISTANCE FUND II FUNDING FROM THE ARIZONA DEPARTMENT OF TRANSPORTATION.

**WHEREAS**, the Arizona Department of Transportation (“ADOT”) is seeking proposals from local agencies for transit projects relating to all aspects of transit services; and

**WHEREAS**, the Arizona State Legislature has authorized an allocation of Local Transportation Assistance Funds II (“LTAF II”) funds to the City of Avondale (the “City”) to fund transit activities; and

**WHEREAS**, the Council of the City of Avondale desires to submit an application for the LTAF II funds for the construction of passenger amenities in the City (the “Application”).

**NOW, THEREFORE, BE IT RESOLVED** BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That the submittal of the Application to ADOT for \$115,669.58 in LTAF II funds is hereby authorized.

SECTION 2. That the expenditure of \$115,669.58 in matching funds is hereby authorized and officially designated to be used in conjunction with the LTAF II funds.

SECTION 3. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute and submit all documents and any other necessary or desirable instruments in connection with the Application and to take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

**PASSED AND ADOPTED** by the Council of the City of Avondale, September 17, 2007.

---

Marie Lopez Rogers, Mayor

ATTEST:

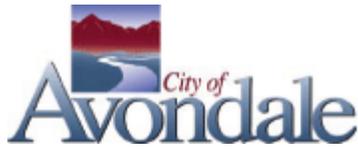
---

Linda M. Farris, City Clerk

APPROVED AS TO FORM:

---

Andrew J. McGuire, City Attorney



# CITY COUNCIL REPORT

**SUBJECT:**  
E-Citation for Police and City Court

**MEETING DATE:**  
September 17, 2007

**TO:** Mayor and Council  
**FROM:** Kevin Hinderleider, IT Director (623)333-5007  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve a contract with Advanced Public Safety (APS) for the purchase of eight E-Citation devices and associated hardware and software in the amount of \$52,727.15.

**BACKGROUND:**

In October of 2005, staff from the Avondale Police Department, the Courts and Information Technology attended a demonstration facilitated by the Tucson City Court and Police Department of an electronic citation system or E-citation system. The demonstration was well executed and helped staff understand the benefits of moving from a manual system of writing citations to an electronic solution.

To prepare for the implementation of this system a supplemental budget request of \$78,227.15 was prepared for the fiscal year 2007-2008. The request was approved by Council in the 2007-2008 Budget. The interdepartmental team consisting of staff from the City Court, Police and Information Technology is now prepared to implement this electronic solution.

This vendor's solution is approved by the Supreme Court and Avondale is able to purchase this product by attaching to the Tucson Contract.

**DISCUSSION:**

To implement the installation of this E-Citation system a total of eight hand held devices, eight printers, a Spillman citation module, all ancillary hardware and software, and technical consulting services will need to be purchased and installed during the 2007/2008 fiscal year.

This system will allow an officer to utilize a hand held device to capture all of the necessary information for issuing a traffic citation. At the end of an officer's shift all of the citation information is uploaded to the Supreme Court's case management system (AZTEC) and the Police Departments records management system. From the point when the citation information is uploaded the Courts can process the case and the Police will have an electronic record on file of all citation information.

Other jurisdictions have found that the installation of the E-citation system has improved the accuracy and efficiency of the citation process. Police Officers in the field are able to quickly capture driver information by utilizing the bar code reader on the device and sliding a person's license through the hand held reader. Court staff would no longer need to retype this information into the AZTEC database system and the Police Records staff would no longer need to retype this information from the citation into their records management system.

This system will reduce the redundant paperwork and the errors generated by multiple inputs of hand written information, resulting in greater speed, accuracy and efficiency in processing traffic citations.

Staff is requesting Council to approve a contract for \$52,727.15, for the purchase of the hand held devices, printers, associated hardware and software. The total budget for this project will be \$78,227.15 as detailed below:

Item Description	
APS Proposal	\$49,931.02
5.6% Taxes	\$2,796.13
Spillman	\$19,500.00
Consulting	\$6,000.00
TOTAL	\$78,227.15

**BUDGETARY IMPACT:**

The approved budget for this project is \$78,227.15 in the Court's Account #101-6200.

**RECOMENDATION:**

Staff recommends that City Council approve the contract with Advanced Public Safety (APS) for the purchase of eight E-Citation devices and associated hardware and software in the amount of \$52,727.15.

**ATTACHMENTS:**

Click to download

 [Contract Submittal](#)

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
ADVANCED PUBLIC SAFETY, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of September 17, 2007, between the City of Avondale, an Arizona municipal corporation (the "City") and Advanced Public Safety, Inc., a Florida corporation ("Contractor").

**RECITALS**

A. After a competitive procurement process, the City of Tucson ("Tucson") entered into Contract No. 053058-01 (the "Tucson Contract"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, for the Contractor to provide various products and services (the "Products and Services").

B. The City is permitted to purchase the Products and Services under the Tucson Contract without further public bidding, and the Tucson Contract permits its cooperative use by other governmental agencies including the City.

C. The City desires to purchase the Products and Services under the Tucson Contract for a lower cost than would otherwise be available.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the covenants and promises contained herein, the parties hereby agree as follows:

1. The Contractor shall provide to the City the Products and Services under the terms and conditions of the Tucson Contract in the quantities as set forth in a purchase order not to exceed \$52,727.15.

2. This Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

[SIGNATURES ON FOLLOWING PAGE]

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

**“City”**

CITY OF AVONDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Charles P. McClendon, City Manager

ATTEST:

\_\_\_\_\_  
Linda M. Farris, City Clerk

**“Contractor”**

ADVANCED PUBLIC SAFETY, INC.,  
a Florida corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2007,  
by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona  
municipal corporation, on behalf of the City of Avondale.

\_\_\_\_\_  
Notary Public in and for the State of Arizona

My Commission Expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_)  
  ) ss.  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, 2007,  
by \_\_\_\_\_ as \_\_\_\_\_ of     ADVANCED  
PUBLIC SAFETY, INC., a Florida corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

EXHIBIT A  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
ADVANCED PUBLIC SAFETY, INC.

[Tucson Contract]

See following pages.



**EXTENDED/OPTIONAL PRICING – STATE OF ARIZONA:**  
**CITY OF TUCSON CONTRACT #053058-01**

**SOFTWARE SOLUTIONS**

---

1. PocketCitation (*City of Tucson build*)  
Electronic traffic ticketing software for the handheld devices \$ 799/device
2. PocketCitation (*customized build*)  
Electronic traffic ticketing software for the handheld devices \$1,399/device
3. PocketParking (*City of Tucson build*)  
Electronic parking ticket software for the handheld devices \$ 200/device
4. PocketParking (*customized build*)  
Electronic parking ticket software for the handheld devices \$ 599/device
5. PocketForms  
Any additional electronic form software for the handheld devices \$ 999/device
- ✓ 6. QuickData  
Electronic data transfer to back-end databases \$7,500/database
7. QuickAccess / QuickSQL / QuickOracle  
Back-end storage and reporting system \$10,000/system
- ✓ 8. QuickPrint  
Re-print of replica ticket issued in the field \$ 5,000/location
9. QuickTicket/QuickForms  
Electronic form software for the mobile computers \$ 275/computer  
(Also requires the Virtual Partner Engine: \$5,000)
10. QuickVoice  
Audio response of mobile query data on the mobile computers \$ 275/computer  
(Also requires the Virtual Partner Engine: \$5,000)



## HARDWARE COMPONENTS

✓11. Symbol MC-50 handheld device w/ 2D Imager & Extended Battery	\$ 1,314/device
12. Symbol MC-70 handheld device w/ 2D Imager & Extended Battery	\$ 2,545/device
13. Symbol MC-9000 handheld device w/ 2D Imager & Extended Battery	\$ 3,608/device
✓14. Single-slot cradle for Symbol handheld device	\$ 114/device
✓15. Direct 110v power supply for Symbol handheld device	\$ 100/device
✓16. Magstripe reader for Symbol handheld device	\$ 199/device
17. Extended battery for Symbol handheld device	\$ 125/device
✓18. Zebra RW-420 Thermal Printer	\$ 899/device
19. Zebra RW-420 Thermal Printer w/ magstripe reader	\$ 1,049/device
✓20. Rolled, white paper for Zebra thermal printer (36 rolls)	\$ 99/case

## SUPPORT / MAINTENANCE ITEMS

21. Annual software maintenance/support (18% of the total software cost)	\$ TBD
22. Project Management	\$ 65/hour
23. Training	\$ 1,000/day



500 Fairway Drive, Suite 204, Deerfield Beach, FL 33441  
Main: 954-354-3000 • Fax: 954-354-3001  
www.advancedpublicsafety.com

## QuickPrint™

### Reliable Printing System

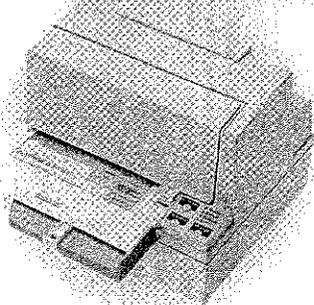
The APS QuickPrint™ application enables agency management, court administrators, and back-office personnel to print clear, professional copies of tickets on any Windows-based printer from any location on the agency's technology network. The QuickPrint™ citation will replicate the ticket as the violator received it, including electronic signature. Additionally, officer's notes, not seen by the violator, may be printed along with the ticket.

Electronic ticketing is the perfect solution to reduce paperwork generated by police officers, fire/rescue personnel, and other first-responders, but court personnel and other back-end processing departments may need to print additional copies of citations or forms. While copies of the citation/form can be reprinted on the thermal printer, such personnel may not have access to this equipment.

The QuickPrint™ application is licensed to the agency and can be installed at the court and on all other computers requiring QuickPrint™ functionality, who are connected to the agency's technology network. Tickets are archived after printing and can be reprinted as often as needed. Easy to install and simple to use, the QuickPrint™ program is the perfect adjunct to PocketCitation™.

## BENEFITS:

- QuickPrint replicates the citation exactly as presented to violator
- Tickets can be printed on any Windows-based printer
- A single license allows for printing at multiple locations
- Prints directly on existing tickets or thermal form
- Tickets can be reprinted as often as necessary
- Provides professional, easy-to-read tickets on all copies



Epson's most rugged high impact printer handles up to 5-part forms and works in even the most demanding environments.



Rugged, Rechargeable, Wireless (Bluetooth), Thermal Printer by Zebra.

Advanced Public Safety, Inc. develops targeted technology solutions that address the specific challenges of today's public safety organizations. APS works with each agency to implement a solution that fits the agency's present and future needs. APS products are designed, developed and tested by public safety officers.



SOFTWARE LICENSE

THIS SOFTWARE LICENSE (the "Agreement") is entered on April 4th, <sup>2005</sup>~~2004~~ by and between ADVANCED PUBLIC SAFETY, INC. ("LICENSOR"), a Florida corporation, with principal offices located at 500 Fairway Drive, Suite 204, Deerfield Beach, FL 33441 and City of Tucson, ("LICENSEE"), located at Tucson, Arizona.

**ARTICLE I  
RIGHT TO USE LICENSED SOFTWARE**

1.1 *Defined Terms.* The terms in this Agreement are defined as follows:

- (a) *Effective Date* means the date entered above.
- (b) *Licensed Software* means the computer program relating to LICENSOR's Virtual Partner software application.
- (c) *Host Software* means the Virtual Partner family of products (QuickVoice, QuickTicket, etc) and/or PocketSuite (PocketCitation, PocketParking, etc) software sold by APS.

1.2 *Grant of Right.* Subject to the terms and conditions set forth herein and as of the Effective Date, LICENSOR grants to LICENSEE, a personal, nontransferable, nonexclusive right to install and use the Licensed Software during the Term (as defined below) for the City of Tucson. Except as expressly permitted under this Agreement, LICENSEE may not permit any third party to use the Licensed Software nor may LICENSEE use the Licensed Software itself for the benefit of any third party.

1.3 *Copying.* LICENSEE may not decompile, disassemble, reverse engineer, or translate the Licensed Software into another computer language or otherwise reduce the Licensed Software to a human-perceivable form.

1.4 *Ownership.* The Licensed Software is LICENSOR's exclusive property. LICENSOR shall have sole and exclusive ownership of all right, title, and interest in and to the Licensed Software and all modifications and enhancements thereof (including ownership of all patents, trade secrets and copyrights pertaining thereto), subject only to the rights and privileges expressly granted by LICENSOR. This Agreement does not provide LICENSEE with title or ownership of the Licensed Software, but only a right of limited use. LICENSEE must keep the Licensed Software free and clear of all claims, liens, and encumbrances.

1.5 *Transfer Prohibited.* LICENSEE may not sell, lease, sublicense or otherwise transfer or dispose of the Licensed Software, in whole or in part.

**ARTICLE II  
LICENSED SOFTWARE ACCEPTANCE**

2.1 *Installation.* The Licensed Software shall be installed by LICENSEE upon delivery by LICENSOR. The computer shall be the type of computer used by LICENSEE'S intended users of the software and shall contain the same operating system and software. The date of this delivery will be referred to as the "Certified Date".

2.2 *Performance.* During the period commencing on the Certified Date and ending sixty (60) days thereafter (the "Performance Period"), LICENSEE shall utilize the Licensed Software and computer system for its intended purpose (in-service use), testing all operation modes and equipment configuration, with the system fully loaded, in order to determine whether the Licensed Software operates successfully. "Successful operation" is defined as the absence of any major software failure in the application software, which results in the disabling of a major item, resulting in the inability of the overall system to perform. Minor failures, such as operational problems and adjustment normally encountered during implementation of a new system, shall not constitute a failure in achieving successful operation.

2.3 *Acceptance.* If the Licensed Software does not successfully operate, LICENSEE shall notify LICENSOR during the Performance Period with specific information detailing why LICENSEE believes the Licensed Software does not successfully operate. If LICENSOR agrees with such information, LICENSOR shall have ninety (90) days to make any revisions or corrections. If LICENSOR fails to make the corrections within such 90-day period, both LICENSEE and LICENSOR shall each have the right to terminate this Agreement and the License granted hereunder and LICENSEE shall receive a full refund of the Licensed Software Fees. If, at any time during the Performance Period, the Licensed Software is altered by any party (except LICENSOR) in any way, or if the media has been damaged by accident, abuse or misapplication, or if the unsuccessful operation arises out of use of the Licensed Software with other than a recommended hardware configuration, the Licensed Software shall automatically be deemed to be accepted by LICENSEE. Acceptance shall be indicated in writing from the City of Tucson.

### ARTICLE III SUPPORT AND MAINTENANCE

3.1 *Eligibility for Support.* To be eligible for support, LICENSEE must have a valid Licensed Software Agreement for the application and be in compliance with the schedule of payments.

3.2 *Scope of Support Services; Hours of Support.* LICENSOR shall provide technical support to LICENSEE during the Initial Term and, provided all Annual Maintenance Fees (as defined below) are paid by LICENSEE, during Renewal Terms. Additionally, LICENSOR shall use reasonable diligence in correcting verifiable and reproducible bugs when reported in accordance with LICENSOR's standard reporting procedures, which may be modified from time to time at LICENSOR's discretion. If a bug exists, LICENSEE must provide LICENSOR with information sufficient for LICENSOR to duplicate the circumstances under which the bug in the Licensed Software became apparent. Such technical support shall be provided to LICENSEE 24 hours a day, 7 days a week.

3.3 *Upgrades.* LICENSOR may, from time to time, issue new releases of the Licensed Software. LICENSOR shall provide LICENSEE with one (1) copy of each new release without additional charge. LICENSOR shall provide reasonable assistance to help LICENSEE install and operate each new release, provided that if such assistance is to be provided at LICENSEE's facility, LICENSEE shall pay supplemental charges set forth in LICENSOR's then current rate schedule for such assistance. LICENSOR shall use reasonable efforts to modify the Licensed Software to work with upgrades to LICENSEE'S Host Software.

3.4 *Maintenance.* During the Initial Term and, provided all Annual Maintenance Fees (as defined below) are paid by LICENSEE, during Renewal Terms, LICENSOR shall use reasonable efforts to ensure that the Licensed Software continues to successfully operate in the event of LICENSEE's upgrade of its Windows operating system, mobile client upgrades or changes, changes to national, state and/or local queries and modifications to law enforcement forms used by the Licensed Software.

3.5 *Obligations of Customer.* LICENSEE must provide new versions of its Host Software to LICENSOR prior to any installation of the Licensed Software to determine compatibility. LICENSOR will provide written confirmation of compatibility within ten (10) business days of the date of this Agreement. In the event the Host Software is deemed to be incompatible by LICENSOR, LICENSOR shall make recommendations for compatibility. If LICENSEE chooses not to follow such recommendations, the provisions set forth in Article II shall not apply to LICENSEE and the Licensed Software shall be deemed to be accepted by LICENSEE prior to installation.

### ARTICLE IV PAYMENTS

4.1 *Fees.* LICENSEE shall pay a one-time Licensed Software Fee and an Annual Maintenance Fee. (See the APS Best and Final Offer Pricing Schedule - Page 7, page 8, and the itemized pricing shown in Exhibit A)

4.2 *Payment Terms.* The Licensed Software Fee shall be due and payable when the Licensed Software is accepted as set forth in Article II. LICENSEE shall pay the Annual Maintenance Fee for the Initial Term when the Licensed Software is accepted as set forth in Article II. LICENSEE

shall pay the Annual Maintenance Fee within thirty (30) days of the expiration of any Term for succeeding Renewal Terms. LICENSEE shall pay all hardware costs within thirty (30) days from delivery and acceptance of hardware to LICENSEE. In the event that hardware is received in separate deliveries, partial payments shall be made by LICENSEE within thirty (30) days of each delivery and acceptance.

#### ARTICLE V TERM AND TERMINATION

5.1 *Term.* The Term of this Agreement and the License granted hereunder shall be one (1) year (the "Initial Term") commencing on the Effective Date. The Initial Term shall automatically renew for subsequent terms (each, a "Renewal Term"; collectively, the Initial Term and any Renewal Terms are the "Term") unless either party provides written notice to the other of non-renewal no later than thirty (30) days prior to the expiration of a Term. Notwithstanding the foregoing, a Term shall not be renewed unless LICENSEE has paid the Annual Maintenance Fee prior to the commencement of the new Term. If LICENSEE fails to pay the Annual Maintenance Fee prior to the commencement of a new Term, this Agreement and the Licensed Software shall terminate immediately.

5.2 *Termination for Breach.* This contract may be terminated at any time by mutual written consent. LICENSEE may terminate this Agreement and the License granted hereunder upon a material breach thereof, which such material breach has not been cured within thirty (30) days of the date of notice of such material breach to LICENSOR. If LICENSEE breaches any of its obligations under this agreement, LICENSOR may immediately terminate this Agreement.

The LICENSEE reserves the right to cancel the whole or any part of this contract due to failure of LICENSOR to carry out any term, promise, or condition of the contract. The LICENSEE will issue a written ten (10) day notice of default to LICENSOR for acting or failing to act as in any of the following:

In the opinion of the LICENSEE, LICENSOR provides personnel that do not meet the requirements of the contract;

In the opinion of the LICENSEE, LICENSOR fails to perform adequately the stipulations, conditions or services/specifications required in this contract;

In the opinion of the LICENSEE, LICENSOR attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality.

LICENSOR fails to furnish the required service and/or product within the time stipulated in the contract;

In the opinion of the LICENSEE, LICENSOR fails to make progress in the performance of the requirements of the contract and/or give the LICENSEE a positive indication that LICENSOR will not or cannot perform to the requirements of the contract.

In the event of termination if this Agreement, the LICENSOR shall be liable only for payment, under the payment provisions of this contract, for services rendered and accepted material received by the LICENSEE before the effective date of termination.

Upon any termination of this Agreement, LICENSEE shall immediately cease any and all use of the Licensed Software and must destroy all copies of the Licensed Software in its possession (such destruction includes, without limitation, deleting all copies installed) and certify such destruction in writing to LICENSOR within thirty (30) days from the date of termination.

Each payment obligation of the LICENSEE created hereby is conditioned upon the availability of City, State and Federal funds which are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continuance of service herein contemplated, the contract period for the service may be terminated by the LICENSEE at the end of the period for which funds are available. The LICENSEE shall notify LICENSOR at the earliest possible time which service will or may be affected by a shortage of funds. No penalty shall accrue to the LICENSEE in the event this provision is exercised, and the LICENSEE shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

## ARTICLE VI WARRANTIES; LIMITATIONS ON LIABILITY

6.1 *Limited Warranties.* LICENSOR warrants that the Licensed Software conforms in all material respects to the specifications for the current release of the Licensed Software as described in LICENSOR's product specifications as of the date of this Agreement. This warranty is expressly conditioned on LICENSEE's observance of proper operating, security and data-control procedures set by LICENSOR. LICENSOR is not responsible for obsolescence of the Licensed Software that may result from changes in LICENSEE'S requirements, including new software packages and/or operating systems used by LICENSEE. The foregoing warranty shall apply only to the most current release of the Licensed Software issued by LICENSOR from time to time. LICENSOR assumes no responsibility for the use of superseded, outdated, or uncorrected releases of the Licensed Software. EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, LICENSOR DISCLAIMS ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IF APPLICABLE LAW IMPLIES ANY WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY DAYS FROM THE DELIVERY DATE OF THE LICENSED SOFTWARE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSOR MAKES NO WARRANTY OR REPRESENTATION OF ANY NATURE THAT THE LICENSEE'S USE OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE, OR SECURE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES CREATES ANY WARRANTIES OR IN ANY WAY INCREASES THE SCOPE OF THIS LIMITED WARRANTY. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. THIS WARRANTY GIVES LICENSEE SPECIFIC LEGAL RIGHTS AND LICENSEE MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

6.2 *Limitation of Damages.* LICENSOR IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, EVEN IF LICENSOR OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. LICENSOR'S TOTAL LIABILITY TO LICENSEE FOR ACTUAL DAMAGES FROM ANY CAUSE WHATSOEVER IS LIMITED TO THE AMOUNT PAID BY LICENSEE FOR THE LICENSED SOFTWARE THAT CAUSED SUCH DAMAGE. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO LICENSEE. TO THE EXTENT PROHIBITED BY APPLICABLE LAW, THE FOREGOING LIMITATIONS OF DAMAGES DO NOT APPLY TO DAMAGES FOR PERSONAL INJURY TO LICENSEE, IF ANY. THE CUMULATIVE LIABILITY OF LICENSOR TO LICENSEE FOR ALL CLAIMS RELATED TO THE LICENSED SOFTWARE AND THIS AGREEMENT, INCLUDING ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES

PAID TO LICENSOR HEREUNDER. Notwithstanding the foregoing, if the Licensed Software is altered by any party (except LICENSOR) in any way, or if the media has been damaged by accident, abuse or misapplication, or if the Licensed Software is used with hardware which is not recommended by LICENSOR, LICENSOR shall have no liability hereunder of any nature whatsoever.

## ARTICLE VII MISCELLANEOUS PROVISIONS

7.1 *Escrow.* Upon request by LICENSEE within ninety (90) days of the date of this Agreement, LICENSOR shall establish an escrow agreement with an independent third party agent for the source code of the Licensed Software. Release of the source code from escrow shall occur only when LICENSOR: (i) ceases doing business and its business is not continued by another corporation or entity; (ii) becomes insolvent; (iii) makes a general assignment for the benefit of creditors; (iv) suffers or permits the appointment of a receiver for its business or assets; or (v) avails itself of, or becomes subject to, any proceeding under Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors or conditions outlined elsewhere (collectively, the "Release Events"). Upon the occurrence of a Release Event, LICENSEE shall be entitled to receive a copy of the Source Code immediately from the Escrow Agent upon LICENSEE's notification in writing to the Escrow Agent of any of the circumstances set forth above. The source code will be released to the LICENSEE on the condition and for the sole purpose of maintaining and supporting the Licensed Software for the remainder of the Term and may not be otherwise used, transferred or sold.

7.2 *Confidentiality.* Subject to any applicable public records laws, LICENSEE shall hold all components of the Licensed Software in confidence for LICENSOR. Except to such of LICENSEE's employees to whom disclosure is necessary in order to use the Licensed Software as contemplated under this Agreement, LICENSEE must not disclose Licensed Software (including methods or concepts utilized therein) to any third party. LICENSEE must appropriately notify all employees to whom any such disclosure is made that such disclosure is made in confidence and must be kept in confidence.

7.3 *Trademarks.* Nothing contained in this Agreement grants LICENSEE any license or right to use any name, trade name, trademark, service mark, symbol or any other identification, or any colorable imitation thereof, belonging to or used or adopted by LICENSOR.

7.4 *Statements.* On LICENSOR's request, but not more frequently than annually, LICENSEE shall furnish to LICENSOR a statement, certified by an authorized representative of LICENSEE, that LICENSEE's use of Licensed Software has been reviewed and that it is being used only for LICENSEE's internal business purposes and such use is in full compliance with the provisions of this Agreement, and an itemized list of the computers installed with the software.

7.5 *Nonassignability.* The parties have entered this Agreement contemplating personal performance by LICENSEE. The rights granted LICENSEE hereunder do not extend to entities or persons other than those expressly referred to herein. LICENSEE may not assign this Agreement or the License granted herein.

7.6 *Entire Agreement.* This entire agreement shall be comprised of the following documents:

- Software License Agreement
- Best and Final Offer dated March 16, 2005
- Advanced Public Safety's proposal response
- City of Tucson Request for Proposal No. 053058

7.7 *Survival.* All covenants, agreements, representations and warranties made in this Agreement continue in full force and effect subsequent to and notwithstanding the Agreement's termination and until they are satisfied or by their nature expire.

7.8 *Binding Effect.* This Agreement, whether so expressed or not, is binding upon, inure to the benefit of, and are enforceable by the parties and their respective personal representatives, legal representatives, heirs, successors and permitted assigns.

7.9 *Notices.* All notices, requests, demands, consents and other communications required or permitted under this Agreement must be in writing and must be (as elected by the person giving such

notice) hand delivered, delivered by a nationally recognized courier service, or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to the appropriate party at its address set forth above or to such other address as that party may designate by notice complying with the terms of this Section. Each such notice is deemed delivered: (a) on the date delivered if by hand delivery or courier service; or (b) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities or courier service as not deliverable, as the case may be, if mailed or couriered.

7.10 *Venue; Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. The venue for any action or proceeding arising out of or in connection with this Agreement shall be in the applicable state or federal court located in Pima Count, Arizona, and LICENSEE hereby waives any objection it may have to such venue, including, without limitation, an objection based on the assertion that this venue is an inconvenient forum.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the date set forth above.

LICENSOR:  
ADVANCED PUBLIC SAFETY, INC.

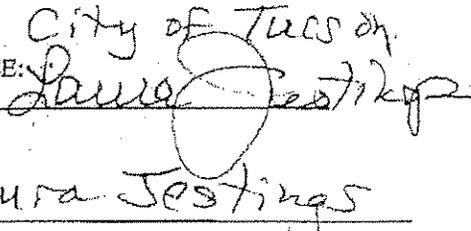
By:

  
Print Name: JEFFREY D. RUBENSTEIN

Its: CHIEF EXECUTIVE OFFICER

*City of Tucson*  
LICENSEE:

By:

  
Print Name: Laura Jesting

Its: *Contract Administrator*

For this proposal, APS is providing the City of Tucson the choice of three different handheld devices:

1. HP 5150 IPAQ device (non-ruggedized)
2. Symbol MC-50 device (ruggedized)
3. Casio IT-3000 device (ruggedized)

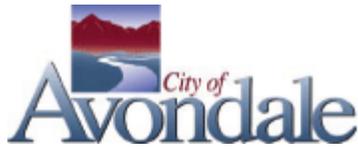
The following chart (from the RFP document) provides a summary of the pricing for each of the proposed handheld devices. Exhibit A contains the full itemized costs associated with each device - and the optional pricing for the Phase 3 and Phase 4 implementations.

ITEM NO.	SCOPE OF WORK	PRICE
1	Electronic Citation Management Software	\$ 60,457
2.	Electronic Citation Hardware (Optional)	HP IPAQ Device \$ 100,878 Symbol Device \$ 103,145 Casio Device \$ 114,754
3.	System Setup/Configuration (and Printer Paper)	\$ 6,115
4.	Training and Documentation	\$ 6,747
5.	First Year Technical Support	\$ 12,939
<b>GRAND TOTAL:</b>		HP IPAQ Device \$ 187,136 Symbol Device \$ 189,403 Casio Device \$ 201,012
<b>OPTIONAL ITEMS:</b>		
1.	<u>Technical Support:</u>	
	Year 2	\$ 12,939
	Year 3	\$ 12,939
	Year 4	\$ 12,939
	Year 5	\$ 12,939

<p>2. Phase 2 - Follow-up on Implementation in TPD - implementation of up to 12 TPD vehicle units.</p>	<p>PocketCitation (HP IPAQ Handheld)</p>	<p>QuickTicket (MDT)</p>
	<p>12 \$ <u>41,938</u> .</p>	<p>\$ <u>21,256</u> .</p>
<p><i>(Pricing for the Symbol and Casio handheld devices are contained in Exhibit A of this proposal.)</i></p>		
<p>3. Phase 3 - Follow-up on Implementation in TPD - implementation of up to 1000 additional users. Offerors shall provide a complete breakdown of costs, including pricing for additional users in increments of 250 (pricing for additional 250, 500, 750 and 1000 users).</p>	<p>PocketCitation (HP IPAQ Handheld)</p>	<p>QuickTicket (MDT)</p>
	<p>250 \$ <u>636,500</u> .</p>	<p>\$ <u>324,500</u> .</p>
	<p>500 \$ <u>1,273,000</u> .</p>	<p>\$ <u>649,000</u> .</p>
	<p>750 \$ <u>1,909,500</u> .</p>	<p>\$ <u>973,500</u> .</p>
	<p>1000 \$ <u>2,546,000</u> .</p>	<p>\$ <u>1,298,000</u> .</p>
<p><i>(Pricing for the Symbol and Casio handheld devices are contained in Exhibit A of this proposal.)</i></p>		
<p>4. Phase 4 - Implementation in Additional City Departments (up to an additional 100 users). Offerors shall provide a complete breakdown of costs, including pricing for single additional users, as well as in increments of 25 (pricing for additional 25, 50, 75 and 100 users).</p>	<p>PocketCitation (HP IPAQ Handheld)</p>	<p>QuickTicket (MDT)</p>
	<p>25 \$ <u>63,650</u> .</p>	<p>\$ <u>32,450</u> .</p>
	<p>50 \$ <u>127,300</u> .</p>	<p>\$ <u>64,900</u> .</p>
	<p>75 \$ <u>190,950</u> .</p>	<p>\$ <u>97,350</u> .</p>
	<p>100 \$ <u>254,600</u> .</p>	<p>\$ <u>129,800</u> .</p>
<p><i>(Pricing for the Symbol and Casio handheld devices are contained in Exhibit A of this proposal.)</i></p>		

**PHASE #1 – Summary Pricing for All Proposed Handheld Devices**

<b>APS BAFO Proposal: City of Tucson</b>				
<u>Software:</u>				
43	PocketCitation (traffic citation) Application	\$34,357	\$34,357	\$34,357
43	PocketParking (parking citation) Application	\$8,600	\$8,600	\$8,600
1	QuickData Application	\$7,500	\$7,500	\$7,500
1	QuickAccess Application	\$10,000	\$10,000	\$10,000
<u>Hardware:</u>				
43	Handheld Device	\$23,607	\$55,686	\$104,972
43	Magstrip Reader	\$8,557	\$6,450	\$0
43	Bar-code Reader	\$30,057	\$0	\$0
43	Mobile Thermal Printer	\$38,657	\$38,657	\$0
	Cradle for Handheld Device	\$0	\$1,481	\$9,783
	Power & Connection cords	\$0	\$872	\$0
<u>Deployment Costs:</u>				
1	Project Management	\$1,400	\$1,400	\$1,400
1	Training & Support Materials	\$4,313	\$4,313	\$4,313
1	Travel Expense	\$1,034	\$1,034	\$1,034
<u>Support/Maintenance:</u>				
43	Case of Paper for Printer (36 rolls/case)	\$6,115	\$6,115	\$6,115
1	Annual Maintenance/Support	\$12,939	\$12,939	\$12,939
<b>TOTAL</b>		<b>\$187,136</b>	<b>\$189,403</b>	<b>\$201,012</b>



# CITY COUNCIL REPORT

**SUBJECT:**

Approval of Amendment No. 3 to the Design-Build Contract with Landscapes Unlimited for pre-construction services of phase II of Festival Fields

**MEETING DATE:**

September 17, 2007

**TO:** Mayor and Council

**FROM:** Daniel Davis, Director of Parks, Recreation & Libraries (623)333-2411

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve Amendment No. 3 to the Design-Build Agreement with Landscapes Unlimited, LLC to provide pre-construction services for phase II of Festival Fields at a cost of \$650,570.29 and authorize the Mayor or City Manager and City Clerk to execute the contract documents.

**BACKGROUND:**

Council awarded a Design-Build contract to Landscapes Unlimited, LLC on November 21, 2005 for pre-construction services for phase 1 of Festival Fields. Olsson Associates was the lead architectural design firm that led the park design effort.

On April 24, 2006 Council approved the Amendment No. 1 to the Design-Build Agreement in the amount of \$4,055,880 for the first phase of the park construction. Phase 1 included a lighted four (4) diamond softball complex, restroom building, lighted multi-purpose festival area, 296 parking spaces, entry roadway, sidewalks, infrastructure for water, sewer, and irrigation, site lighting, and landscape.

On June 4, 2007 Council approved Amendment No. 2 to the Design-Build Agreement in the amount of \$498,687.45 for additional work not anticipated in the original project scope for phase 1. These items included unforeseen conditions that were uncovered during construction and engineering design refinements.

**DISCUSSION:**

The Design-Build Agreement consists of two distinct phases; the pre-construction phase and the construction phase. At the conclusion of the pre-construction phase, the City and Contractor shall negotiate a Guaranteed Maximum Price (GMP) for the construction phase of the project. If the City and Contractor cannot agree on a GMP for the construction phase, the City shall be free to publicly bid the construction phase utilizing the construction plans and specifications.

Staff negotiated a total pre-construction services fee with Landscapes Unlimited, LLC. The Scope of Services and Fee Proposal for these services include the design of all phase II improvements, allowances for Geotechnical, Environmental, and Architectural services, along with printing of Design Development Drawings and Specifications.

**BUDGETARY IMPACT:**

Festival Fields Phase II has a \$7 million budget, and will consist of the construction of a lighted four-field ball field complex, Splash pad, picnic areas, basketball and tennis courts, restroom, roadways, parking and landscaping. The fee for these pre-construction services is \$650,570.29

Funding for this work is budgeted in the Park CIP fund account # 310.

**RECOMENDATION:**

Staff recommends that the City Council approve Amendment No. 3 to the Design-Build Agreement with Landscapes Unlimited, LLC to provide pre-construction services for phase II of Festival Fields at a cost of \$650,570.29 and authorize the Mayor or City Manager and City Clerk to execute the contract documents.

**ATTACHMENTS:**

Click to download

 [Third Amendment](#)

**THIRD AMENDMENT  
TO DESIGN-BUILD AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
LANDSCAPES UNLIMITED OF NEBRASKA, L.L.C.**

THIS THIRD AMENDMENT TO DESIGN-BUILD AGREEMENT (this “Third Amendment”) is made as of September 17, 2007, between the City of Avondale, an Arizona municipal corporation (the “City”) Landscapes Unlimited, L.L.C., a Nebraska limited liability company, d/b/a Landscapes Unlimited of Nebraska, L.L.C. (the “Contractor”).

RECITALS

A. The City and the Contractor entered into that certain Design-Build Agreement, dated November 21, 2005 (the “Original Agreement”), for the purpose of designing and constructing the City’s new Lower Buckeye Park (hereinafter referred to as “Festival Fields”) and the City’s new Pendergast Park (collectively, Festival Fields and the Pendergast Park are referred to as the “Project”).

B. The Original Agreement was amended twice, on April 24, 2006, to establish the GMP and the date of substantial completion for Phase I of the Festival Fields portion of the Project (the “First Amendment”), and on June 4, 2007, to approve certain change orders related to additional work performed in conjunction with construction of Phase I of the Festival Fields portion of the Project, resulting in an increase to the GMP and the date of substantial completion for the construction phase of Phase I of the Festival Fields portion of the Project (the “Second Amendment”). The Original Agreement, the First Amendment and the Second Amendment are collectively referred to herein as the “Agreement.” All capitalized terms used in this Third Amendment shall have the meanings set forth in the Agreement, unless specifically defined otherwise in this Third Amendment.

C. The City and the Contractor desire to further amend the Agreement to increase the GMP by an amount sufficient to compensate the Contractor for pre-construction services related to Phase II of the Festival Fields portion of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor hereby agree as follows:

1. Subsection 7.1 (B) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

B. The City shall pay the Contractor (1) \$677,097.00 for services performed during the Pre-construction Phase relating to Phase I of the Festival Fields portion of the Project and (2) \$650,570.29 for services performed during the Pre-construction Phase relating to Phase II of the Festival Fields portion of the Project, including all allowances and reimbursable expenses.

2. Subsection 7.1 (C) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

C. Compensation of Pre-construction Phase Services shall be equitably adjusted if such services extend beyond (1) May 31, 2006, for services performed during the Pre-construction Phase relating to Phase I of the Festival Fields portion of the Project and (2) March 1, 2008, for services performed during the Pre-construction Phase relating to Phase II of the Festival Fields portion of the Project, for reasons beyond the reasonable control and not the fault or partial fault of the Contractor or as provided in Section 9.1 below. For changes in Pre-construction Phase Services, compensation shall be adjusted as mutually agreed upon by the City and the Contractor at the time of such extended services.

3. The Pre-construction Services Amount set forth above for services performed during the Pre-construction Phase relating to Phase II of the Festival Fields portion of the Project, including all allowances and reimbursable expenses, is the total compensation from the City to the Contractor for its fee and for the performance of the Pre-construction Phase services related to Phase II of the Festival Fields portion of the Project in accordance with the Agreement and pursuant to the Scope of Work, including Assumptions and Exclusions (including allowances), submitted August 21, 2007, 16 pages, attached hereto as Exhibit 1.

4. In all other respects, the Agreement is affirmed and ratified, and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

5. By executing this Third Amendment, the Contractor affirmatively asserts that the City is not currently in default, nor has been in default at any time prior to this Third Amendment, under any of the terms or conditions of the Agreement.

6. This Third Amendment and the Agreement may be cancelled for a conflict of interest pursuant to ARIZ. REV. STAT. § 38-511.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

**“City”**

CITY OF AVONDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Charles P. McClendon, City Manager

ATTEST:

\_\_\_\_\_  
Linda M. Farris, City Clerk

**“Contractor”**

LANDSCAPES UNLIMITED, L.L.C., a  
a Nebraska company d/b/a Landscapes  
Unlimited of Nebraska, L.L.C.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT 1  
TO  
THIRD AMENDMENT TO  
DESIGN-BUILD AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
LANDSCAPES UNLIMITED OF NEBRASKA, L.L.C.**

[Scope of Services, including Assumptions and Exclusions]

See following pages.

**City of Avondale**  
**Festival Fields Community Park – Phase Two**  
**City of Avondale Project No.**  
**Olsson Associates Design Team / Landscapes Unlimited Pre-Construction**  
**Services**  
**Scope of Work**

**FESTIVAL FIELDS COMMUNITY PARK PHASE TWO – PROJECT DESCRIPTION**

The 80-acre Festival Fields Community Park site is located in southern Avondale, directly adjacent to the Agua Fria River south of Lower Buckeye Road. Phase one which consisted of the four plex softball complex, the festival field area, parking areas within the northern half of the site and the northern half of the main entry road and is scheduled for completion by August 2007. Phase Two which will be completed under this scope of work will complete the southern half of the park and will include sport courts, 6 lighted Little League ball fields, group ramada area with a performance stage, a splash pad play area, playground, restroom building and restroom concession building, utility infrastructure, roadways and parking areas. In addition, phase two will also include additional improvements within phase one, such as a playground, picnic ramadas and a restroom facility adjacent to and north of the festival field area. The construction budget available for Phase II Improvements is \$7,000,000, however, Olsson will provide design services for the remaining park elements not constructed in Phase I, including the south park road.

The following Scope of Work Proposal has been prepared for completion of the phase two construction documents for the remainder of the park site, and is based on the Master Plan Graphic dated October 12<sup>th</sup>, 2005, review of the 15% schematic design and Phase-II Improvement modifications established by the City of Avondale.

**FESTIVAL FIELDS COMMUNITY PARK PHASE TWO – SCOPE OF WORK**

**1.0 PROJECT INITIATION AND DESIGN REVIEW**

- **Project Kickoff Meeting**

The Olsson Associates Design Team (OA) shall facilitate a project kickoff meeting at the City of Avondale (“City”) with the City Stakeholders to discuss the project schedule, design intent, budget, and deliverables. Other stakeholders will include user groups, public utilities, government agencies, and the contractor. A key component of this meeting shall be the review of the phase two 15% schematic design. The City shall provide OA with any potential site plan modifications, which may be due to phase one as built conditions, site constraints, budget or recreational programming needs. Any site plan modifications shall require City review and approval prior to the start of construction documents and the review of the master drainage, water and sanitary sewer reports.

- **Initial Project Schedule**

OA will produce a Design Project Schedule for the completion of the design for phase two in MS Project format in coordination with City staff

**City of Avondale**  
**Festival Fields Community Park – Phase Two**  
**City of Avondale Project No.**  
**Olsson Associates Design Team / Landscapes Unlimited Pre-Construction**  
**Services**  
**Scope of Work**

and the Contractor. Baselines will be kept to track changes in the Schedule as the project progresses.

- **Drainage Master Plan Review**

The master drainage report which was approved as part of the phase one improvement plans will be revisited by OA and City staff to determine if any modifications are necessary due to as built conditions of phase one or any site plan modifications requested by the City of Avondale. Any improvements adjacent to the phase two site which have occurred since the completion of phase one construction documents will also be evaluated by OA and City staff to determine any impact to the approved master drainage report. OA shall meet with the Maricopa County Flood Control District (MCFCD) to update them on the phase two improvements and review the Floodplain Use Permit and FCDMC Right of Way Permit for compliance. Any modifications to the drainage report will adhere to the format outlined in the City of Avondale Design Standards. All drainage requirements, guidelines, assumptions and calculations shall be performed using the Maricopa County Flood Control District (MCFCD) Drainage Design Manuals, Volumes I & II.

- **Traffic Impact Analysis Update:**

The Traffic Impact Analysis developed and approved during Phase I improvements, will be updated to reflect the build-out conditions of the Park. This will include the following:

1. Trip Generation for the Park
2. Weekday background traffic volumes
3. Weekend (Saturday and Sunday) background traffic volumes
4. Weekday total traffic volumes
5. Weekend (Saturday and Sunday) total traffic volumes
6. Signal Warrant Analysis
7. The study will also include a discussion on the future south access road to the Park site, both interim and ultimate configuration

- **Water Design Report Review**

The water design report which was approved as part of the phase one improvement plans will be revisited by OA and City staff to determine if any modifications are necessary due to as built conditions of phase one or any site plan modifications requested by the City of Avondale. Any water design report modifications will adhere to the format outlined in the City of Avondale Design Standard.

- **Sanitary Sewer Design Report Review**

The sanitary sewer design report which was approved as part of the phase one improvement plans will be revisited by OA and City staff to determine if any modifications are necessary due to as built conditions of phase one or any site plan modifications requested by the City of Avondale. Any sanitary sewer

**City of Avondale**  
**Festival Fields Community Park – Phase Two**  
**City of Avondale Project No.**  
**Olsson Associates Design Team / Landscapes Unlimited Pre-Construction**  
**Services**  
**Scope of Work**

design report modifications will adhere to the format outlined in the City of Avondale Design Standard.

- **As Built Review and Design Adjustments**  
OA shall review the Festival Fields Community Park Phase One approved as built plans with LU and the City to identify major deviations, if any, from the phase one construction documents. All deviations shall be incorporated into the OA CADD base files and adjusted as necessary to reflect the phase one as built conditions. The as built conditions shall be used as the basis of the phase two improvements.
- **Preliminary Site Plan Development**  
A preliminary site plan for Festival Fields Community Park Phase Two shall be developed by OA and submitted to the City. This preliminary site plan will be reviewed by City staff and stakeholders to ensure that all necessary or desired site plan modifications have been addressed.
- **Final Site Plan**  
A final site plan will be developed to address any preliminary site plan comments and shall be submitted for final City approval. The final site plan shall require City approval prior to the start of construction documents and the review of the master drainage, water and sanitary sewer reports.
- **Initial Cost Model**  
Based on the development of the Site Plan, a preliminary Cost Model will be created to forecast construction costs. This Cost Model will provide direction to design development efforts with regards to what is attainable within the established budgetary constraints.

**Deliverables:**

- Project Kickoff Meeting Notes
- Initial Project Schedule
- Drainage Master Plan Review Meeting Notes
- Water Design Report Review Meeting Notes
- Sanitary Sewer Report Review Meeting Notes
- Preliminary Site Plan
- Final Site Plan
- Initial Cost Model

**2.0 DESIGN DEVELOPMENT (60%)**

**60% Design Development Plans**

**City of Avondale**  
**Festival Fields Community Park – Phase Two**  
**City of Avondale Project No.**  
**Olsson Associates Design Team / Landscapes Unlimited Pre-Construction**  
**Services**  
**Scope of Work**

- a. Schedule, general notes, key map, general sheets
- b. Demolition Plans
- c. Grading and Drainage Plans
- d. Hardscape Plans and Details
- e. Plaza Areas
- f. Playground Areas
- g. Group Ramada Area
- h. Stage Area
- i. Sports Courts (Basketball Courts (2), Tennis Court)s (2)
- j. Splash Pad
- k. Little League Fields (4)
- l. Baseball Field – High School Level 350' outfield (1 )
  
- m. Way Finding Signage Plans
- n. Paving, Signing, and Striping Plans
- o. Electrical Plans
  - Little League Fields (4 Total)-Circuit/Control Design
  - Baseball Field – High School Level 350' outfield (1 )
  - Restroom Buildings (2 Total)
  - Court Lighting-(3 Total)-Circuit/Control Design
  - Site Lighting-Circuit/Control Design
  - Ramadas (4 Total)
  - Miscellaneous Details
  - Concession/Restroom Building (1 Total)
  - Parking Lot and South Park Roadway Lighting
- p. Landscape Plans
- q. Irrigation Plans Coordinate with Sub-Consultants
- r. Restroom Plans Coordinate with Sub-Consultants
- s. Little League Fields Concessions Bld. Coordinate with Sub-Consultants
- t. Sanitary Sewer Plans
- u. Water Plans
- v. Traffic Signalization Plans
- w. South Park Roadway Plans
- x. Storm Water Pollution Prevention Plan
- (SEE ATTACHED PROPOSAL FROM AQUA ENGINEERING FOR IRRIGATION DESIGN SERVICES)
- (SEE ATTACHED PROPOSAL FROM ARCHITECTURAL ALLIANCE FOR ARCHITECTURE DESIGN SERVICES)
  
- **Technical Specifications**
  - 60% Technical specifications will be developed in CSI format as special provisions to the standard City of Avondale and MAG standard specifications.

**City of Avondale**  
**Festival Fields Community Park – Phase Two**  
**City of Avondale Project No.**  
**Olsson Associates Design Team / Landscapes Unlimited Pre-Construction**  
**Services**  
**Scope of Work**

- **Coordinate Utility Company Reviews and Comments**  
OA shall provided all affected utility companies with a set of 60% plans for review and comments.
- **Quality Control Review**  
OA shall provide an extensive in-house quality control review to reduce plan error and assure that proper coordination has taken place between the City, affected utilities, and consultant teams. LU will evaluate the plan for constructability and make recommendations to improve efficiency, quality, and schedule.
- **60% Review Comments**  
OA shall compile all 60% review comments from City Staff and Utility companies into one master document along with OA's initial disposition on each comment. Once compiled, this document will be distributed to all reviewers prior to the 60% comment resolution meeting.
- **60% Comment Resolution Meeting**  
OA shall facilitate a 60% comment resolution meeting with all project stakeholders in which all comments that require further information or direction will be discussed to a point where final resolution is agreed upon.
- **Guaranteed Maximum Price (GMP) Document Development**  
Upon completion of the 60% plans and 60% comment resolution meeting, OA shall coordinate with LU and aid them, as needed, in the development of their Guaranteed Maximum Price (GMP) documents for the phase two improvements and suggested value engineering alternatives.
- **Progress Meetings (2/month)**
- **Project Management**  
The Project Manager will coordinate with the City, consultant teams, and sub-consultants to provide a product that is on time, on task, and on budget.
- **60% Cost Model**  
Formalizing Cost Model based on the current level of design development. At this level there will be a relatively refined list of scope items for each section of work. Subcontractors and vendors will be solicited for competitive bids to formulate this document.

**Deliverables:**

- 60% Design Development Plans

**City of Avondale**  
**Festival Fields Community Park – Phase Two**  
**City of Avondale Project No.**  
**Olsson Associates Design Team / Landscapes Unlimited Pre-Construction**  
**Services**  
**Scope of Work**

- 60% Technical Specifications
- 60% Review Comments
- 60% Comment Resolution Meeting Minutes
- Progress Meeting Minutes
- 60% Cost Model

**3.0 CONSTRUCTION DOCUMENTS (90%)**

**90% Construction Documents**

- a. Schedule, general notes, key map, general sheets
- b. Demolition Plans
- c. Grading and Drainage Plans
- d. Hardscape Plans and Details
- e. Plaza Areas
- f. Playground Areas
- g. Group Ramada Area
- h. Stage Area
- i. Sports Courts (Basketball Courts (2), Tennis Courts (2))
- j. Splash Pad
- k. Little League Fields (4)
- l. Baseball Field – High School Level 350' outfield (1 )
- m. Way Finding Signage Plans
- n. Paving, Signing, and Striping Plans
- o. Electrical Plans
  - Little League Fields (4 Total)-Circuit/Control Design
  - Baseball Field – High School Level 350' outfield (1 )
  - Restroom Buildings (2 Total)
  - Court Lighting-(3 Total)-Circuit/Control Design
  - Site Lighting-Circuit/Control Design
  - Ramadas (4 Total)
  - Miscellaneous Details
  - Concession/Restroom Building (1 Total)
  - Parking Lot and South Park Roadway Lighting
- p. Landscape Plans
- q. Irrigation Plans Coordinate with Sub-Consultants
- r. Restroom Plans Coordinate with Sub-Consultants
- s. Little League Fields Concessions Bld. Coordinate with Sub-Consultants
- t. Sanitary Sewer Plans
- u. Water Plans
- v. Traffic Signalization Plans
- w. South Park Roadway Plans
- x. Storm Water Pollution Prevention Plan

**City of Avondale**  
**Festival Fields Community Park – Phase Two**  
**City of Avondale Project No.**  
**Olsson Associates Design Team / Landscapes Unlimited Pre-Construction**  
**Services**  
**Scope of Work**

- (SEE ATTACHED PROPOSAL FROM AQUA ENGINEERING FOR IRRIGATION DESIGN SERVICES)
- (SEE ATTACHED PROPOSAL FROM ARCHITECTURAL ALLIANCE FOR ARCHITECTURE DESIGN SERVICES)
- **Technical Specifications**  
90% Technical specifications will be developed in CSI format as special provisions to the standard City of Avondale and MAG standard specifications.
- **Coordinate Utility Company Reviews and Comments**  
OA shall provided all affected utility companies with a set of 90% plans for review and comments.
- **Quality Control Review**  
OA shall provide an extensive in-house quality control review to reduce plan error and assure that proper coordination has taken place between the City, affected utilities, and consultant teams.
- **90% Review Comments**  
OA shall compile all 90% review comments from City Staff and Utility companies into one master document along with OA's initial disposition on each comment. Once compiled, this document will be distributed to all reviewers prior to the 90% comment resolution meeting.
- **90% Comment Resolution Meeting**  
OA shall facilitate a 90% comment resolution meeting with all project stakeholders in which all comments that require further information or direction will be discussed to a point where final resolution is agreed upon.
- **Progress Meetings (2/month)**
- **Project Management**  
The Project Manager will coordinate with the City, consultant teams, and sub-consultants to provide a product that is on time, on task, and on budget.
- **90% Cost Model**  
Further refinement of 60% GMP Cost Model. Subcontractors & vendors will be providing preliminary "hard bids" to formulate this document. Contractor selections will most likely be based on these preliminary bids.

**Deliverables:**

- 90% Construction Documents

**City of Avondale**  
**Festival Fields Community Park – Phase Two**  
**City of Avondale Project No.**  
**Olsson Associates Design Team / Landscapes Unlimited Pre-Construction**  
**Services**  
**Scope of Work**

- 90% Technical Specifications
- 90% Review Comments
- 90% Comment Resolution Meeting Minutes
- Progress Meeting Minutes
- 90% Cost Model

**4.0 CONSTRUCTION DOCUMENTS (100%)**

**100% Construction Documents**

- a. Schedule, general notes, key map, general sheets
- b. Demolition Plans
- c. Grading and Drainage Plans
- d. Hardscape Plans and Details
- e. Plaza Areas
- f. Playground Areas
- g. Group Ramada Area
- h. Stage Area
- i. Sports Courts (1 Basketball Court, 1 Tennis Court)
- j. Splash Pad
- k. Little League Fields (4)
- l. Baseball Field – High School Level 350' outfield (1 )
- m. Way Finding Signage Plans
- n. Paving, Signing, and Striping Plans
- o. Electrical Plans
  - Little League Fields (4 Total)-Circuit/Control Design
  - Baseball Field – High School Level 350' outfield (1 )
  - Restroom Buildings (2 Total)
  - Court Lighting-(3 Total)-Circuit/Control Design
  - Site Lighting-Circuit/Control Design
  - Ramadas (4 Total)
  - Miscellaneous Details
  - Concession/Restroom Building (1 Total)
  - Parking Lot and South Park Roadway Lighting
- p. Landscape Plans
- q. Irrigation Plans Coordinate with Sub-Consultants
- r. Restroom Plans Coordinate with Sub-Consultants
- s. Little League Fields Concessions Bld. Coordinate with Sub-Consultants
- t. Sanitary Sewer Plans
- u. Water Plans
- v. Traffic Signalization Plans
- w. South Park Roadway Plans
- x. Storm Water Pollution Prevention Plan

**City of Avondale**  
**Festival Fields Community Park – Phase Two**  
**City of Avondale Project No.**  
**Olsson Associates Design Team / Landscapes Unlimited Pre-Construction**  
**Services**  
**Scope of Work**

- y. Horizontal Control Plans
- (SEE ATTACHED PROPOSAL FROM AQUA ENGINEERING FOR IRRIGATION DESIGN SERVICES)
- (SEE ATTACHED PROPOSAL FROM ARCHITECTURAL ALLIANCE FOR ARCHITECTURE DESIGN SERVICES)
  
- **Technical Specifications**  
100% Technical specifications will be developed in CSI format as special provisions to the standard City of Avondale and MAG standard specifications.
  
- **Coordinate Utility Company Reviews and Comments**  
OA shall provided all affected utility companies with a set of 100% plans for review and comments.
  
- **Quality Control Review**  
OA shall provide an extensive in-house quality control review to reduce plan error and assure that proper coordination has taken place between the City, affected utilities, and consultant teams.
  
- **100% Review Comments**  
OA shall compile all 90% review comments from City Staff and Utility companies into one master document along with OA's initial disposition on each comment. Once compiled, this document will be distributed to all reviewers prior to the 100% comment resolution meeting.
  
- **100% Comment Resolution Meeting**  
OA shall facilitate a 100% comment resolution meeting with all project stakeholders in which all comments that require further information or direction will be discussed to a point where final resolution is agreed upon.
  
- **Progress Meetings (2/month)**
  
- **Project Management**  
The Project Manager will coordinate with the City, consultant teams, and sub-consultants to provide a product that is on time, on task, and on budget.
  
- **Final GMP**  
Final refinement of design/development Cost Models. Subcontractors & Vendors will have contracts written based on the scopes of work described in this document.

**Deliverables:**

- 100% Construction Documents
- 100% Technical Specifications

**City of Avondale**  
**Festival Fields Community Park – Phase Two**  
**City of Avondale Project No.**  
**Olsson Associates Design Team / Landscapes Unlimited Pre-Construction**  
**Services**  
**Scope of Work**

- 100% Review Comments
- 100% Comment Resolution Meeting Minutes
- Progress Meeting Minutes
- Final GMP

## **5.0 CONSTRUCTION DOCUMENTS (PERMIT SET)**

### **Permit Set**

- **Final Revisions**  
OA shall coordinate all final comments to ensure final compliance with City comments.
- **Submit Permit Set**  
OA shall submit one set of original sealed reproducible drawings and one set of unbound, sealed technical specifications to the City of Avondale for City final permitting.
- **Project Management**  
The Project Manager will coordinate with the City, consultant teams, and sub-consultants to provide a product that is on time, on task, and on budget.

### **Deliverables:**

Final Permit Plans and Technical Specifications  
Progress Meeting Minutes

## **ASSUMPTIONS AND EXCLUSIONS:**

- **Assumptions**

The final master plan approved during the phase one improvement design phase shall be used, in principle, as the basis of design for the phase two improvements.

The approved phase one mass grading plan and utility plans approved during the phase one improvement design phase shall be used, in principle, as the basis of design for the phase two improvements.

The final site plan shall require City approval prior to the start of construction documents and the review of the master drainage, water and sanitary sewer reports.

**City of Avondale**  
**Festival Fields Community Park – Phase Two**  
**City of Avondale Project No.**  
**Olsson Associates Design Team / Landscapes Unlimited Pre-Construction**  
**Services**  
**Scope of Work**

LU shall provide adequate as built information to OA.

OA shall assist LU in the development of the approved Guaranteed Maximum Price (GMP) documents but shall not provide any additional cost estimate information

- **Exclusions:**

Environmental, cultural or archeological investigations/reports.

**CITY OF AVONDALE  
FESTIVAL FIELDS COMMUNITY PARK-PHASE TWO**

AUGUST 21, 2007

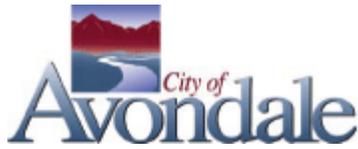
OLSSON ASSOCIATES DESIGN SERVICES																								
Phase	Task	Project Design Team Manager - Jeff Krzyska, P.L.A.	Landscape Architecture Task & OC Manager - Shane Harneman	Senior Landscape Designer - Ernest Rodriguez	Landscape Designer - Randall Kopff	Landscape CAD Designer - Brian Murphy	Senior Project Civil Engineer - Sean Wozny, PE	Civil Designer - Omar Elizarraras, EI	Project Drainage Engineer - Jeff Ford, PE	Project Transportation Engineer - Aileen Frick, PE	Transportation Designer - Hector Mendoza	Traffic Engineer - Maria Garber, PE	Traffic Designer - Natalie Carrick EI	Senior Electrical Engineer - Ken Fairchild, PE	Electrical Engineer - Darin Gourki, PE	Electrical Designer - Jennifer Jirak	Senior Project Surveyor - Ed Vincent, RLS	Senior Surveyor - Chuck Paddock	Survey CAD Tech - Dave Saeger	Survey Party Chief - Pat Buckle	Survey Instrument Person - Justin Flemington	Structural Engineer - Mark Stark, PE	Admin/Clerical - Mariene Pluney	Olsson Associates Design Phase Subtotal
<b>1.0 PROJECT INITIATION AND DESIGN REVIEW</b>																								
	Project Kickoff Meeting	4	4	4	4		4		4			4		4	4		4							
	Initial Project Schedule	4	2																					
	As-Built - Pick-Up Survey																5	2	24	16				
	Update and Final Drainage Report		1				24		50															
	Update Phase One Traffic Impact Analysis to reflect Phase Two Improvements											30	24											
	Water Design Report Review		1																					
	Sanitary Sewer Design Report Review		1																					
	As Built Review and Design Adjustments	1	2	2				12				2		2	10	16								
	Preliminary Site Plan Development	2	2	8	16	4	4					1												
	Final Site Plan		2			2	2							10										
	Progress Meetings (2/month)	4	4	4	4		4		4															
	Project Management	20												16	16	9	2	24	16	0	0	4		
	Subtotal Hours	35	19	18	24	6	50	12	58	0	0	37	24	16	32	28	16	4	48	32	0	0	4	461
	Subtotal Fee at Billing Rate	\$5,897.37	\$2,200.30	\$1,957.23	\$2,018.66	\$504.67	\$5,127.42	\$826.48	\$8,371.12	\$0.00	\$0.00	\$4,879.02	\$2,021.59	\$4,669.26	\$2,297.08	\$1,511.56	\$2,597.93	\$395.57	\$4,095.84	\$2,633.04	\$0.00	\$0.00	\$176.76	\$52,180.88
<b>2.0 DESIGN DEVELOPMENT DOCUMENTS (60%)</b>																								
<b>60% Design Development Plans</b>																								
	a. Schedule, general notes, key map, general sheets			4	12	16	2	4																
	b. Demolition Plans		2	4	8	8																		
	c. Grading and Drainage		8	6	6	2	64	48																
	d. Hardscape Plans and Details	2	8	40	80	80																8		
	e. Plaza Area Enlargement Plans		2	24	40	30																		
	f. Playground Enlargement Plans		2	8	16	20																		
	g. Group Ramada Area Enlargement Plans	2	2	12	32	16																		
	h. Stage Area Enlargement Plans		2	10	20	8																		
	i. Sports Court Enlargement Plans		2	12	12	16																		
	j. Splash Pad		8	32	42	24																		
	k. Volleyball Courts		2	6	12	8																		
	l. Little League Fields (4 Each)		8	24	36	48																8		
	m. Baseball Field - High School Level 350' outfield (1)		8	16	28	32																6		
	n. Way Finding Signage Plans		4	8	12	12																		
	o. Paving, Signing, and Striping Plans						8	16																
	p. Electrical Plans																							
	Little League Fields (4 Total)-Circuit/Control Design													12	45	45								
	Baseball Field - High School Level 350' outfield (1)													5	24	20								
	Restroom Buildings (2 Total)													4	28	25								
	Court Lighting-(3 Total)-Circuit/Control Design													2	15	15								
	Site Lighting-Circuit/Control Design													2	25	25								
	Ramadas (4 Total)													2	10	10								
	Miscellaneous Details													2	10	25								
	Concession/Restroom Building (1)													10	30	30								
	q. Landscape Plans		6	8	24	32																		
	r. Irrigation Plans (coord. w/ sub)		2	8	4																			
	s. Restroom Plans (coord. w/ sub)		2	8	2																			
	t. Concessions Building (coord. w/ sub)		2	8	2																			
	u. Sanitary Sewer Plans w/ Lift Station		2	8	2	8	32	24																
	v. Water Plans					4	24																	
	w. Traffic Signalization Plans											24	32											
	x. Signing & Striping Plans											8	16											
	y. Storm Water Pollution Prevention Plan					8	12																	
	Technical Specifications	2	4	8										2	8							4	5	
	Coordinate Utility Company Reviews and Comments			4	4	2	2	4						8	16									
	Quality Control Review	8	16																					
	60% Review Comments	2	2	8	8		2															1		
	60% Comment Resolution Meeting	4	4	4			3		4					10	10							1		
	Guaranteed Maximum Price (GMP) Document Development	8	8	24	24	12	16	12	4															
	Progress Meetings (2/month)	8	8	8	8		8		8					8	8									
	Project Management	60												2	2								16	
	Subtotal Hours	96	114	302	426	376	127	152	40	0	0	32	48	69	231	195	0	0	0	0	0	28	21	0
	Subtotal Fee at Billing Rate	\$16,175.64	\$13,201.77	\$32,837.91	\$35,831.29	\$31,625.74	\$13,023.64	\$10,468.77	\$5,773.18	\$0.00	\$0.00	\$4,219.69	\$4,043.18	\$10,068.09	\$16,950.94	\$9,211.07	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,437.16	\$927.96	\$210,796.03

**CITY OF AVONDALE  
FESTIVAL FIELDS COMMUNITY PARK-PHASE TWO**

Phase	Task	Project Design Team Manager - Jeff Kratzke, PLA	Landscape Architecture Task & GC Manager - Shane Haneman	Senior Landscape Designer - Ernest Rodriguez	Landscape Designer - Randall Kpff	Landscape CAD Designer - Brian Murphy	Senior Project Civil Engineer - Sean Wozny, PE	Civil Designer - Omar Elzarnans, EI	Project Drainage Engineer - Jeff Ford, PE	Project Transportation Engineer - Aileen Frick, PE	Transportation Designer - Hector Mendoza	Traffic Engineer - Maria Garber, PE	Traffic Designer - Natalie Carrick EI	Senior Electrical Engineer - Ken Fairchild, PE	Electrical Engineer - Darin Gourka, PE	Electrical Designer - Jennifer Jirak	Senior Project Surveyor - Ed Vincent, PLS	Senior Surveyor - Chuck Paddock	Survey CAD Tech - Dave Staeger	Survey Party Chief - Pat Brockle	Survey Instrument Person - Justin Flemming	Structural Engineer - Mark Stark, PE	Admin/Clerical - Marlene Purney	Olsson Associates Design Phase Subtotal
<b>3.0</b>	<b>CONSTRUCTION DOCUMENTS (90%)</b>																							
	<b>90% Construction Documents</b>																							
	a. Schedule, general notes, key map, general sheets						1	2																
	b. Demolition Plans			2	2	6	2	4																
	c. Grading and Drainage	2	6	16	24	24	32	40																
	d. Hardscape Plans and Details		8	28	28	60																6		
	e. Plaza Area Enlargement Plans		2	8	8	12																		
	f. Playground Enlargement Plans		2	8	8	12																		
	g. Group Ramada Area Enlargement Plans	2	2	12	24	24																		
	h. Stage Area Enlargement Plans		2	8	8	12																		
	i. Sports Court Enlargement Plans (1 Basketball and 1 Tennis Court)		2	8	12	8																		
	j. Splash Pad		4	24	36	16																		
	k. Volleyball Courts		2	8	16	16																		
	l. Little League Fields (4 Each)		4	24	24	16																	6	
	m. Baseball Field - High School Level 350' outfield (1)		2	16	28	16																	4	
	n. Way Finding Signage Plans		2	8	8	8																		
	o. Paving, Signing, and Striping Plans					1	4	12																
	p. Electrical Plans					1																		
	Little League Fields (4 Total)-Circuit/Control Design					1																		
	Baseball Field - High School Level 350' outfield (1)					1																		
	Restroom Buildings (2 Total)		2	6	8																			
	Court Lighting (3 Total)-Circuit/Control Design																							
	Site Lighting-Circuit/Control Design													2	20	20								
	Ramadas (4 Total)												1	10	10									
	Miscellaneous Details													1	5	5								
	Concession/Restroom Building (1)													1	5	5								
	q. Landscape Plans													1	5	5								
	r. Irrigation Plans (coord. w/ sub)														2	2								
	s. Restroom Plans (coord. w/ sub)														2	10								
	t. Concessions Building (coord. w/ sub)													1	5	10								
	u. Sanitary Sewer Plans w/ Lift Station	2			12	16	4	24	20															
	v. Water Plans	2		6	4	4	4																	
	w. Traffic Signalization Plans		2	4	2	2						16	24											
	x. Signing and Striping Plans		2	4	2	2						6	12											
	y. Storm Water Pollution Prevention Plan		2	4	2	4	8																	
	Coordinate Utility Company Reviews and Comments			2		4		4						4	8									
	Quality Control Review	8	24																					
	90% Review Comments	2	2	12	12		2								10								1	
	90% Comment Resolution Meeting	4	4	4	4		3		4					10									1	
	Progress Meetings (2/month)	8	8	8	8		8		8					10										
	Project Management	60																						16
	Subtotal Hours	86	88	214	256	266	66	110	32	0	0	22	36	30	72	67	0	0	0	0	0	18	16	0
	Subtotal Fee at Billing Rate	\$14,490.68	\$10,190.84	\$23,269.25	\$21,532.42	\$22,373.53	\$6,768.19	\$7,576.09	\$4,618.55	\$0.00	\$0.00	\$2,901.04	\$3,032.38	\$4,377.43	\$5,906.79	\$3,164.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,852.46	\$707.02	\$133,761.48







# DEVELOPMENT SERVICES

**SUBJECT:**

Public Hearing and Resolutions 2669-907 and 2670-907  
- Major General Plan Amendment and Specific Plan  
Amendment for Pasadera (GP-07-3 & SP-07-2)

**MEETING DATE:**

September 17, 2007

**TO:** Mayor and Council

**FROM:** Brian Berndt, Development Services Director (623)333-4011

**THROUGH:** Charlie McClendon, City Manager

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**REQUEST:** 1) Amend the General Plan Land Use Map from Commercial to Mixed Use and Public Facilities.  
2) Amend the North Avondale Specific Plan Land Use Map from Commercial to Mixed Use and Public Facilities.

**PARCEL SIZE:** Approximately 40.5 acres

**LOCATION:** Southeast of the Southeast corner of Dysart and Indian School Roads

**APPLICANT:** Dustin C. Jones and Shaine Alleman

**OWNER:** Rose Properties Southwest, LLC

**BACKGROUND:**

\*\* This item was continued by Council at the August 20, 2007 meeting at the applicant's request to the September 17, 2007 meeting. There are no changes to the request. Per Council's direction at the August meeting, staff sent a copy of the request and land use maps to the Luke Air Force Base community initiatives team for comment. No comments were received.

On June 29, 1992, Council approved the North Avondale Specific Plan, which assigns a land use designation to the subject property of Commercial and Drainage/Open Space.

On August 2, 1993, Council approved a Development Agreement between the City of Avondale and SunCor Development Company regarding the future Palm Valley-Avondale PAD.

On September 7, 1993, Council approved annexation of an area containing the subject property.

On September 6, 1994, Council approved a case to rezone to PAD for the Palm Valley-Avondale PAD (case Z94-284). The approved PAD designates the uses for the subject property as Mixed Use Commercial (MUC) but does not define the term.

On January 7, 2002, Council approved a third amendment to the Development Agreement that established that MUC shall mean Community Commercial (C-2) uses.

On June 17, 2002, Council approved the General Plan, which assigns a land use designation of Commercial to the subject property.

May 24, 2007, the Planning Commission conducted the first of two required hearings on this request. On June

21, 2007, the Planning Commission conducted the second hearing on the request.

### **SUMMARY OF REQUEST:**

1. The applicant is requesting to amend the General Plan land use map to change the land use designation of the approximately 40.5 acre subject property from Commercial to approximately 37 acres of Mixed Use and approximately 3.5 acres of Public Facilities.

The current General Plan designation of Commercial provides for the daily needs of goods and services to the residents within the surrounding area on a neighborhood to regional scale. The Mixed Use designation is intended to provide a mix of high intensity uses with a retail commercial emphasis, and may include up to 45% residential use. The Public Facilities designation can provide a variety of public facilities for the healthy, safety, and welfare of the City's residents. This typically results in a traditional single family subdivision with detached units.

2. The applicant is also requesting an amendment of the North Avondale Specific Plan land use map from Commercial to Mixed Use and Public Facilities.

3. Staff is recommending that the General Plan and North Avondale Specific Plan land use designation for the entire subject property (approximately 40.5 acres) be changed from Commercial to Mixed Use. The applicant is in agreement with staff's recommendation.

The original rationale for inclusion of 3.5 acres of Public Facilities was that the City was considering locating a joint Police and Fire public safety complex on the east side of the subject property. The City is still examining this location, along with others. Staff recommends that the Public Facility land use change be removed because if the City public safety facility is not located on the subject property, the owner would be stuck with a land use designation that he could not then reasonably utilize. If the entire subject property is designated Mixed Use, the City may still choose to locate the public safety complex on a portion of the subject property.

### **PARTICIPATION:**

Notifications of a 60-day review period for an application for a major amendment of the General Plan were mailed on March 7, 2007 to: Members of City Council; member of the Planning Commission; the planning authorities of City of Phoenix, City of Tolleson, City of Goodyear, City of Litchfield Park and Maricopa County; the Maricopa Association of Governments (MAG); and the superintendents of the Agua Fria Union High School District and the Tolleson Elementary School District. The notifications contained a description of the request, maps and aerials, and a copy of the applicant's project narrative. No comments were received back from any recipients within the 60-day review period. No comments have been received beyond the 60-day review period either.

The neighborhood meeting was advertised in the West Valley View on April 17, 2007 and run for one week. The property was posted with two signs, one along Indian School Road and one along Dysart Road, on April 17, 2007. Notices were mailed to a total of 225 property owners within 500 feet of the property on April 17, 2007.

The applicant conducted a neighborhood meeting from 7 to 8:30 pm on Wednesday, May 2, 2007 at the Estrella Mountain Community College. According to the sign-in sheet, 16 citizens attended the meeting. Concerns raised by the residents were regarding type of development and height, especially along the property line with Sage Creek; connection to an internal local street with Sage Creek; increased population placing additional burdens upon schools; additional traffic created; increased crime and safety; and, what comfort can be given that development will be as high of quality as being shown. The applicant's summary of the meeting is attached to this report (Exhibit E).

Notice of the first Planning Commission hearing was published in the West Valley View on May 8, 2007 and the ad run for a week. The property was posted with two signs, one along Indian School Road and one along Dysart Road, on May 7, 2007. Notices of the Planning Commission meeting were mailed to a total of 225 property owners within 500 feet of the property on May 8, 2007.

The May 24, 2007 Planning Commission fourteen speaker cards were filled-out for both items of this

request. Six citizens spoke on the case, and one read a statement on behalf of someone who could not attend. Concerns expressed included: overcrowding of schools and busing children further away as a result; increased traffic on Indian School and Dysart Roads, as well as internal to Sage Creek subdivision; the ability of the market to support more apartments; that if unsuccessful, the apartments could be converted to low-income housing; pricing of apartment/condo units high enough to keep them high quality, but not so high they are vacant or unaffordable to students; and, the height of three-story apartments looking into adjacent backyards. No one spoke in opposition to the existing commercial designation of the property.

Notice of the June 21, 2007 Planning Commission hearing was published in the West Valley View on June 5, 2007 and the ad was run for a week. The property was posted with two signs, one along Indian School Road and one along Dysart Road, on May 7, 2007. Notices of the Planning Commission meeting were mailed to a total of 225 property owners within 500 feet of the property on June 5, 2007.

On June 21, 2007, the Planning Commission held a public hearing on the request for major amendment to the General Plan (case GP-07-3). Speakers cards were filled out for sixteen people, twelve of whom spoke during the meeting. Of the 16 people who filled out speaker cards and/or spoke at the meeting, four were in favor of the project, 11 were opposed and one was neutral. Those in favor expressed opinions that the more intensive and high quality development would be good for Avondale. Those who opposed the request focused primarily on the multifamily aspect. Some of those opposed spoke against multifamily because they might be rental units, but seemed to be alright with them if they would be owner-occupied. Others opposed multifamily because of perceived overcrowding of schools and affects on local streets with regard to traffic. Draft minutes of the June 21, 2007 Planning Commission meeting are included (Exhibit I).

On June 21, 2007, the Planning Commission held a public hearing on the request for an amendment to the North Avondale Specific Area Plan (case SP-07-2). Many of the speaker cards filled out were for both cases. Four people got up to address the Planning Commission, all four opposed for the same reasons they had been opposed to the major amendment to the General Plan. A notice of the City Council hearing of August 20, 2007 was published in the West Valley View on July 31, 2007. Letters were mailed out to 225 property owners on July 31, 2007. The property was posted on July 31, 2007. One letter was received August 2, 2007 from Mack Ferrick president of the Sage Creek Homeowners Association on behalf of the HOA in support of the requested land use change (Exhibit H).

#### **PLANNING COMMISSION ACTION:**

The Planning Commission conducted the first of two public hearings on May 24, 2007 and voted 4-0 to CONTINUE the request to the June 21, 2007 Planning Commission meeting.

The Planning Commission conducted a second public hearing on June 21, 2007 and voted 5-1 to recommend APPROVAL of staff's recommendation that the land use designation of the entire approximately 40.5 acre property be changed to Mixed Use.

#### **ANALYSIS:**

The City Council must determine that the proposed amendment meets four findings prior to recommending approval. The burden of proof rests with the applicant. Staff's analysis of each of the required findings is presented below.

1. The development pattern contained on the Land Use Plan inadequately provides the appropriate optional sites for the use and/or change proposed in the amendment.

— The proposed change is to allow for a development with integrated retail, office, restaurant and residential uses. Mixed use developments exhibit a higher degree of pedestrian interconnectivity between the residential and non-residential uses than traditional commercial and residential development located adjacent.

— Approximately 3% of the City's acreage is designated as Mixed Use.

— Currently, all properties with a Mixed Use land use designation in the City is either developed or is in the development process.

— Thus, the Land Use Plan inadequately provides the appropriate optional site for the use and/or change proposed in the amendment.

2. The amendment constitutes an overall improvement in the 2002 Plan and is not solely for the good or benefit of a particular landowner or owners.

— The General Plan describes Mixed Use as a mix of high intensity uses with a retail commercial emphasis. These types of developments are typically situated in areas of higher densities and on major travelways.

— North Avondale is predominantly Medium Density Residential (2.5 - 4 dwelling units/acre) land use with corners of Commercial land use. This land use pattern is especially true for the northwest portion of Avondale, except for approximately 80 acres of Medium High Density Residential (4 - 8 dwelling units/acre) that exists due east of the subject property.

— The subject property is not in an area of high densities such as along Interstate 10 and at the Avondale City Center. The subject property is located along two arterial roadways, Indian School and Dysart Roads, and is positioned at the north and west entry gateway to Avondale as identified in the North Avondale Specific Plan.

— The purpose for the requested amendment is to allow for the possibility of stand alone residential uses on the subject property. Residential uses above ground floor retail is allowed under existing land use and zoning with an approved Conditional Use Permit.

— Because the character of North Avondale is primarily residential, the addition of residential to the subject property through a Mixed Use land use designation would not be out of character for North Avondale. However, high-density residential would be a new precedent.

— The amendment constitutes an overall improvement of the 2002 Plan and is not solely for the good or benefit of a particular landowner or owners because the Mixed Use category gives greater flexibility in the development entitlement process to follow. Mixed Use allows for the possibility of stand alone residential uses, but it does not in-and-of-itself grant these. The uses, as well as the densities, site layout, materials and colors, are granted through zoning and site plan approval. Changing the land use designation to Mixed Use allows for the possibility of stand alone residential on the subject property should that be the City Council's intention.

3. The amendment will not adversely impact the community as a whole and/or a portion of the community by:

a. Significantly altering acceptable land use patterns;

· Land use patterns for the area comprise lower densities and intensities as compared to areas to the east and south, such as along 99th Avenue and along Interstate 10.

· The Mixed Use land use designation is a combination of other land use designations - commercial, residential, employment. Because of this, it generally fits into typical land use patterns.

· The amendment will not adversely impact the community as a whole or a portion of the community by significantly altering acceptable land use patterns.

b. Requiring large and more expensive public infrastructure improvements including, but not limited to roads, water, wastewater, and public safety facilities than would otherwise be needed without the proposed change; or

· Indian School and Dysart Roads are identified in the City Transportation Plan as arterial roadways calling for six vehicular lanes of travel. The developer of the subject property is required to construct his/her portion of these roadways abutting their property.

- The City is in the process of acquiring property in the northwest portion of Avondale in order to construct a public safety facility for police and fire.
  - Adequate potable water for daily consumption needs currently exists to service the uses allowed by the Mixed Use designation. Residential uses consume more water compared to commercial uses.
  - Adequate sanitary sewer capacity currently exists to service the uses allowed by the Mixed Use designation. Residential uses requires a greater capacity compared to commercial uses.
  - The amendment will not adversely impact the community as a whole or a portion of the community by requiring expensive infrastructure improvements.
- c. Adversely impacting the existing land use.
- Existing land use within the immediate vicinity of the subject property include single family detached residential, churches, a water treatment facility, a ministorage facility, small retail centers, and a community college.
  - The amendment will not adversely impact the community as a whole or a portion of the community by adversely impacting the existing land use.
4. The amendment is consistent with the overall intent of the 2002 Plan and other adopted plans, codes, and ordinances.

#### General Plan

- The overall intent of the 2002 Plan is to provide for orderly development and re-development of the City in the most beneficial way to the most citizens for the near term and long term vitality and sustainability of the City.
- 
- The requested amendment would allow for the possibility of stand alone residential on the subject property in addition to the commercial uses already allowed.
- 
- The addition of residential to the subject property would not be contrary to the overall intent of the 2002 Plan.
- 

#### Specific Plan

The overall intent of the North Avondale Specific Plan is to provide for the orderly development of the northern part of Avondale. North Avondale is characterized as predominantly residential with pockets of commercial at major intersections and travel corridors. The existing commercial is of the neighborhood and community intensity and is characterized by the absence of more intense commercial as found along Interstate 10 further south. There is an absence of manufacturing, except along the river.

- 
- The addition of stand alone residential on the subject property is not contrary to the intent of the North Avondale Specific Plan. The density of stand alone residential and the uses and intensity of the commercial would be determined later, in conformance to the intent of the North Avondale Specific Plan and other codes.

#### **RECOMMENDATION:**

The City Council should conduct a public hearing and recommend APPROVAL of the Major General Plan amendment as proposed by staff and agreed to by the applicant - that the land use designation of the entire subject property be Mixed Use.

The City Council should conduct a public hearing and recommend APPROVAL of the North Avondale Specific Plan amendment as proposed by staff and agreed to by the applicant - that the land use designation of the entire subject property be Mixed Use.

**PROPOSED MOTION:**

I move that the City Council accept the findings and **ADOPT** the resolution approving Application GP-07-3, a request to amend the General Plan from Commercial to Mixed Use as proposed by staff and agreed to by the applicant.

I move that the City Council accept the findings and **ADOPT** the resolution approving Application SP-07-2, a request to amend the North Avondale Specific Plan from Commercial to Mixed Use as proposed by staff and agreed to by the applicant.

**ATTACHMENTS:**

Click to download

-  [Exhibits A - I except F & G](#)
-  [RES - 2669-907](#)
-  [RES - 2670-907](#)

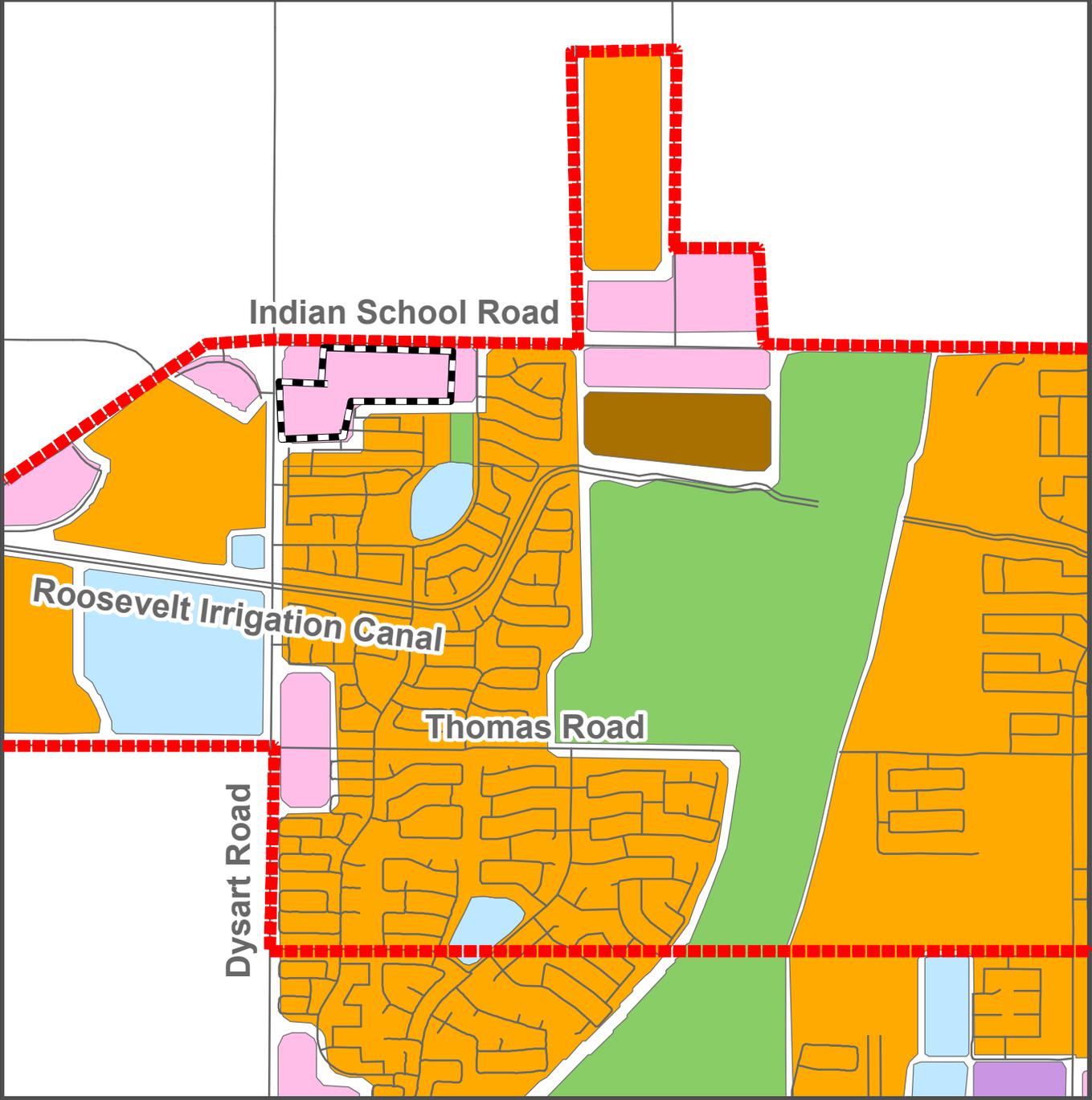
**Pasadera  
GP-07-3 & SP-07-2**

**ATTACHMENTS:**

- Exhibit A Existing General Plan Land Use Map - Subject Property Detail
- Exhibit B Land Use Map Proposed by the Applicant- Subject Property Detail
- Exhibit C Zoning Vicinity Map
- Exhibit D Aerial Photo dated 2006
- Exhibit E Applicant's Neighborhood Meeting Summary & Sign-In Sheet
- Exhibit F General Plan Amendment narrative, date stamped June 13, 2007
- Exhibit G Freeway Corridor Specific Plan Amendment narrative, date stamped June 13, 2007
- Exhibit H Planning Commission June 21, 2007 draft minutes
- Exhibit I Correspondence received regarding the proposed request

# Pasadena

## GP-07-3 and SP-07-2

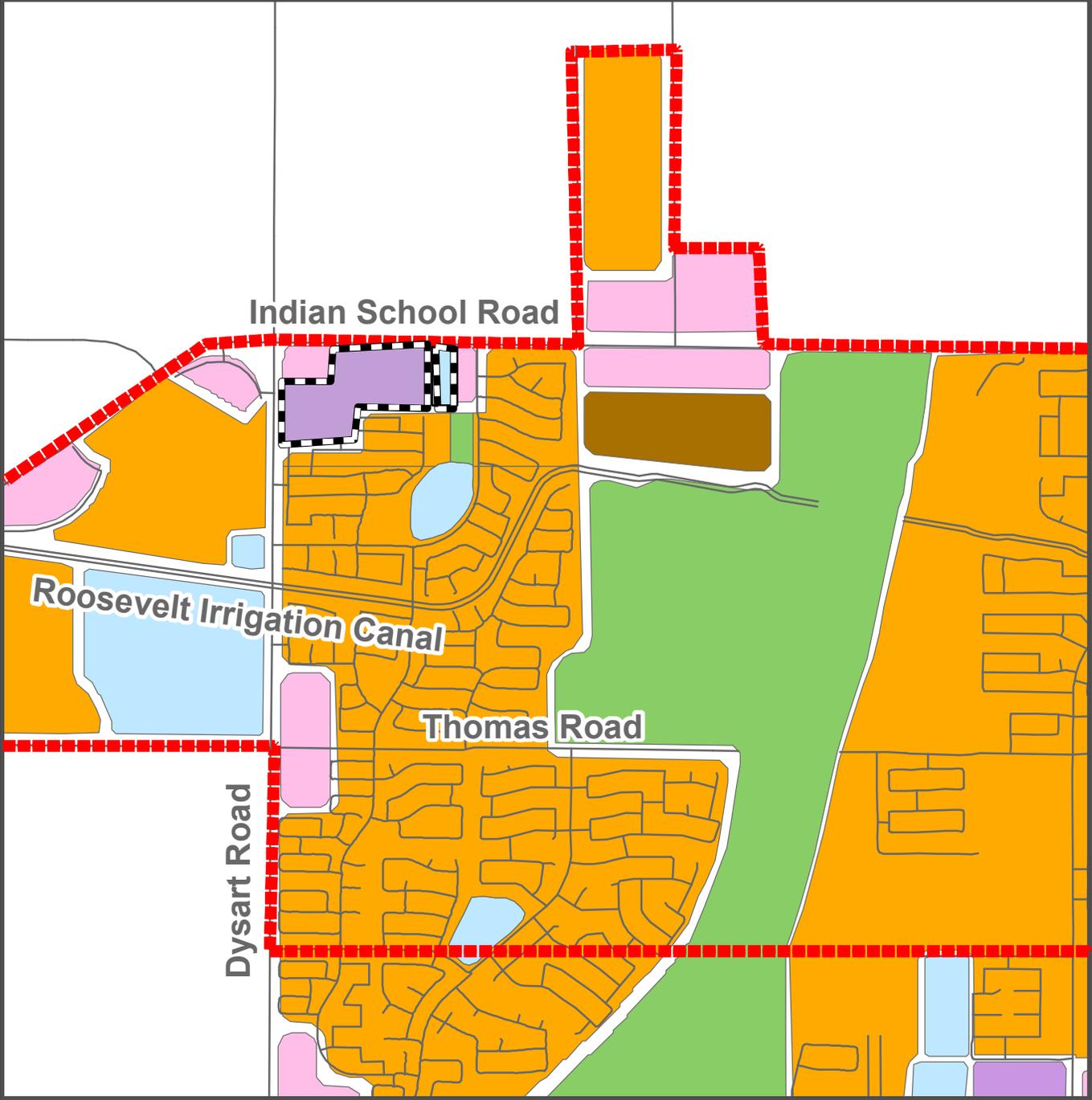


### Existing - General Plan Land Use

- |  |   |  |
|--|---|--|
|  Commercial                 |  Medium High Density Residential |  |
|  Employment                 |  Mixed Use                       |  |
|  Freeway Commercial         |  Multi Family Residential        |  |
|  High Density Residential   |  Open Space                      |  |
|  Low Density Residential    |  Public Facilities               |  North Avondale Specific Plan Area |
|  Medium Density Residential |  Subject Property                |  |

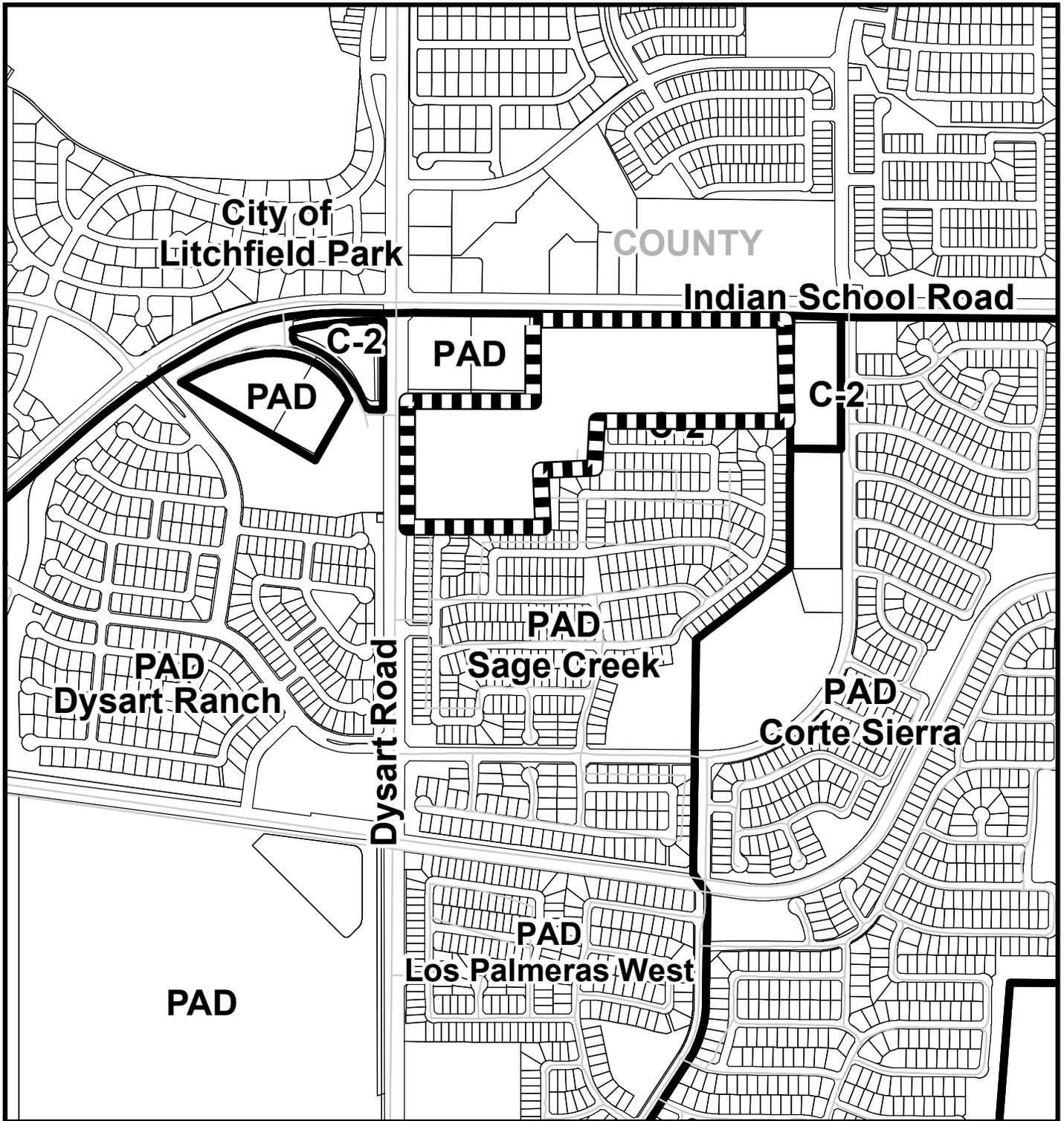
# Pasadena

## GP-07-3 and SP-07-2



### Proposed - General Plan Land Use

- |  |   |  |
|--|---|--|
|  Commercial                 |  Medium High Density Residential |  |
|  Employment                 |  Mixed Use                       |  |
|  Freeway Commercial         |  Multi Family Residential        |  |
|  High Density Residential   |  Open Space                      |  North Avondale Specific Plan Area |
|  Low Density Residential    |  Public Facilities               |  |
|  Medium Density Residential |  Subject Property                |  |



## Zoning Vicinity Map



**Subject Property**





## GP-07-3/SP-07-2 Pasadera Air Photo 2006



Subject Property

**DATE:** 05.04.07  
**FROM:** Shaine T. Alleman – Tiffany & Bosco, P.A.

**PROJECT:** Rose Properties – Pasadera (SEC of Dysart & Indian School Rd.)  
**RE:** General & Specific Plan Amendment Neighborhood Mtg. Summary held May 2, 2007

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The following is a summary of the Neighborhood Meeting for the General and Specific Plan Amendment applications of the Pasadera project (Case # GP-07-03 & SP-07-02) held on May 2, 2007. The meeting was held at the Estrella Mountain Community College located at 3000 North Dysart Road, Avondale, AZ 85323 from 700 p.m. to 830 p.m. The purpose of the meeting was to discuss the proposed general and specific plan amendment applications that have been submitted to the City of Avondale.

The following were in attendance from the Pasadera development team:

Leslie Wade, Wade Communications  
John Ruggieri, Rose Properties Southwest, LLC  
Gonzalo Mosquera, Rose Properties Southwest, LLC  
Jerry Davis, Vision Residential Group, LLC  
Shaine Alleman, Tiffany & Bosco, P.A.

The attached sign-in sheets reflects property owners and interested citizens that were present at the meeting. From discussions with property owners, many of them were present due to an additional notification flyer that was sent out through the neighborhood from Lisa Dubas. There were no representatives from the City of Avondale present at the meeting.

Presentation boards exhibiting the conceptual site plan and conceptual building elevations were placed around the room, which were used in the presentation and dialogue of the proposed project. There were also handouts given out to those present to explain the vision of the Pasadera project.

Leslie Wade and John Ruggieri led the discussion with a power point presentation. Mr. Ruggieri gave an overview of Rose Properties Southwest and the development they are currently involved with in the West Valley, and specifically in Avondale. He also explained Rose Properties' commitment to creating quality development and providing a community that the City of Avondale would be proud of. Mr. Ruggieri and Ms. Wade then explained the proposed general and specific plan amendments and the proposed development that Rose Properties envisions for the property. Findings of the market study were also included in the presentation, which explain what land uses would be appropriate for this property and what would be economically feasible for the City of Avondale.

This lead into the discussion of the proposed vision for the Pasadera development, which was explained as a mixed-use development consisting of retail, office, and residential uses that will be attractively landscaped and infused with pedestrian-friendly open spaces that will create a vibrant community. Conceptual drawings were used to exhibit the possible configuration of land uses that would be allowed under the proposed land use change. There was also a presentation of potential gateway improvements that are proposed for the southeast corner of Dysart and Indian School Roads.

The presentation concluded with a description of the entitlement process in the City of Avondale and an explanation of the General and Specific Plan Amendment process that the Pasadera development is currently going through. There was also an assurance that the applicant is aware of the neighborhood meeting process and is willing to work with the neighbors as the development process continues to move forward.

After the presentation, the floor was opened up for questions and comments from those present. The following is a summary of that feedback and the responses given from those representing the applicant.

- COMMENT: What will be the building heights along the southern boundary and their setback/relationship to existing residential homes? This included comments related to building heights, setbacks from existing residential, the types of uses that will occur behind the adjacent neighbors.
  - RESPONSE: It was explained that through the current zoning on the property, buildings can have a maximum height of 30' with a setback of 50' (25' setback for 15' buildings) from the existing residential. Due to the current configuration of conventional development, this will most likely be the rear of commercial uses (loading areas, delivery bays, etc.) It was explained that through the PAD rezoning process the applicant will work with City Staff and property owners to ensure that there is sufficient buffering/landscaping, and appropriate building heights that will not be offensive to existing neighborhoods. A conceptual Site Plan was also shown in the presentation that showed possible configurations of buildings and their relationships to the neighboring property owners (including building siting and heights, setbacks, and landscaping buffering).
- COMMENT: What will be the configuration of access on the southern boundary with the existing dead-end road in the Sage Creek neighborhood?
  - RESPONSE: It was discussed with the property owners as to what they would like to have for access. It was the general consensus that a road thoroughfare was not desired, but that a gated pedestrian access maintained by the HOA would be appropriate for access.
- COMMENT: There were general comments related to the concern of the high-density residential creating additional students that will overcrowd the schools in the area.
  - RESPONSE: It was explained that the applicant has not yet spoken to school officials. However, these discussions are currently being scheduled to discuss the development with the school superintendents. It was explained that the proposed housing products for Pasadera have been shown to produce less students than conventional apartment complexes and single-family housing. In previous conversations with Avondale superintendents they are aware of these trends. The proposed market for the housing products were also emphasized (baby boomers, professionals/executives, empty nesters, etc.), clarifying that this markets has smaller numbers of children per households.
- COMMENT: What about traffic? Will this development produce additional traffic that will be a burden for the area?
  - RESPONSE: It was explained that the applicant has produced a traffic study that has

concluded that there will not be a significant impact on the area in regards to traffic. The property owners were also told that the applicant will have to continue to work with City staff, including Traffic Engineers, to produce more thorough traffic analysis that will ensure that there is not a negative impact on the area. These studies will occur in the subsequent rezoning and site plan phases of the development.

- COMMENT: Some property owners mentioned the break-in of automobile vehicles in other residential development in the area and were concerned if this development would add to that perceived trend. How will this development secure the parking areas?
  - RESPONSE: It was explained that the applicant has proposed internally protected parking areas for the residential areas through the means of a secured parking garage. Only those that are meant to access the development will be able to use this garage. It is anticipated that this configuration of residential parking will add to the security of the development.
  
- COMMENT: What will happen to the property if Rose Properties ends up selling the property to another development? Will they develop it the same way that Rose Properties envisions?
  - RESPONSE: It was explained that the current applications are for amendments to the General and Specific Plan only. This is primarily a land use change that focuses on what that change will do for the community. In the subsequent Rezoning application, the development standards will be set and the applicant will be stipulated to certain provisions. It was explained that Rose Properties will be submitting that Rezoning application before the Planning and Zoning Hearings for the GPA/SPA applications and will begin to be stipulated to specific development and design criteria. Once the rezoning application is finalized and approved, whoever develops the property will need to adhere to this document.

# Information Sign-up Sheet

## Neighborhood Meeting, May 2, 2007

# PASADERA

Name	Mailing Address	Phone	Email
Kim Leggio	18926 W. Whitton Ave. <sup>85303</sup> Avondale	(603) 536-1110	
Keth Kzawali	870 N. VILLAGE AVE PT. LITCHFIELD	623 935-5195	
SUSAN Bunge	12646 W. Clarendon	623 5494746	
Charles Rump	12946 W. Clarendon	623 5479746	
David Csicsak	3529 N. 127 <sup>th</sup> Dr	623 3373736	
Brian Peterson	3717 N. 128 <sup>th</sup> AVE. AVONDALE 85323	623-748-9799	
ANDREA BODEN	3729 N. 127 <sup>th</sup> DR AVONDALE 85323	623-536-7360	
Ed Girsman	13818 W. Fairmount Ave Avondale	623 979 0013	
Lisa Dubas	12943 West Whitton Ave	623 536 3011	
Alphonso Tyson	1288 W. Indiana Ave Avondale	(623) 535-5491	
SHARON O'BANION	3701 N. 127 <sup>th</sup> DR AVONDALE	623 935-0857	
Nancy Acunil	12854 W. Indiana Ave	623 935 6579	
Pat Buzadzijski	80 E. Rio Salado Pkwy Tempe	480/659-4664	
Deborah Lucy	12840 W. Veldon Ave	623 535-3044	
David Cook	12814 W. Fairmount Ave	623-440-0278	leah@scoadden.com





would not guarantee residential uses or density. Mr. Morgan stated the next step after tonight is zoning and even if this property were approved for Mixed Use, the current zoning would stay in place, not allowing residential until further steps are taken. He described the existing land use of the City and stated it was important to remember that most of this existing Mixed Use is either within the development process or it already has been developed. Mr. Morgan stated the North Avondale Specific Plan emphasizes medium density single family residential with planned open spaces and Dysart Road is identified as a commercial corridor to service the needs of the community college and area residents, and the Specific Plan identifies 99<sup>th</sup> Avenue as heavier commercial. He then covered the citizen review process for the Planning Commission, stating concerns expressed at the neighborhood meeting were increased traffic, traffic being routed through Sage Creek, additional burden upon schools, and the height of buildings. He stated subsequent letters received comprised the three opposed based on traffic and the addition of residential concerns, and one was in favor. Mr. Morgan recapped that at the Planning Commission meeting on May 24, 2007 the concerns expressed were the same as at the neighborhood meeting, plus a question of the ability of the market to absorb apartments and the apartments becoming low income housing, and the pricing of the units. He stated subsequently five letters were received, all in favor, but all opposing low income housing. Mr. Morgan stated that the Planning Commission must determine that the proposed amendment meets four findings prior to recommending approval: 1) The development pattern contained on the Land Use Plan inadequately provides the appropriate optional sites for the use and/or change proposed in the amendment. 2) The Amendment constitutes an overall improvement of the General Plan and the Specific Plan. 3) The Amendment will not adversely impact the community as a whole and/or a portion of the community by significantly altering acceptable land use patterns or requiring large and more expensive public infrastructure improvements, and it is not adversely impacting the existing land use. 4) The Amendment is consistent with the overall intent of the General Plan and adopted plans, codes and ordinances. He stated Staff recommends approval of the proposed Major General Plan amendment because all four findings have been met and that the Planning Commission recommends to the City Council that all 40.5 acres be changed to Mixed Use. Mr. Morgan indicated the City was in negotiation with this site and another site in the northwest portion of the City for the location of a combination police/fire station facility and if the other location is selected, Staff does not wish to see this applicant stuck with 3.5 acres of public facility, thus if all 40.5 acres are approved for Mixed Use and the City decides this is the location for the combo police/fire station facility, Mixed Use will not prohibit that. Mr. Morgan stated after tonight's application the next step would be that on August 20, 2007 the item would go before City Council for approval or denial.

Chairperson Lageschulte invited questions for Staff.

Commissioner Iwanski stated in reading the responses from the immediately impacted landowners, he gets the general feeling they are supportive overall, and asked is that the same feeling that Staff gets. Mr. Morgan reported that Staff did not have a clear indication that all of the residents of Sage Creek, or the residents directly abutting the

property, or the residents of surrounding communities were completely in favor or completely against. He stated the Sage Creek HOA had voted in favor, but in the last public hearing most of the people were against it, particularly of the multi-family facet. He added the written responses were approximately evenly split.

Chairperson Lageschulte stated there were 5 in favor and 7 against who requested to speak later in the public hearing.

Commissioner Copeland asked about a letter in the Planning Commission's packet from Mr. Mack Ferrick, inquiring if Mr. Ferrick were a resident of Sage Creek or Avondale because his addresses given are in Surprise and Goodyear. Mr. Morgan stated he had not contacted Mr. Ferrick directly to ascertain his address, and it could be that is a business address, and he accepted the letter on face value.

Chairperson Lageschulte asked for more questions for Staff, and hearing none, invited the applicant to address the Commission.

Dustin C. Jones, Tiffany & Bosco, 2525 E. Camelback Rd., Phoenix, AZ, stated he was here on behalf of his client, Rose Properties Southwest, LLC, and that also present is the President of Rose Properties Southwest, John Ruggieri, and a residential development partner, as well as Jerry Davis, and a representative from the London Group. He stated he would turn the presentation over to John Ruggieri.

John Ruggieri, President, Rose Properties Southwest, LLC, stated they were currently developing six properties within the City of Avondale. He stated when they acquired this site they hired the Griffin Consulting Company to ascertain what would be viable on the site, as well as performing 4 other studies of the surrounding areas, and those studies show there is limited retail capability of only 50,000 sq. feet for primary tenants. Mr. Ruggieri stated they are attempting to resist secondary tier tenants and feel it best to introduce the Pasadera, a walkable, Mixed Use village with shops, restaurants and offices and residences targeting empty nesters and working professionals. He then turned the presentation over to Leslie Wade of Wade Communications.

Leslie Wade, Wade Communications, 3990 N. Litchfield Rd., Avondale, AZ, stated the management company for the Sage Creek HOA is based in Surprise, and that is why Mr. Ferrick's letter has a Surprise address. She stated the HOA Board had voted 4-1 and a couple of members are present tonight who are not clear on the Board's understanding and would speak to those concerns. Ms. Wade stated it was fair to say that the community response so far is mixed, but she believes all the concerns heard to date can be addressed and mitigated.

Mr. Ruggieri continued his presentation, stating they take public outreach very seriously and consider themselves to be good neighbors. He then gave an invitation to the Commission and the members in the audience for an open and honest dialogue and turned the presentation over to Dustin Jones to conclude the presentation.

Mr. Jones stated they concur with Staff's recommendation that the entire 40.5 acres be designated as Mixed Use. He then detailed how they meet the four findings of Staff, stating a General Plan amendment does not guarantee residential even in light of a Mixed Use designation, but is just a land use designation change, and a zoning case would have to be heard for residential in the future. Mr. Jones stated their studies concluded there is an excess of 247.7 million dollars in demand for conventional commercial, and their project would be an improvement to the area. He added this would be a gateway into North Avondale with an entry monument on the site as an icon for the City of Avondale. He showed the Planning Commission slides of their plans depicting how this would improve the area. Mr. Jones reminded the Planning Commission on Staff's finding that this development would not adversely impact the community, and added building heights right now could be 30' in height and set back to 25' under the current zoning, but with their development, they want to mitigate the visual impact on the neighbors. He stated with their Mixed Use development, the residents can walk to where they want to go, so the traffic impact would be mitigated. Mr. Jones stated a public facility would benefit the residents as well. He then addressed the impact on the schools, stating that with their high-end residential urban development, impact on the schools is less, and high-end residential urban development brings in more property tax per student than single family homes. He then addressed property values, stating property values would not be negatively affected, as this is a high-end residential development for the upwardly mobile. Mr. Jones informed the Planning Commission there were at least 13 goals of the General Plan that they meet and this site provides a great opportunity to be developed as a Mixed Use development that is upscale in quality, and Rose Properties is committed to this site. He added that the City Council in June 2006 articulated a development plan, and he read that development plan for the Planning Commission, requesting that the Planning Commission take a leap of faith on Rose Properties as the General Plan amendment does not guarantee them any specific number of residential units.

Chairperson Lageschulte invited questions for the applicant.

Commissioner Alcorn asked for specifics on the dollar amount and demographics on the town homes/condos.

Mr. Ruggieri introduced Jerry Davis, Vision Residential, to address Commissioner Alcorn's question.

Jerry Davis, President of Vision Residential, 14362 N. Frank Lloyd Wright, Scottsdale, AZ, stated his company had canvassed the area and found there was no townhouse attached products for sale within a five mile radius, so they addressed that fact in their market research and looked for in income level in their demographics equal or higher to the adjacent single family homes. He stated their product would not be affordable and that was the only type of product they do.

Chairperson Lageschulte inquired where the closest town homes/condos were to this property. Mr. Davis responded he did not know at this time without looking at their market studies, but explained what is happening to the demographics in America in general is there are fewer families with children and more empty nesters. He added it was a very small quantity of town homes they were looking to put on the site. Chairperson Lageschulte stated the closest ones were in Litchfield Park just across the street. Mr. Davis stated they did not consider those a competitive product. Chairperson Lageschulte stated based on price, he thinks they are very competitive. Mr. Davis stated they look at new construction in their studies, not at products that have already been sold.

Commissioner Grimsley stated he believes there are upscale town homes/condos north of Indian School at Litchfield Road built within the last two years and he understands they are not fully occupied. Mr. Davis responded that occupancy and ownership were two different things and what Commissioner Grimsley may think is vacant is a second home only occupied three months of the year; thus, the title had to be searched. He added in Litchfield Park there were no town homes that were adjacent or within a Mixed Use community where the residents can walk to shops, restaurants, and work. Commissioner Grimsley stated if these town homes could be used as an investment home or second home, there was the opportunity they could be used as rental properties. Mr. Davis stated by law they could not stop that and that in Sage Creek there were several rental homes. He added they were not looking for the second home buyer, but were looking for the upwardly mobile buyer that will be there year-round because that is what helps the retail and these homes would not be marketed in a travel magazine to people that live in Minnesota or Michigan.

Commissioner Iwanski stated it was compelling for him, in that in a letter from the West Valley Hospital it states many of the doctors, interns, nurses, and administrators would welcome the opportunity to live in a high quality loft or apartment environment such as that proposed in the Rose Properties Southwest Pasadera project. He stated the City of Goodyear has been successful in getting two colleges to relocate to Goodyear and the Southwest Valley needs hospitals, doctors, nurses, and the City wants quality jobs, quality industry and companies to be in Avondale, and if the City does not provide adequate housing options for the men and women that work in those professions, shame on the Planning Commission. He stated this is a good project to provide for the professional men and women they have asked to come here and he likes this project.

Chairperson Lageschulte invited other questions, and on receiving none, he stated there would be a 10 minute break.

After the break Chairperson Lageschulte opened the item for public hearing, stating he had many requests to speak on Item No. 3, GP-07-3.

Mike DeSmith, 12802 W. Fairmont Ave., Lot 12, Avondale, AZ, stated when he bought his house he knew it was zoned Commercial. He stated the developers had done a

fantastic job on the commercial properties being built, but if this development goes through, his house would go on the market the next day.

Charles Runge, 12946 W. Clarendon Ave., Avondale, AZ, stated they are the second owners of their property and they realized there was a large field next to their perimeter wall, and they started out by putting in trees as a buffer zone. He stated they are for the rezoning and for the Pasadera Project, and they are for the City of Avondale putting in the combo police/fire facility in that area.

Lisa Dubas, resident of Sage Creek, stated that during a City Council meeting in 2002, they were requested to rehear a mini storage proposal that had been denied, and two members of the Sage Creek HOA Board had stood before the Council and stated they thought this was good for the community, and the mini storage was approved. Ms. Dubas reported the HOA Board had never asked the community what they wanted. She stated she had attempted to be voted onto the Board, but at a meeting where Rose Properties presented this 1-3 story development to the HOA Board, the three board members present discussed liking the concept and after the meeting drafted a thank you letter. Ms. Dubas stated she was assured this was not a letter of support and she was voted in as a board member and was told never to speak for the Board. Ms. Dubas reported that next at the Planning and Zoning meeting on May 24, 2007, she was approached by the developer and was told the Sage Creek HOA was going to officially support the Pasadera project at the meeting, and she was at a loss. She reported at the HOA meeting she was shown an e-mail sent to Rose Properties by the President of the Sage Creek HOA stating they support the Mixed Use zoning with residential condos/lofts. Ms. Dubas stated she did not vote to ratify. She asked the Planning Commission to treat the positive responses from the HOA Board members as a positive response from individuals who live in Sage Creek, as none of them attended the neighborhood meeting or requested a special meeting with residents, and asked the Planning Commission to remember that people present tonight were expressing their own opinions. She stated she would rather have a center like Dysart Commons and does not believe a three story development should be located so close to a mostly one story residential neighborhood and she personally thinks those units will become rentals, because based on the assessor data, at Main Street and Verada right now, out of 20 lofts, 15 are rentals and 5 are owner-occupied, and at Indian School Road and Wigwam Creek South, out of 35 homes 20 are owner-occupied and 15 are rentals. She reported that Sage Creek is owner-occupied and she is concerned that the houses adjacent to this development will be sold to investors.

David Cook, 12814 W. Fairmont Ave., Avondale, AZ, stated he hoped the Planning Commission would consider the HOA's endorsement nothing more than four individual residents stating their opinions. He reported in letters from Rose Properties, there was misinformation given to the residents, and he could report with confidence there is a 30 to 1 disapproval for the residential aspect of this project. Mr. Cook stated a big selling point was there would be no through traffic and everyone is vehemently opposed to through traffic. He reported the HOA did not attend the May 2, 2007 or the May 24, 2007 neighborhood meetings, yet offered their approval on behalf of the residents of the HOA

even while the debate was ongoing. He added that the HOA Board has not represented the homeowners and have served their own purposes. Mr. Cook stated he could compliment Rose Properties on the commercial/retail side of their development as it is beautiful and he wholeheartedly supports that aspect, but the question to ask is why residential. He stated the impact on the schools was downplayed tremendously tonight. Mr. Cook stated \$65,900 is not a high quality/high scale town home and would not assist his home value, and a three story apartment in his backyard would adversely affect him. As to the traffic impact, he finds it hard to believe there will be no impact on traffic. Mr. Cook stated he had researched how close Rose Properties was to claims of what they would provide to what they actually did provide, but he could not find any properties to research, thus could not verify their track record. He stated that changing the zoning based on something that might happen or would be discussed in the future, once the box was opened one could not un-ring the bell. Mr. Cook continued, stating Rose Properties is not concerned that the schools would be overcrowded, the home values could be affected, and a street would be opened affecting the quality of life of the children. He stated the project without the retail and residential is an excellent project and could be expanded and everyone would win. Mr. Cook urged the Planning Commission not to approve a zoning change for this property. He reminded the Planning Commission that 750 apartments were being built a quarter of the mile away and across the street a complex is offering free rent in search of tenants.

John Waltz, 12826 W. Fairmont, Ave., Avondale, AZ, stated his wife and he purchased their home less than a month ago and had no knowledge of this project prior to purchasing their home and had they, they would have attended the prior meetings. He informed the Commission he has built and developed properties in three states, and according to the Arizona Republic, there are over 50,000 houses in Arizona on the market, and in the stadium area there are hundreds of condos and townhouses being built there, less than a 10 minute drive from this proposed site. Mr. Waltz stated that across the street is a townhouse project with a huge sign. As for the 3 percent of the City's acreage designated as Mixed Use, Mr. Waltz stated one only needs to go to Goodyear or Litchfield Park and the percentage is changed dramatically. He reported they bought their property because they like the quiet and the fact that the street is a dead-end. He questioned how the Avondale entryway monument depicted in the slides could be built on property that does not belong to Rose Property. He stated there is often times a difference between what is proposed and what is actually built.

Chairperson Lageschulte welcomed Mr. Waltz to Avondale.

Ileah Cook, 12814 W. Fairmont Ave., Avondale, AZ, showed the Planning Commission a rudimentary drawing and stated her information comes directly from the Maricopa County Assessor's web site, the Avondale Land Use map, and members of the Agua Fria Unified High School District. She pointed out the residential areas on her drawing and stated there were not enough upper grade schools to accommodate the population explosion in the West Valley, and employees of the Agua Fria School District voiced their desire to stay at a 4A category, which means a student capacity between 16,000-

18,000 students, and reported they are currently on the brink of becoming a 5A category, which puts student capacity between 20,000-22,000 students, which would require more land. Ms. Cook stated the type of residential properties proposed would likely have upper grade students and currently there are only four high schools, and currently there is a need for 8-10 high schools, but there is not enough land available for purchase. She informed the Planning Commission a parcel was in escrow, but fell out of escrow, and another school site is in escrow and happens to be with Rose Properties, but is located in the furthest southeast boundary of the district. Ms. Cook stated as residential zoning intensifies, it is necessary to bus students further away and her family is experiencing this firsthand because Agua Fria is a 42 to 1 student to teacher ratio for core curriculum classes, and while they live closer to the Millenium District, excessive homebuilding and apartments forced rezoning and now the district bears the cost of bussing students to Verado. Ms. Cook stated as far as Sage Creek HOA, their attention lies with the shrubbery and gravel, not with the impact of rezoning on families. She submitted that this amendment would adversely affect the community and would not be an overall improvement to the community. She added that the high quality of aesthetic standards set by the City of Avondale are exemplified by Dysart Commons and she would not be bothered by such a commercial development, and she is not in favor of a high or medium density residential development, but is in favor of the existing commercial zoning.

Sam Conrad, 12810 W. Fairmont Ave., Avondale, AZ, stated he did not understand the difference between Item Nos. 3 and 4 and asked for clarification. Chairperson Lageschulte stated Staff could answer his question after the meeting. Mr. Conrad stated he was concerned that both items were lumped together in the presentation. He stated he appreciated the fact that Rose Properties sent a letter to the residents, but was upset that the HOA Board did nothing about this. Mr. Conrad stated he was concerned over the noise pollution to the neighbors both during development and after and had not heard that addressed. He added he would like to hear a contingency plan if the property is built and there are 50 kids per 100 units and if property values go down.

David Wood, 12806 W. Fairmont, Ave., Avondale, AZ, stated before moving to Sage Creek, he had visited City Hall to research zoning because he did not want apartments in his backyard, and on finding it was zoned commercial, that was a big factor in his buying his home. He stated the Planning Commission has a large task in growing the City and protecting the children from overcrowding in the schools. Mr. Wood stated in the General Plan, a condition states that the burden of proof is on the developer, and posed the question, what if every residential unit has two children.

Lou Osborn, 12941 W. Clarendon Ave., Avondale, AZ, stated he likes what he sees, as he likes the idea of a shopping center and he does not see this development affecting the property values as they are talking about high income properties. He stated he agrees with Mr. Cook, in that \$69,500 for the condos is low for a high income property. He stated Verado is a good example of mixed density. Mr. Osborn added there are many rentals around his house. He reiterated he approved of this item.

Angela Tyson, 12858 W. Indianola Ave., Avondale, AZ, stated she and her husband strongly support rezoning of the property for Commercial and Mixed Use, and believe the project will make a positive contribution to the neighborhood and will beautify the entranceway into Avondale. She stated this lot had been empty for a long time and her property backs directly up to the lot, and she would rather see something other than a grocery store or low end restaurant. Ms. Tyson stated she approves this project 100 percent.

Eric Greene, 12827 W. Mulberry Dr., Avondale, AZ, reiterated that not all Sage Creek residents voted to approve this project. He stated Rose Properties states this will be like the Glendale Stadium project, but there is not enough land to recreate that and everybody's home will back up to the wall. Mr. Greene stated he cannot get his son into the preschool because of overcrowding. As for professional people occupying the rentals, such people can also reproduce and will create more overcrowding in the schools. He questioned if the developer would make contributions to the elementary schools in the neighborhood for expansions. Mr. Greene stated at 59<sup>th</sup> Avenue and Olive in Glendale, and at Litchfield Road and Van Buren in Goodyear, and 16<sup>th</sup> Street and Camelback Road in Phoenix, when the main anchor pulls out, the shopping centers sit empty. He stated the northwest corner of Wigwam Blvd. and Litchfield Road has condos that start out at \$350,000-375,000 and that price would bring value to the neighborhood, but as a rental, with all the competition, apartments will turn to Section 8 housing. He then addressed traffic signals, stating a need for additional traffic signals at Osborn and Dysart, and at Santa Fe and Indian School, and if they build this project, there will be a need for still more traffic signals.

Chairperson Lageschulte stated he had a card for Gail Mullins, who is in favor of the item, but does not wish to speak.

Steven Ballsley, 3730 N. 127<sup>th</sup> Dr., Avondale, AZ, stated he had had a conversation with John and Leslie Wade about the letter sent from the Sage Creek HOA Board and it is a misinterpretation, as it was meant as merely a thank you letter for the presentation. He stated the HOA is in support of the development and does not condemn or condone what is going to be developed, but simply wants more information. He stated his property does backup to the property and he is not for or against the project right now because he does not believe they have all the information, but rather is leaving it up to the Planning Commission because he believes they will make the best decision and the best recommendation for the community and the City of Avondale.

Chairperson Lageschulte stated he had a card from Kim and Don Conrad, West Fairmont Ave., Avondale, AZ, who are opposed to the project, but do not wish to speak.

Lori Waltz, 12826 W. Fairmont, Ave., Avondale, AZ, stated her husband had spoke on the issue, and she also wished to be recognized as being in opposition to the item.

Chairperson Lageschulte summarized he had five cards in favor, ten opposed, and one unsure. He thanked everyone for attending. Chairperson Lageschulte invited the applicant to respond to the citizens.

John Ruggieri, Rose Properties Southwest, LLC, again addressed the audience, stating they will agree to a whole number of CC&Rs for the project, and he wants to assure the Planning Commission and the members of the community that they will never agree to restricting procreation.

Mr. Dustin Jones added he has three children and one on the way, and his colleague has five children and is a professional. He also thanked the neighbors for attending tonight. Mr. Jones stated 34 letters were sent to property owners that about the project, 225 letters were sent to residents within 200 feet of the project, and 250 letters were sent to residents of the Sage Creek HOA, and oftentimes no one attends these meetings. He stated many of the questions raised tonight were specific questions about the site plan and they were only at the General Plan stage and were not trying to present a zoning case tonight. He stated tonight's plan has a 0 to 45 percent residential allowance and they are not asking for any specific percentage tonight. He stated many of the questions cannot be answered tonight as this is just a General Plan stage, but in the next stage they hope to get to, they could answer those questions. As far as their track record, Mr. Jones stated all of Rose Properties are quality projects and this is not an attempt to sneak in a project that would be embarrassing to Rose Properties or to the City of Avondale, and they will be back before the Planning Commission on multiple projects. He stated the best consultants, architects and designers from around the country have been hired to assure the quality of development and there was no attempt to do anything of less quality, and this would be the first signature project Rose Properties would get to do in the City of Avondale. Mr. Jones continued, stating the growth in the Valley is projected to increase and professionals do not want to live in apartment buildings or single family homes and they are trying to serve that market. He stated they have met their burden of proof on all four of the criteria required for a General Plan application. Mr. Jones stated the criteria for a zoning application is much more discretionary and the Planning Commission would get to decide if that is met when they get to the PAD stage. He stated all the questions regarding schools, building placement, building height, etc., would be addressed in the zoning application stage. Mr. Jones stated the hundreds of letters they have sent out are indicative of their public outreach efforts. He stated that changing the General Plan to allow for the Mixed Use and then allowing them to return with a PAD application endorsed by Staff is the way to go with this project.

Chairperson Lageschulte asked for further questions for the applicant or Staff.

Commissioner Copeland asked someone to address the entrance monument issue if the property was not part of the development. Mr. Jones responded they had met on several occasions with the representatives of that property and they have a landscape plan they are planning on implementing, and Rose Properties is willing to participate with them and enhance that because they believe that as the gateway in from the northwest sector, that

corner can be highly landscaped and they have letters confirming their involvement. Commissioner Copeland asked if their involvement was well-received, and Mr. Jones confirmed it was.

Commissioner Grimsley stated there are a number of commercial developments that are vacant right now and asked if the developer has a list of possible restaurant, retail or office tenants for their development. Mr. Jones stated that their market studies have shown very little vacancy for the properties along McDowell and the national tenants are along McDowell and closer to the freeway, and when you get further away, unless you have a grocery store, the shopping centers have a tendency to take a long time to lease up, and the national major tenants will not come further north. Commissioner Grimsley asked if there is already a problem with getting tenants north of I-10, what makes the applicant believe tenants will come to their area if they build. Mr. Jones responded that the success would lie in creating a special place, a lifestyle destination.

Chairperson Lageschulte invited further questions, and hearing none, closed the public hearing.

Chairperson Lageschulte asked for a motion on item GP-07-3. Commissioner Webster moved that the Planning Commission accept the findings and recommend approval of application GP-07-3, a request to amend the General Plan from Commercial to Mixed Use. Commissioner Copeland seconded the motion.

Chairperson Lageschulte opened the item for discussion.

Commissioner Copeland stated the Commissioners do not work for the City, are volunteers, and her comments were based on comments from the public. She stated there were things the public may not be aware of, such as the developers do put money away for the schools, but schools are a state-driven entity, not a city entity, and regarding traffic signals, she stated Indian School Road is not a city street, but is a county street. Commissioner Copeland stated the Commission would probably not vote for anything like 750 apartments, but they are interested in working with the applicant to help them understand what the community will accept. She stated everybody has an image of a renter and for the most part are correct, but no one should forget about people such as herself, upscale professionals who rent at some point in their life when they are not sure how long they can stay in a specific location or if they want to stay. Commissioner Copeland stated the housing market as a whole is down and to pick on this particular development as being not sellable is shortsighted and the Commission needs to look long term as the real estate business goes up and down all the time. She stated the thought that the developer would build upscale housing that would turn into Section 8 is unrealistic. Commissioner Copeland stated what the residents have right now is a dirt field and she suggests working with the developer to put something on that piece of land that will work for everyone.

Chairperson Lageschulte stated he has mixed feelings, in that while he likes the project, he is not sure about three stories. He stated if he lived in a house looking out over the dirt lot, he would want to see trees and shrubbery rather than the 30 foot wall of a shopping center. Chairperson Lageschulte stated it was his opinion the Commission was to vote per the peoples' opinions, and right now he has 10 opposed, 8 in favor and 1 unsure, and he also felt the City was not in a race to build out. He added that overcrowded schools were a problem as well.

Commissioner Iwanski thanked everyone for showing up at the meeting. He summarized that he had heard the concerns as school overcrowding, traffic/child safety, and property values. He announced that when it comes to school overcrowding and teacher to student ratios, talk to the governor's office, the state legislature and the representatives on the facility's school board because that is where you address those concerns, not at a Planning and Zoning Commission meeting and not with your city government. Commissioner Iwanski next addressed traffic and child safety, stating he had to defer to the professional staff and the traffic engineers and developers to continue to work together on the traffic flow, and he will continue to defer to the professional staff at Avondale. He stated in terms of opening up particular avenues, they could direct Staff to work with the developer to make sure their kids are safe. Commissioner Iwanski continued, stating Rose Properties has done quality developments and have a track record of success and can address the concerns of property values. He stated he likes the project as it provides a housing option that currently does not exist in Avondale or in most places in the Southwest Valley with the exception of Westgate. Commissioner Iwanski stated when corporate CEOs and CEOs of hospitals tell him they need these housing products and these kind of options, to him this is a compelling argument to try to move this project forward, while at the same time addressing the concerns of the public. Commissioner Iwanski told Mr. Greene not to bring up Section 8 again, and clarified that Section 8 was a federal housing project and there are specific requirements, and this project was not even close to that circumstance, and he would be more concerned about the 750 apartment units up the road. Commissioner Iwanski stated this project has his support.

Commissioner Alcorn stated he thinks the Commission needs to go to the next step and try to see exactly what Rose Properties has on their agenda. He clarified that the Commission was an advisory board and merely advises the City Council on what the people are saying, and if City Council thinks they want to proceed, they do not have to listen to the Planning Commission. He added that lately the City Council does seem to be listening to the Planning Commission and he is very pleased about that fact. Commissioner Alcorn stated he believes the system needs to be changed to where housing is not always in direct conflict with Mixed Use and should be changed to where it has a restriction, such as Mixed Use can be Mixed Use with Housing, and Mixed Use with restrictions for no housing, and that should be put in the General Plan because the Commission is having too much trouble with the issue coming up at the meetings over and over. He reiterated he would like this project to move forward.

Commissioner Grimsley stated his wife is a teacher in the Agua Fria High School District and he was shocked to hear that someone in the same neighborhood had their children bussed to Verado. He stated one problem he saw firsthand is that one week before school starts, the school is still filling teaching positions, so building new schools would not necessarily solve the problem. He stated he hopes people are telling their children to look into teaching as a vocation. Commissioner Grimsley stated for the Commission to know how much merit this project has or does not have, the project needs to go to the next step, and that still gives the City the opportunity to say that it cannot be built.

Commissioner Webster stated the Commission has a duty to find out if a project meets the criteria, which this project does, and the Commission needs to think about what is good for Avondale, and she does not believe Avondale can sit back and wait to decide what they want to do with a property, but should be proactive. She stated this is an opportunity for the City to be in the limelight and do something different. Commissioner Webster stated she thinks this is a good plan.

Commissioner Copeland stated that the next step would not be a cake walk, as the Commission would not allow three story town homes. She assured the audience that when the site plan comes forward, the concerns that have been brought up, the Commission is against them as well and the Commission will make sure that the integrity of their backyards and their privacy will be no more than if a single story home development were in their backyards. Commissioner Copeland stated she is in favor of this project because she realizes that the big boxes will not be drawn to so far away from the freeway, and this project will open up the opportunity for small business owners to go into the area where people can walk to, eat there, spend time there and enjoy their neighborhood. She added that with a traditional type commercial development, she doubted people would spend more than 15 minutes there. She stated she is looking forward to seeing the site plan. Commissioner Copeland encouraged the audience members to attend as many of the Planning Commission's monthly meetings as possible.

Chairperson Lageschulte asked for further questions, and hearing none, called for a Roll Call vote on GP-07-3.

ROLL CALL VOTE

Commissioner Webster	Aye
Commissioner Copeland	Aye
Commissioner Alcorn	Aye
Chairperson Lageschulte	Nay
Commissioner Grimsley	Aye
Commissioner Iwanski	Aye

The motion passed 5 to 1.

Chairperson Lageschulte opened the public hearing on SP-07-2.

Mike DeSmith, 12802 W. Fairmont Ave., Avondale, AZ, stated everyone has mixed feelings, but three stories are upsetting to him. He stated at this stage they do not know exactly what the project will be, but perhaps at the next level they might find out. Mr. DeSmith stated someday he may want a lock and leave residential unit, but he does not want rentals.

Chairperson Lageschulte suggested Mr. DeSmith get with the developer and let them know his concerns, and if he is not satisfied, he can come back and raise cane.

John Waltz, 12826 W. Fairmont Ave., Avondale, AZ, stated he realized his comments did not count for much, but he still wanted to take this opportunity to speak. He stated he understands the school issue and that the funding comes from the state, but he also understands that it starts some place and the Planning Commission has the opportunity right now to impact whether there will be more children going into a district or not. Mr. Waltz stated he understands the Planning Commission does not build the roads, but the Commission has the opportunity to address how much traffic goes out onto the road. He stated the Commission says it wants to represent the citizens of Avondale, and the people have spoken. He commended Chairperson Lageschulte for standing on that. He stated State Senators view every one letter they receive as representing over 100 voters, and if the Commission looks at this issue in the same light, he does not believe they have listened to the people of this subdivision. Mr. Waltz stated his property abuts the back of this project and he hears what Rose Properties is going to do and how it will benefit them, but wonders how it will benefit the residents. He stated while he appreciates the Commission's comments in trying to educate the citizens, they should give credit to some who do understand the process. Mr. Waltz stated the Commission has the responsibility to stop things, or to allow them to continue.

David Wood, 12806 W. Fairmont Ave., Avondale, AZ, stated he has an issue with the Commission saying the overcrowding in schools is not their problem, yet they will throw more residents into that area and he feels that is very irresponsible. He continued, stating that when addressing the burden of proof, one issue was there would be no economic impact on the city. He stated the national average for police officers was 2 officers per 1,000 residents, and Avondale was already behind. He stated if the Commission adds 1,000 residents and 450 units, that would be 2 officers, and questioned was that not an economic impact.

Eric Greene, 12827 W. Mulberry Dr., Avondale, AZ, stated Commissioner Iwanski had made him feel like he was in Russia where he cannot voice his opinion and that is what the First Amendment is for, and requested not to have his freedom taken away. He stated in the last meeting, the developer had stated that the Sage Creek HOA stated they were in favor of this project and that turned out to be a lie, and another real estate expert the developer is using stated tonight that the nearest condos are five miles away. Mr. Greene stated the kids are being bussed to Verado and his neighbor just put his home up for sale yesterday because he is tired of going out to Verado to pick his son up from school. He

stated the project would impact their future, and everyone could not put their home up for sale. Mr. Greene stated if the Commission allows additional residential units to be built, they will increase the student-teacher ratio. He added there were landlords that have put up brand new communities on the west side of Phoenix along McDowell Road and they have turned to this means of revenue to pay their bills, and now there are apartment communities along Indian School Road and he wondered would they take the same road, and he did not want that type of environment near his home.

Chairperson Lageschulte asked if anyone else wished to speak, and hearing none, invited the applicant to respond. The applicant declined. Chairperson Lageschulte closed the public hearing.

Chairperson Lageschulte called for a motion on SP-07-2. Commissioner Copeland made a motion that the Planning Commission accept the findings and recommend approval of application SP-07-2, a request to amend the North Avondale Specific Plan, and Commissioner Webster seconded the motion.

#### ROLL CALL VOTE

Commissioner Webster	Aye
Commissioner Copeland	Aye
Commissioner Alcorn	Aye
Chairperson Lageschulte	Nay
Commissioner Grimsley	Aye
Commissioner Iwanski	Aye

The motion passed 5 to 1.

Commissioner Copeland addressed Mr. Waltz, stating there was no intent to insult his or anyone else's intelligence. She stated that since they do not have many people attending the meetings, it was an opportunity for her to share information with everyone.

June 2007

City of Avondale  
11465 Civic Center Drive  
Avondale, AZ 85323

RE: PASADERA PROJECT, GP-07-3 & SP-07-2

As residents of Avondale, we want to see a quality project built on the southeast corner of Indian School and Dysart roads.

We do not want to see a discount shopping center built there and support the idea of a mixed-use development with housing, offices, stores and restaurants.

We like the idea of residential units for professionals and seniors, but do not want to see low-income housing or family housing in the development.

Finally, we would like to see 129<sup>th</sup> Street blocked from automobile traffic and some type of security gate and/or wall to prevent strangers from walking into the Sage Creek neighborhood.

Sincerely,

Signature Elizabeth W. Grace  
Print Name Elizabeth W. Grace  
Address 12811 - W. Fairmount Ave

Signature Angela Tyson  
Print Name Angela Tyson  
Address 12858 W. Indianola Ave.

Signature Charles Ringo  
Print Name Charles Ringo  
Address 12946 - W. Clarendon

Signature Margaret Erickson  
Print Name 37210 N. 129th Dr  
Address 623-935-3796

Signature Susan A. Ringo  
Print Name SUSAN A. RINGO  
Address 12946 W. Clarendon

Signature Don Keels  
Print Name DON KEELS  
Address 12759 W. INDIANOLA AVE

Signature Alphonsa L. Ryan  
Print Name Alphonsa L. Ryan  
Address 12858 W. Indianola Ave

Signature Sally Mullins  
Print Name SALLY MULLINS  
Address 3625 N. 27 DR

June 21, 2007

Planning Commission  
City of Avondale  
11465 W. Civic Center Drive  
Avondale, AZ 85323

Re: GP-07-3 and SP-07-2 – Dysart & Indian School Roads

Dear Commissioners:

My wife and I own a home immediately adjacent to the Pasadera project by Rose Properties Southwest.

We strongly support the rezoning of the property from commercial to mixed-use and believe the project will make a positive contribution to our neighborhood.

We believe the project will beautify the entryway to Avondale at Indian School and Dysart roads. The lot has been vacant for too long and the existing LPSCP facility is an eyesore.

We also like the concept of a walkable, mixed-use village, which will allow our family to walk to the shops and restaurants without having to get into our car to drive there.

The undeveloped property is a liability, so we hope that you will approve the Pasadera concept and allow development to proceed there as quickly as possible.

Sincerely,

  
Alphonso and Angela Tyson  
12858 Indianola Avenue  
Avondale, AZ 85323

June 20, 2007

City of Avondale  
Planning Division

Dear Planning Commissioners:

I am writing regarding case #GP-07-3, the Pasadera project, near my home in northwestern Avondale.

I am a resident of Sage Creek and will not be able to attend the hearing tomorrow because I work in the evenings.

I am very supportive of the Pasadera project that Rose Properties is talking about building at Dysart Road and Indian School. I believe it will be better for our neighborhood than another strip mall.

As long as the rental units are very nice and not built as affordable housing, I think a mix of uses will work very well. I also like the idea of a gate that would let Sage Creek residents walk to the restaurants and stores there, rather than having to drive.

I hope you support the project.

Sincerely,

KARON KENCERA  
13017 Weldon Avenue  
Avondale, AZ 85311

**Sage Creek  
Community  
Association**

Mack Ferrick  
PO Box 7751  
Surprise, AZ 85374  
June 20, 2007

John Ruggieri  
Rose Properties Southwest  
3090 N. Litchfield Road  
Goodyear, AZ 85338

Dear John,

On behalf of the Sage Creek Home Owners Association Board of Directors, we would like to thank you and Leslie for attending our H.O.A. meeting on April 26. We appreciate your openness for input on the Pasadena Project to be developed on the 40 acres at the S.E. corner of Dysart and Indian School.

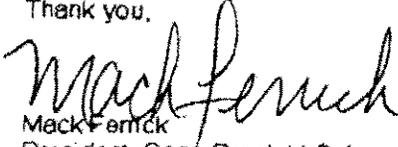
On May 24, our board voted 4-1 in favor of supporting the Mixed Use Zoning with residential town houses, upscale rental units and urban style lofts mixed in with the businesses. This concept is being used in many places with much success. We think it is a very desirable concept and would add property value to our homes in Sage Creek.

We are looking forward to working with you on the site planning of this project to insure a positive relationship with our community. We are particularly interested in the following issues:

- We would like to see space developed in this project for Police and Fire protection.
- The landscaping of this property is also very important to our community.
- The short street of 129<sup>th</sup>, that now dead ends at your property line, is an area of particular concern. We need to protect our property from unwanted vehicle traffic as well as foot traffic into or thru our property.
- We would not want to see affordable or family -orientated residential units that would impact our already overcrowded schools.

We will continue to encourage input from our residents, especially, along the north end of our neighborhood where their homes are along two property lines. Again, thank you for including Sage Creek in this very important project.

Thank you,

  
Mack Ferrick  
President, Sage Creek H O A.



**West Valley Hospital**  
*An Affiliate of Abrazo Health Care*

June 18, 2007

The Honorable Marie Lopez Rogers  
and City Council Members  
City of Avondale  
11465 West Civic Center Drive  
Avondale, AZ 85323

Re: Pasadera GP-07-3 and SP-07-2

Dear Mayor Lopez Rogers and Honorable Council Members:

It has come to my attention that the Avondale City Council is working toward innovative planning solutions in its Civic Center area and elsewhere in the city -- planning solutions that may allow for mixed-use developments with attached housing products for rent and for sale.

On behalf of the West Valley Hospital, I applaud efforts that will create more housing diversity in the Southwest Valley. Our hospital employs more than 450 people, many of whom commute from elsewhere in the Valley because they don't have suitable housing choices near our facility.

Many of our doctors, interns, nurses and administrators would welcome the opportunity to live in a high-quality apartment or loft environment, such as that proposed in Rose Properties Southwest's Pasadera project in northwestern Avondale and envisioned elsewhere in the city.

As we work to attract and recruit talent from other regions, the availability of convenient and attractive transitional housing is extremely important, as well.

I applaud your vision and encourage your support of projects such as Pasadera that will provide more diverse housing options for those who work in and near the City of Avondale.

Thank you for your consideration.

Sincerely,

James R. Resendez, FACHE  
President and CEO  
West Valley Hospital

cc: City of Avondale Planning Commission  
Mr. Charlie McClendon, City Manager  
Mr. Brian Berndt, Director of Planning

May 24<sup>th</sup>, 2007

City of Avondale  
Planning Commission  
Cases 6P-07-3 and 5P-07-2 Pasadena

ERIC MORGAN

As property owners adjacent to the subject land, we support the proposed land use designation from Commercial to Mixed use and Public Facilities.

We would sincerely hope that the entrances be few and the use of Limited Access Roads be used. The intersection of Dysart and Indian School Roads is very busy and can only grow much busier.

It would also be great if a Police Outpost and Fire Station be included in the Recommendation to the City Council.

It is our belief that any restaurants be on the Indian School or North side of the property and the residential units will be on the South side of the property.

Thanks for your Consideration

Charles Rung & Susan Rung  
12946 West Clarendon Road  
Avondale  
Residential Phone 623 547 4746

Current Folder: **INBOX**[Sign Out](#)[Compose](#) [Addresses](#) [Folders](#) [Options](#) [Search](#) [Help](#)[Message List](#) | [Delete](#)[Previous](#) | [Next](#)[Forward](#) | [Forward as Attachment](#) | [Reply](#) | [Reply All](#)**Subject:** Pasadera Project**From:** "Mack Ferrick" <mackferrick@gmail.com>**Date:** Wed, May 23, 2007 11:19 am**To:** johnr@rosepropertyessw.com (more)**Cc:** "Betty Lynch" <blynch@avondale.org> (more)**Priority:** Normal**Options:** [View Full Header](#) | [View Printable Version](#) | [Download this as a file](#)

On behalf of the Sage Creek Home Owners Association Board of Directors, we would like to thank you John and Leslie for attending our H.O.A. meeting on April 26. We appreciate your openness for input on the Pasadera Project to be developed on the 40 acres at the S.E. Corner of Dysart and Indian School. We certainly support the Mixed Zoning with residential condos and urban style lofts mixed in with the businesses, this concept is being used in many places with much success. We think it is a very desirable concept and would add property value to our properties in Sage Creek. We would like to see space developed in this project for Police and Fire protection, and we are looking forward to working with you on the site planning of this project to insure a positive relationship with our Community. The landscaping of this property is also very important to our community and again looking forward to working with you in this area. The short street of 130th that now dead ends at your property line is another area of great concern. We need to protect our property of unwanted vehicle traffic as well as foot traffic into or through our property. We will continue to encourage input from our residents, especially, along the north end of our neighborhood where their homes are along the two property lines.

Again thank you for including Sage Creek in this very important Project.

Thank you

Mack Ferrick  
President Sage Creek H.O.A.

**Attachments:**

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**Eric Morgan**

**From:** kleggio [kleggio@cox.net]  
**Sent:** Saturday, May 19, 2007 8:29 AM  
**To:** Email Planning; Kenneth Galica; Eric Morgan  
**Cc:** azbzbees@yahoo.com  
**Subject:** May 24, 2007 Planning Commission, Special Meeting

This email is in response to the Planning Commission Meeting scheduled for May 24, 2007 at 6:00 p.m. I am an original resident of the Sage Creek Community and have concerns about the plan to rezone the corner property of Indian School Road and Dysart (Case GP-07-3 and SP-07-2).

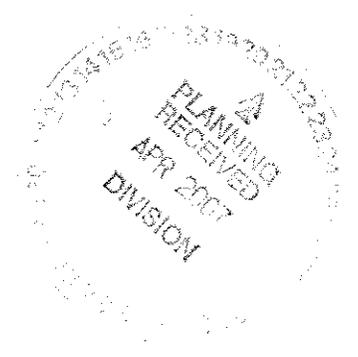
I would like to see the development on that corner property to be developed in such a manner that will add value to the properties located in Sage Creek while also preserving the quiet, safe community life that we have come to expect.

I did attend the neighborhood meeting sponsored by Rose Properties on May 2, 2007 that explained their vision for the Pasadera project. There are some aspects of the projects that I liked and some that I did not. These aspects include:

- The Sage Creek Community is very quiet. There is currently no through traffic on our streets. It is easy to spot those that do not belong in our community. Our children can run and play within our neighborhood without worry of being hit by a speeding vehicle. The corner of Dysart and Indian School is very heavy with traffic. I am concerned that a through street may connect either Dysart or Indian School with our community. I am opposed to this type of plan.
- I do like the idea of a police and fire substation added to the corner. This only adds an extra layer of safety to our community. I would ask that if this does occur and a connecting street must be added to our community that it be gated so that only emergency personnel can access the Sage Creek Community.
- The Pasadera Project calls for luxury rentals, condos for rent and urban style lofts. I am against this plan. I am concerned that once the zoning would be changed, that apartments would be built on the corner. I am against the addition of rental units so close to the Sage Creek Community. This will only increase traffic, crime and place an additional burden on our already overcrowded schools. While Rose Properties may be looking for additional rental properties to accommodate the upcoming Super Bowl, your current Avondale residents have been here before the Super Bowl and will still be here after the Super Bowl. There was talk of "Urban lofts". This is not an urban loft community and would detract from the neighborhood.
- If residential areas are truly needed on this property, can the zoning be changed to restrict it to luxury patio homes? This may be a good compromise that would encourage owner occupied living and still keep the value of the community.
- I do like the idea of having a "mixed use" facility that includes a "walkable village made vibrant by its mix of shops, restaurants and offices". However, the property must be made of a design that matches the community. I have seen several new plazas and buildings in other areas recently built with a design that includes very bright, contrasting colors that really are an eyesore that cheapens the community. The colors and design must match. The new plaza that has been built on Thomas and Dysart matches the surrounding community and the Community College. This design does not detract from property values.
- I am also concerned about the types of businesses that would be going into this corner. I am against any "low brow" type of shop such as a dollar store or check cashing center. These types of shops will detract from our property values.

I am not able to attend the Public Hearing on May 24<sup>th</sup> due to another commitment, but I respectfully ask that my concerns be voiced. I would like to see the corner of Dysart & Indian School developed, but in a manner that will add to our community value, not detract from it. It would not be in our cities best interest to develop that corner property in such a way that it detracts from the Sage Creek property values.

Sincerely,  
Kim Leggio  
12926 W. Whitton Ave.  
Avondale, Arizona 85323  
azbzbees@yahoo.com



May 19, 2007

City of Avondale  
Planning Commission  
11465 W. Civic Center Drive  
Suite 110  
Avondale, Az. 85323

Re: Cases GP-07 and SP-07 Pasadera

I am writing to express my opposition to the proposed zoning change sought by Rose Development for the land at Indian School and Dysart.

I attended a meeting hosted by Rose Development along with approximately 40 other homeowners in Sage Creek and we all shared the same concerns. While all of us would like to the property developed and landscaped no one is in favor of 3 story residential units adjoining the perimeter of our community. There is no way to completely screen buildings of that height from the surrounding homes. We were told landscaping would be in place but I do not feel that would be enough of a barrier to offset the loss of privacy, and increased noise.

Other issues that were not satisfactorily addressed concerned the traffic impact and the potential impact on our local schools. Rose Development quoted 300 units to be part of their mixed use plan. They told us their targets demographic are empty nesters looking to down size and support staff for the Tigers baseball organization needing short term housing. These units would be rental with a possible conversion to condos at a future date. All the parking for these units is open with no garage or direct access to the residences. The apartment complex at Indian School and Santa Fe Trail has had an on going problem with car theft as a result of open parking behind a gated complex. I don't want to invite this problem into our neighborhood. Without garages and direct access they will not be attractive to the type of tenet they are seeking. The condo development in Litchfield Park has these features and would more likely capture buyers than a condo conversion without a garage. Once the units are rented I believe they will always remain rentals to families with children which would increase the demand for enrollment in our schools.

There was no mention for a traffic plan for Indian School and Dysart with the addition of 300 residences and 600 cars (most families tend to have 2 cars). It is already difficult to

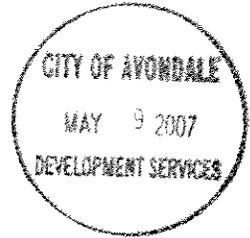
access the left turn lane from the Albertsons center to south bound Dysart during peak traffic.

Based on the above issues I am opposed to the change in zoning and would prefer it remain commercial.

Sincerely,

*Sharron O'Bannon*

Sharron O'Bannon  
Resident Lot 32  
Sage Creek, Avondale



**GuyCor Development**  
6412 E. Maverick Rd.  
Paradise Valley, AZ 85253  
Phone: 602-319-6785  
Fax: 480-948-7105  
[guyetteDEV@cox.net](mailto:guyetteDEV@cox.net)

5/5/2007

City of Avondale Planning Division  
ATTN Eric Morgan  
11465 W. Circle Center Drive  
Suite # 110  
Avondale, AZ 85323

Attn: Eric Morgan

RE: General Plan and Specific Plan Amendments; Pasadera

Dear Mr. Morgan;

As the owner of Palm Desert Plaza located at the corner of Indian School Road and Santa Fe Trail, we form the east boundary of the proposed "Pasadera" project. In designing and developing this property, it was stipulated that a stub-out would be constructed on the property for cross-access with future commercial development to the west. This was to allow access to Palm Desert Plaza by automobiles traveling west on Indian School Rd.

Enclosed is a copy of the ordinance No. 747-00 outlining this agreement dated August 21<sup>st</sup>, 2000. (Section 1: Amendment of the Zoning Map; Stipulation No. 4). Also enclosed is a site plan showing the stub-out.

I am forwarding this information to you so that this access can be incorporated into the Pasadera design.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Guyette". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robert F. Guyette

CC: Dustin C. Jones  
Leslie Wade

Passadery

**Eric Morgan**

---

**From:** Lori Waltz [lwaltz@royaloakslife.com]  
**Sent:** Thursday, May 17, 2007 3:58 PM  
**To:** Eric Morgan  
**Cc:** John  
**Subject:** Re-Zoning of Commerical Land at corners of Indian School and Dysart Roads

May 17, 2007

Dear Eric Morgan,

My husband and I are brand new residents in the Sage Creek subdivision. We just received a copy (from a neighbor) of a notice about a re-zoning meeting that was apparently held on May 2, 2007 at Estrella College concerning a proposed change of zoning for the vacant land located south of Indian School and east of Dysart roads from Commercial to Mixed Use. We are concerned because this proposed change was not pointed out to us prior to the May 4, 2007 closing on our property. The back wall of our yard is directly next to the vacant land on Indian School. My husband and I may not have made the home purchase if we thought anything other than commercial properties would ever be built on that land directly behind us. **Specifically, we would not be in favor of any residential housing of an apartment or condominium configuration.** We strongly feel that those types of structures de-value the neighborhood and would negatively increase the traffic flow through our currently quiet streets.

We just wanted to be heard if it is not too late to weigh in on this decision. We certainly hope that the City of Avondale will carefully review the possible negative ramifications for the city, and will vote to keep the current "commercial only" designation for that land.

Thank you for your time and consideration,

John and Lori Waltz  
12826 W. Fairmount Avenue  
Avondale, AZ 85323

Lwaltz@royaloakslife.com  
enviroquest@core.com

Confidentiality Statement:

This message may contain protected health information (PHI) or other information which may be confidential or legally privileged. If you are not the intended recipient, you may not use, copy, disseminate or disclose this communication or its contents to anyone. If you have received this message in error, please advise the sender by replying and delete this message. Thank you.

August 3, 2007

From: Sage Creek Home Owners Association

To: Planning Division  
11465 West Civic Center Drive  
Suite 110  
Avondale, Arizona, 85323

Attention: Eric Morgan, Planner 11

Reference: Cases GP-07-03 Pasadera and SP-07-2 Pasadera

Dear Sir,

This letter is a point of clarification to any and all letters, emails sent to the City Council or any other organization concerning the Multipurpose Proposal of the 40 acres just north of Sage Creek Community, cross roads of Dysart and Indian School.

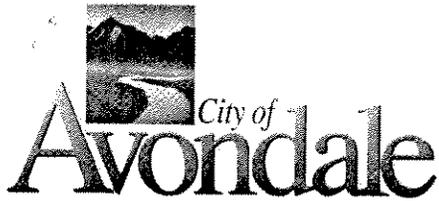
Our five Board Members, as home owners, agree and support the Multipurpose Proposal of the development of the 40 acres just west of our community on Dysart and Indian School. We have encouraged input from the community to the City Council in this decision making process.

The one issue of concern is the height of the design of the buildings, apartments or condos. Two floor verses three or more seems to be the issue at this point. I would hope that further input in the future will address those issues.

I would like to thank Rose Properties for coming to our Board meeting and explaining the project and seeking our community input. And the willingness to come back for further discussion as the project moves forward.

Sincerely,

Mack Ferrick  
President, Sage Creek Home Owners Association



## DEVELOPMENT SERVICES

### MEMORANDUM

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**DATE:** August 20, 2007

**TO:** City Council

**FROM:** Brian O. Berndt, Development Services Director  
Eric Morgan, Planner II

**THROUGH:** Charlie McClendon, City Manager

**SUBJECT:** Citizen Correspondence for GP-07-3 & SP-07-2 (Pasadera)

Attached are five emails regarding the above project received by staff subsequent to distribution of Council packets.

Staff has responded to each, informing them that the applicant has requested a continuance of tonight's item until a future meeting, that their letter will be made a part of the official file and that staff would provide their correspondence to members of Council.

**Eric Morgan**

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**From:** Guyette Developments [guyette@cox.net]  
**Sent:** Saturday, August 18, 2007 12:09 PM  
**To:** Eric Morgan  
**Subject:** General Plan & Specific Plan Amendments: "Pasadera"  
**Importance:** High

GuyCor Development  
6412 E. Maverick Rd.  
Paradise Valley, AZ 85253  
Phone: 602-614-4565; FAX 480-948-7105  
[guyette@cox.net](mailto:guyette@cox.net)

The Honorable Marie Lopez Rogers  
and City Council Members  
City of Avondale  
11465 West Civic Center Drive  
Avondale, AZ 85323

**RE: General Plan and Specific Plan Amendments; Pasadera**

Dear Mayor Rogers and Honorable Council Members:

As the owner of Palm Desert Plaza, located at the corner of Indian School Rd. and Santa Fe Trail in Avondale, I am writing to express our conceptual support of the "Pasadera" project proposed by Rose Properties Southwest.

Our commercial center forms the east boundary of the Pasadera project, immediately west of the Corte Sierra neighborhood.

We are supportive of the change from commercial to a mixed-use zoning that would allow for multi-family residential development as a component of the project. The type of housing envisioned by Rose Properties would be beneficial to many of our tenants and other retailers in the northwest Avondale area.

With your support for the proposed GPA and SPA, we will look forward to collaborating with Rose Properties on site planning for the project, including the provision of cross-access between our two sites, as stipulated in City of Avondale Ordinance # 747-00, adopted August 21, 2000. The access was intended to provide vehicular access to Palm Desert Plaza by cars traveling west on Indian School Road.

Lastly, we have some concerns about the proposed public safety facility on the Pasadera property and would like to be involved in any planning efforts for the police/fire station in the future, as it would have a potentially significant impact on our tenants.

In closing, I encourage your support of the GPA and SPA as requested by Rose Properties Southwest. Rose Properties is a local, community-oriented company and I am confident they will develop a project of quality at the northwestern gateway to Avondale.

Sincerely,

Robert F. Guyette  
GuyCor Development

CC: Eric Morgan  
Dustin Jones  
Paul Gilbert

## Eric Morgan

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**From:** Taniguchi Roy Civ TRSS Det 1/OZTC [Roy.Taniguchi@luke.af.mil]  
**Sent:** Monday, August 20, 2007 1:33 PM  
**To:** Eric Morgan  
**Cc:** Charlie McClendon; Kelly LaRosa; Kenneth Galica; ST; Marie Lopez Rogers; Chuck Wolf; Frank Scott; Betty Lynch; Jim Buster; Jason Earp; Kenneth Weise  
**Subject:** RE: Public Hearing and Resolutions 2669-807 and 2670-807

Mr. Morgan,

Thank you for your timely response.

My concern centers around the fact that currently at Indian School and Dysart, with the development on the on the north east corner, there is only painted islands (double solid yellow lines) which are constantly ignored, especially into and out of the Remington \_\_\_? apartment complex. This situation involves east bound traffic turning into the apartment complex (often without signaling and blocking east and west bound traffic) and out of the apartment complex through moving traffic and into the narrow painted island. This also situation applies to the business complex west of the apartments but is not as critical since the islands are wider. The traffic situation during the morning and afternoon rush hours is getting to become dangerous and delaying road improvement until after new development takes place will only make road design more complicated later with more chances of political pressure from interested parties with road frontage dictating road design over sound traffic control design principles.

Avondale and Goodyear so far have made a real mess of intersections and traffic control north and south of McDowell between the Agua Fria River and Litchfield Rd due to development and now I can see the potential for a repeat on Indian School.

I believe that unless Avondale, Litchfield Park and the County can install raised islands on Indian School between the Agua Fria River and Litchfield Rd, we will see the a repeat of the mess we had on McDowell from 91st Ave to 107th Ave over the last 5 years where development drove the constant redesign of the street. If the road is properly improved now, then the developer(s) would have to design to the road or participate with the city in the improvement of the road to match their plans.

Respectfully,

Roy Taniguchi

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**From:** Eric Morgan [mailto:emorgan@avondale.org]  
**Sent:** Friday, August 17, 2007 5:08 PM  
**To:** Taniguchi Roy Civ TRSS Det 1/OZTC  
**Cc:** Charlie McClendon; Kelly LaRosa; Kenneth Galica  
**Subject:** RE: Public Hearing and Resolutions 2669-807 and 2670-807

Mr. Taniguchi,

My name is Eric Morgan and I am the planner who is the project manager for the Pasadera project, which is located south of the southeast corner of Indian School Road and Dysart Road.

Traffic issues are always a part of the development review process. The timing of the installation of traffic signals is not always triggered by the development immediately adjacent. Sometimes a development is built, but no traffic signal is needed because the development by itself does not generate enough traffic. Then months, or

even years, later a new development goes in somewhere else on the road (sometimes a good distance away) that finally adds enough traffic to the road to require the installation of a signal. This may be the case at the intersection you reference below.

The applicant for Pasadera is requesting a land use designation change. Even if granted, it does nothing to what can be built on the property currently. The applicant then has to go through another public hearing process involving a neighborhood meeting, Planning Commission and City Council in order to change the zoning. At that time traffic will be examined in more detail. Provided that the zoning change is approved, the applicant then has to go through the public hearing process again for an approval of the site plan (what is actually going to be built) that involves another neighborhood meeting, Planning Commission and City Council. At the site plan process specifics as to when and where traffic signals are installed, roads widened, lanes added, medians constructed, etc. are addressed.

I will include mention of your email stating your opposition to the Pasadera (cases GP-07-3 and SP-07-2) request for a land use change from commercial to mixed use in my presentation to City Council at their August 20, 2007 meeting. Your email will also be made a part of the official case file.

If you have further questions about the Pasadera project, please email me.

With regards,

ERIC MORGAN, PLANNER II  
PLANNING DIVISION  
DEVELOPMENT SERVICES DEPARTMENT  
CITY OF AVONDALE, ARIZONA  
[EMORGAN@AVONDALE.ORG](mailto:EMORGAN@AVONDALE.ORG)  
(623) 333-4017

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**From:** Taniguchi Roy Civ TRSS Det 1/OZTC [mailto:Roy.Taniguchi@luke.af.mil]  
**Sent:** Friday, August 17, 2007 10:46 AM  
**To:** Charlie McClendon  
**Cc:** Marie Lopez Rogers; Chuck Wolf; Frank Scott; Betty Lynch; Jim Buster; Jason Earp; Kenneth Weise  
**Subject:** Public Hearing and Resolutions 2669-807 and 2670-807

Mr. McClendon,

Since I don't know who to send this to I hope you will forward it to the appropriate individual.

After one of our community meetings, I asked Mr. Galica about the area north of Indian School Rd. (across from the subject site of this of this public hearing) and was told that it is a county island and that Avondale does not have the power to control traffic on that portion of Indian School Rd.

I am extremely concerned because traffic control seems to be always overlooked in development planning as evidenced by the number of traffic lights installed by the city after the fact as evidenced by the number of lights installed on Dysart and McDowell in areas of mixed use development.

Unless traffic planning for the area immediately east and south of the intersections of Dysart and Indian School is carefully planned we are probably going to have to have traffic lights installed in a few years near that intersection due to the number of collisions caused by cars attempting to enter or exit the subject area, crossing the painted (double yellow lines) as is currently happening with the apartments and business on the north side of Indian School.

Until Avondale and the developers adequately address the traffic safety issues that this development will generate, I am **adamantly** against this proposal.

Respectfully,  
Roy Taniguchi

**Eric Morgan**

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**From:** Ileah Cook [Ileah@scoutten.com]  
**Sent:** Monday, August 20, 2007 12:41 PM  
**To:** Eric Morgan  
**Subject:** GP-07-3-Pasadera and SP-07-2 Pasadera  
**Attachments:** Planning Commission Address.doc

Dear Mr. Morgan:

I am a resident at 12814 W. Fairmount Ave. I have attended every council meeting pertaining to this matter. However, I am unable to attend the meeting taking place this evening.

I have attached the concerns I presented to the Planning Commission on June 21st 2007. It was met with mild interest and a little sarcasm. I was told that those of us with upper grade children and **only 4 high schools** to support the current population was an issue for the *State Level*, not at a city government level.

Therefore I contend that City government decisions such as this ultimately affect and become a burden to the State of Arizona.

The Traffic Impact Analysis being used for this development cannot possibly take into account the traffic that will be generated by the Apartment complex that recently broke ground .10 of a mile east of the proposed development. I reside in one of the two-story homes that border the property in questions and am **strongly opposed** to a development that is **3 stories**. Finally, I would be interested to hear how the already poor water pressure will be further affected. I understand there is considerable concern as to whether or not the current system can even accommodate a residential property.

Thank you for your time and attention.

Ileah M. Cook  
W.C. Scoutten, Inc.  
1646 N. Litchfield Road  
Suite 235  
Goodyear, AZ 85338  
(623) 547-4661  
(623) 547-4662 f  
[ileah@scoutten.com](mailto:ileah@scoutten.com)

Note: As of July 1, our NEW ZIP CODE IS **85395**

**Eric Morgan**

---

**From:** DCook@ddrc.com  
**Sent:** Monday, August 20, 2007 4:07 PM  
**To:** Eric Morgan  
**Subject:** GP-07-3-Pasadera and SP-07-2 Pasadera

Mr. Morgan:

My name is David Cook and I live at 12814 W. Fairmount Ave. in Avondale. While I realize you have already received an email from my wife Leah, I wanted to go on record as well in regards to my **opposition to the rezoning** being proposed for the property mentioned in the above referenced matter. In addition to the concerns mentioned by my wife which included the continuing over crowding of our schools that additional apartments will bring, as well as additional traffic, the idea of **a three story apartment complex** being built behind us is simply unacceptable. Privacy will be destroyed, and the quality of life that we so love with our property will be diminished. While the Village concept of commercial & retail shops sounds appealing, the residential portion of the development is intrusive and unnecessary.

Thank you for your consideration in this matter,

David A. Cook  
Operations Manager  
Christown Spectrum Mall  
(602) 249-0670

**Eric Morgan**

---

**From:** Sam Conrad [buddhaful@yahoo.com]  
**Sent:** Monday, August 20, 2007 4:17 PM  
**To:** Eric Morgan  
**Cc:** Kim Dawn  
**Subject:** GP-07-3 & SP-07-2 Pasadera

Eric,

please accept this email as my vote, and my wife's vote (who I have copied on this email) of denial for the Cases identified in the Subject Line to change the land use from Commercial to Mixed Use.

We would also like to say that we oppose the residential aspect of the change, not the retail aspect. It is unfortunate that these 2 aspects are lumped together, as it does not allow for a clear decision.

I am also curious if you could explain why there is a GP & SP for this item? I'm just curious as they seem relatively similar.

Lastly, if the presenters for Pasadera mention tonight or in further meetings that the Residential aspect is ZERO to 45% of the land use, could you please relay the message to them that it is insulting to the homeowners. We understand it could be zero, we also understand it could be 45 PERCENT, but they don't focus on that. :)

Regardless of your opinion of these cases, thanks for your efforts on behalf of Avondale land owners.

Sam Conrad  
Kim Dawn

**RESOLUTION NO. 2669-907**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY OF AVONDALE GENERAL PLAN REGARDING THE LAND USE DESIGNATION OF APPROXIMATELY 40.5 ACRES SOUTHEAST OF THE SOUTHEAST CORNER OF INDIAN SCHOOL ROAD AND DYSART ROAD.

**WHEREAS**, the City of Avondale General Plan (the “General Plan”) was adopted by the Mayor and Council of the City of Avondale (the “City Council”) on June 17, 2002, and ratified by the qualified electors of the City of Avondale on September 10, 2002; and

**WHEREAS**, the General Plan establishes the authority and procedures for major amendments; and

**WHEREAS**, pursuant to ARIZ. REV. STAT. § 9-461.06 and the General Plan, the City of Avondale (the “City”) has given notice to and provided all neighboring cities, Maricopa County, Maricopa Association of Governments, Arizona Department of Commerce and all local school districts the opportunity for comment on the amendment to the General Plan; and

**WHEREAS**, pursuant to ARIZ. REV. STAT. § 9-461.06 and the General Plan, the City has consulted with, advised and provided the public with the opportunity for comment on the amendment to the General Plan; and

**WHEREAS**, pursuant to ARIZ. REV. STAT. § 9-461.06 and the General Plan, the City Planning Commission (i) held one public hearing in the Public Safety Building on May 24, 2007 on the proposed General Plan amendment, (ii) held a second public hearing in the City Council Chambers on June 21, 2007 on the proposed General Plan amendment, and (iii) provided notice of such hearings by publication of said notices in the *West Valley View* on May 8, 2007 and June 5, 2007, respectively; and

**WHEREAS**, pursuant to ARIZ. REV. STAT. § 9-461.06 and the General Plan, the City Council (i) held public meetings in the City Council Chambers on the proposed General Plan amendment on August 20, 2007 and September 17, 2007 and (ii) provided notice of such hearing by publication of said notice in the *West Valley View* on July 31, 2007; and

**WHEREAS**, the City Council finds and determines that (i) proper notice has been given in a manner required by ARIZ. REV. STAT. § 9-461 *et seq.* of the proposed General Plan amendment and that each of the required publications have been made; and

**WHEREAS**, the City Council desires to amend the General Plan to change the land use designation for approximately 40.5 acres of real property generally located southeast of the southeast corner of Indian School Road and Dysart Road from Commercial to Mixed Use.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE** as follows:

SECTION 1. That the General Plan is hereby amended to change the land use designation for approximately 40.5 acres of real property generally located southeast of the southeast corner of Indian School Road and Dysart Road from Commercial to Mixed Use, as set forth in Exhibit A attached hereto and incorporated herein by reference.

SECTION 2. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Council of the City of Avondale, September 17, 2007.

---

Marie Lopez Rogers, Mayor

ATTEST:

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Linda M. Farris, City Clerk

APPROVED AS TO FORM:

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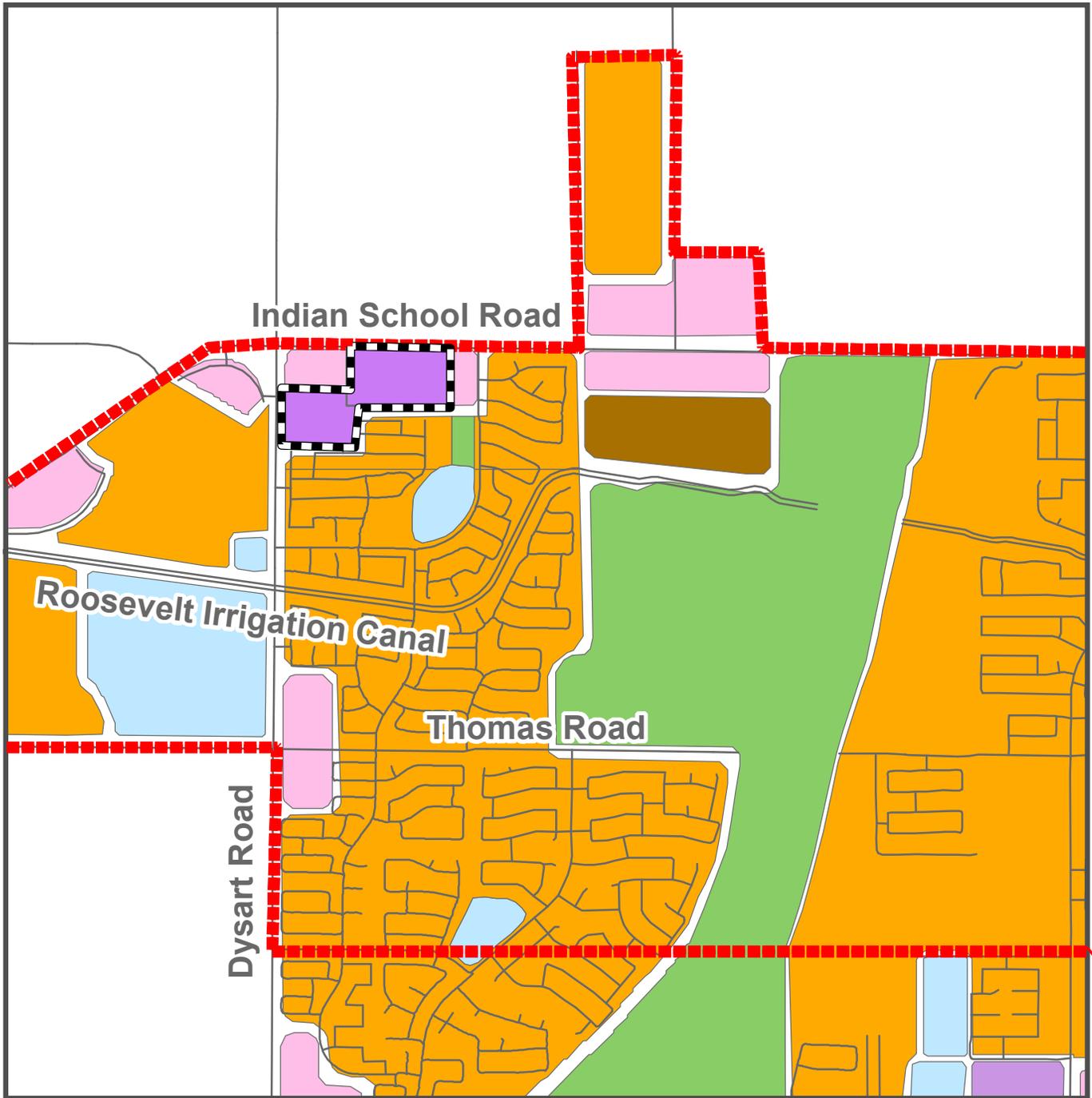
Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 2669-907

[General Plan Amendment Land Use Map]

See following page.

# General Plan Amendment



## Existing - General Plan Land Use

- |  |   |  |
|--|---|--|
|  Commercial                 |  Medium High Density Residential |  |
|  Employment                 |  Mixed Use                       |  |
|  Freeway Commercial         |  Multi Family Residential        |  |
|  High Density Residential   |  Open Space                      |  |
|  Low Density Residential    |  Public Facilities               |  North Avondale Specific Plan Area |
|  Medium Density Residential |  Subject Property                |  |

**RESOLUTION NO. 2670-907**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY OF AVONDALE NORTH AVONDALE SPECIFIC PLAN REGARDING THE LAND USE DESIGNATION OF APPROXIMATELY 40.5 ACRES SOUTHEAST OF THE SOUTHEAST CORNER OF INDIAN SCHOOL ROAD AND DYSART ROAD.

**WHEREAS**, the City of Avondale North Avondale Specific Plan (the “North Avondale Plan”) was adopted by the Council of the City of Avondale (the “City Council”) in June 1991 and updated on June 17, 2002; and

**WHEREAS**, the North Avondale Plan establishes the authority and procedures for amendments; and

**WHEREAS**, the City of Avondale (the “City”) has given notice to and provided all neighboring cities, Maricopa County, Maricopa Association of Governments, Arizona Department of Commerce, and all local school districts the opportunity for comment on the amendment to the North Avondale Plan; and

**WHEREAS**, the City has consulted with, advised and provided the public with the opportunity for comment on the amendment to the North Avondale Plan; and

**WHEREAS**, pursuant to ARIZ. REV. STAT. § 9-461.09 and the North Avondale Plan, the City Planning Commission (i) held one public hearing in the Public Safety Building on May 24, 2007 on the proposed North Avondale Plan amendment, (ii) held a second public hearing in the City Council Chambers on June 21, 2007 on the proposed North Avondale Plan amendment, and (iii) provided notice of such hearings by publication of said notices in the *West Valley View* on May 8, 2007 and June 5, 2007, respectively; and

**WHEREAS**, pursuant to ARIZ. REV. STAT. § 9-461.09 and the North Avondale Plan, the City Council (i) held public meetings in the City Council Chambers on the proposed North Avondale Plan amendment on August 20, 2007 and September 17, 2007 and (ii) provided notice of such hearing by publication of said notice in the *West Valley View* on July 31, 2007; and

**WHEREAS**, the City Council finds and determines that (i) proper notice has been given in a manner required by ARIZ. REV. STAT. § 9-461 *et seq.* of the proposed North Avondale Plan amendment and that each of the required publications have been made; and

**WHEREAS**, the City Council desires to amend the North Avondale Plan to change the land use designation for approximately 40.5 acres of real property generally located southeast of the southeast corner of Indian School Road and Dysart Road from Commercial to Mixed Use.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE** as follows:

SECTION 1. That the North Avondale Specific Plan is hereby amended to change the land use designation for approximately 40.5 acres of real property generally located southeast of the southeast corner of Indian School Road and Dysart Road from Commercial to Mixed Use, as set forth in Exhibit A attached hereto and incorporated herein by reference.

SECTION 2. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Council of the City of Avondale, September 17, 2007.

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Marie Lopez Rogers, Mayor

ATTEST:

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Linda M. Farris, City Clerk

APPROVED AS TO FORM:

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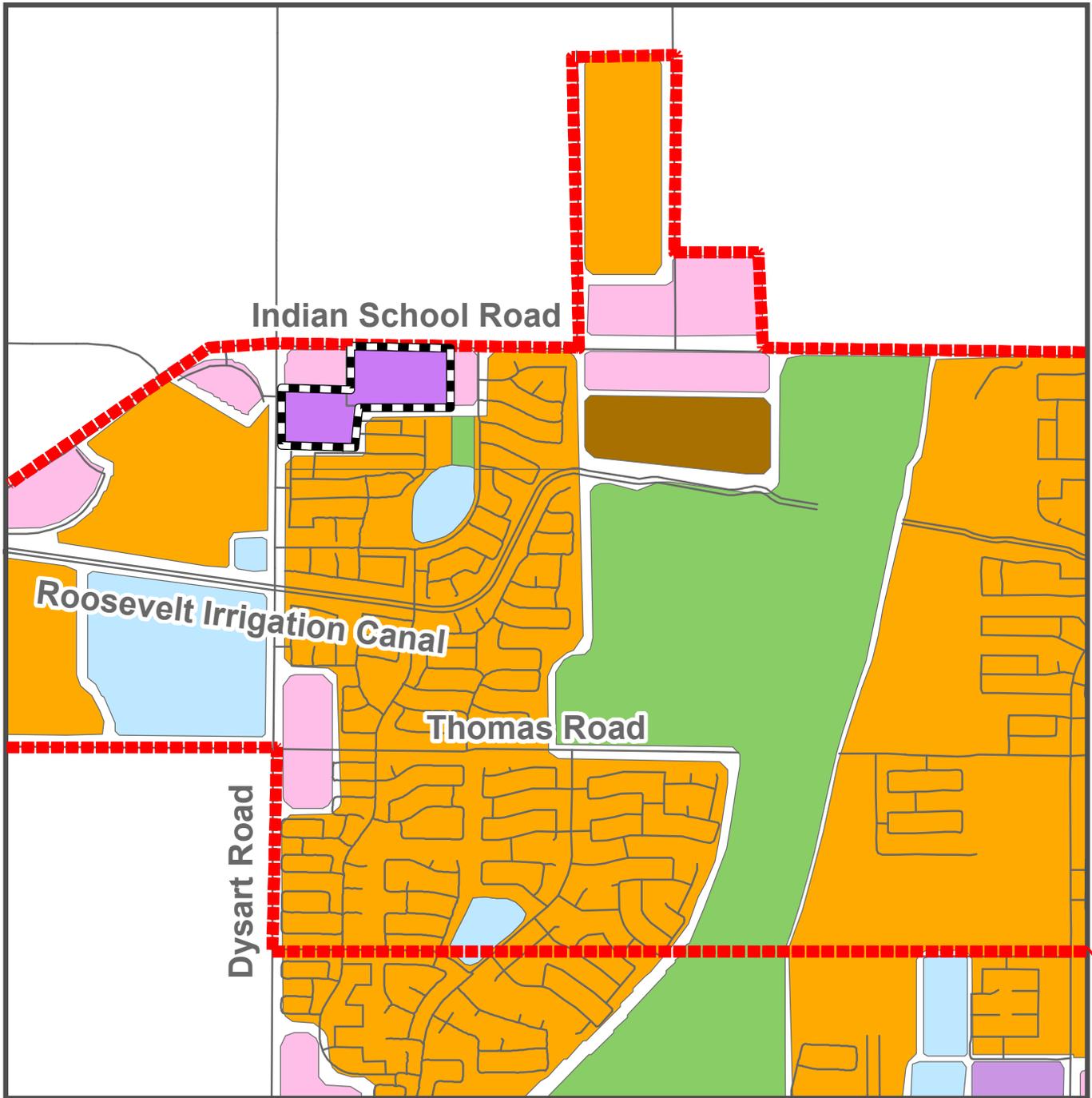
Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 2670-907

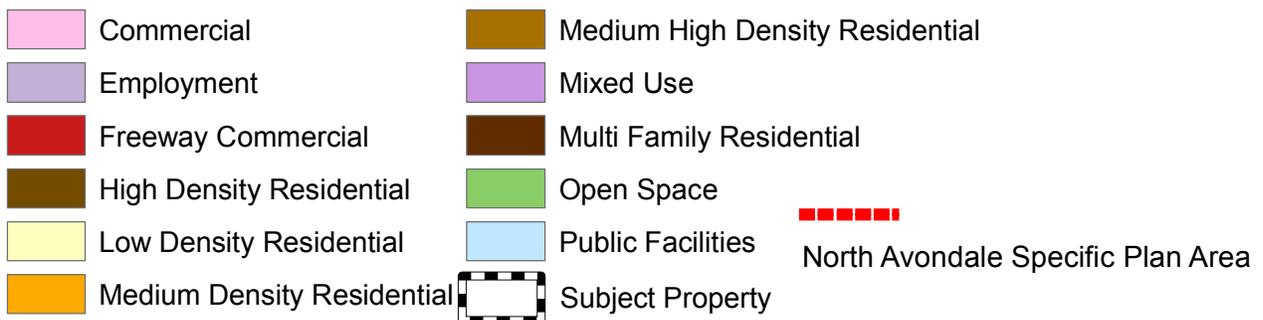
[North Avondale Plan Amendment Land Use Map]

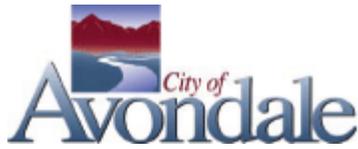
See following page.

# North Avondale Specific Plan Amendment Land Use Map



## Existing - General Plan Land Use





# CITY COUNCIL REPORT

**SUBJECT:**

Resolution authorizing an I-10 Acceleration  
intergovernmental Agreement

**MEETING DATE:**

September 17, 2007

**TO:** Mayor and Council

**FROM:** Shirley Gunther, Intergovernmental Affairs Manager (623)333-1612

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve a resolution authorizing an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) the Maricopa Association of Governments (MAG) and the Cities of Goodyear and Litchfield Park to accelerate the widening of Interstate 10 from the Loop 101 to Sarival Road.

**BACKGROUND:**

On August 22, 2007 the MAG Regional Council met and recommended \$6 million of the \$10 million legislatively appropriated STAN II funds be directed to the I-10 acceleration project. The recommendation also called for the Mayors of each of the three cities involved in the agreement, to take back to their respective City Councils the recommendation of the MAG Regional Council for review and input.

On August 27, 2007 the Goodyear City Council acted to approve the Intergovernmental Agreement between the three cities, the Maricopa Association of Governments and the Arizona Department of Transportation. The Goodyear Council agreed to accept "at least" \$6 million of the \$10 million for the I-10 acceleration project.

On September 4, 2007 the Avondale City Council met and directed Mayor Lopez Rogers to reject the \$6 million recommendation and seek additional funds from the legislatively appropriated \$10 million. On September 5, 2007 the Litchfield Park City Council met and directed Mayor Schoaf to reject the \$6 million and recommended that he continue to seek the full \$10 million or a more significant amount than the \$6 million.

On September 6, the MAG Regional Council held a special meeting, at which Mayors Rogers and Schoaf, acting upon their city councils' direction, advocated for more than \$6 million. The MAG Council subsequently increased the \$6 million recommendation to \$7 million for the I-10 widening acceleration project.

**DISCUSSION:**

The State Transportation Board is the governing body with the final authority to approve or disapprove the MAG recommendation. The Board's next meeting is scheduled for Friday, Sept. 21, where it could review MAG's recommendation for funding of the I-10 acceleration project.

**BUDGETARY IMPACT:**

The MAG Regional Council's September 6, 2007 action increases the amount of STAN II funding to the Interstate - 10 widening project from \$6 million to \$7 million. The additional funds reduces Avondale's obligation from \$1.4 million to \$1 million.

**RECOMENDATION:**

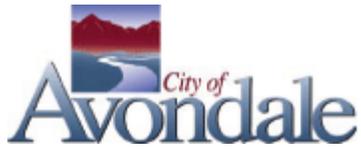
Staff recommends that the City Council approve a resolution authorizing an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) the Maricopa Association of Governments (MAG) and the

Cities of Goodyear and Litchfield Park to accelerate the widening of Interstate 10 from the Loop 101 to Sarival Road.

**ATTACHMENTS:**

**[Click to download](#)**

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**  
Executive Session

**MEETING DATE:**  
September 17, 2007

**TO:** Mayor and Council  
**FROM:** Linda Farris  
**THROUGH:** Charlie McClendon, City Manager

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available