Staff Summary Report *REVISED* Tempe

Council Meeting Date: 01/15/04 **Agenda Item Number:** 30

SUBJECT: This is the second public hearing to authorize the Mayor to execute a Development and Disposition Agreement between the City of Tempe and Suncor Development Company

DOCUMENT NAME: 20040115cacc01 **RIO SALADO MASTER PLAN (0112-07-03)** Ordinance No. 2003.39

SUPPORTING DOCS: Yes

COMMENTS: Suncor Development Company ("Suncor") responded to Request for Proposals No. 04-006, dated June 3, 2003, (the "RFP") offering a long-term lease and development of a parcel of land approximately 27 acres in size located south of Rio Salado Parkway and west of Priest Drive in the City of Tempe (the "city property") and was selected under Resolution No. 2003.63 to enter into exclusive negotiations for the purposes of entering into a development and development of the city property.

PREPARED BY: Christopher J. Anaradian, Rio Salado Manager (x2204)

REVIEWED BY: Jan Schaefer, Economic Development Manager (x8036)

LEGAL REVIEW BY: Marlene A. Pontrelli, City Attorney (x8120)

FISCAL NOTE: The bid price for the city property by SunCor is $8.53 per square foot. Note that the city appraisal of this property performed in November of 2002 estimated the value of this lease at $6.50 per square foot.

With an area of 25.26 acres, less a currently estimated $600,000 for landfill item removal, and less a 3% brokerage fee, the resultant amount of the pre-paid lease of the city property is currently estimated at $8,522,204.

The lease value is being discounted to accommodate the removal of landfill items on the city property. The items were discovered during site investigations as part of SunCor's due diligence period at their cost. Final costs for landfill item removal will reflect the actual work required to prepare the site for development.

The lease value is being discounted to accommodate a 3% brokerage fee established as a term of the RFP.

RECOMMENDATION: Staff recommends adoption of Ordinance No.2003.39.

ADDITIONAL INFO: SunCor has, in cooperation with city staff, conducted due diligence during the past two months into the city property. During this time, the initial offering of 27.04 acres of city property has been reduced by approximately 3 acres to accommodate existing easements and the potential future widening of the 1st street alignment (see attached Site Map). Existing easements include drainage and access agreements the city has entered into for the two hotel properties at the southeast corner of the city property. The First Street alignment also includes a 25-foot wide easement for the City of Phoenix Val Vista waterline, and therefore the southern property line for this development will be established to remain out of that waterline easement. Accompanying the Development and Development Agreement as an exhibit is a final survey of the proposed property lines that serves to establish the exact acreage and resultant value for this lease.

ORDINANCE NO. 2003.39

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AND DISPOSITION AGREEMENT BETWEEN THE CITY OF TEMPE AND SUNCOR DEVELOPMENT COMPANY

WHEREAS, the City issued a Request for Proposals No. 04-006, dated June 3, 2003, (the "RFP") offering a long-term lease and development of a parcel of land approximately 27 acres in size located south of Rio Salado Parkway and west of Priest Drive in the City of Tempe and more particularly described in Exhibit A attached hereto (the "Property"); and

WHEREAS, Suncor Development Company ("Suncor") responded to the RFP and was selected under Resolution No. 2003.63 to enter into exclusive negotiations for the purposes of entering into a lease and development of the Property; and

WHEREAS, the City desires to enter into a development agreement for the lease and development of the Property with Suncor.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Mayor is authorized to execute the Development and Disposition Agreement and any and all other Exhibits attached thereto, copies of which are on file in the Clerk's Office.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2004.

_____
MAYOR

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

When recorded, return to:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

DEVELOPMENT AND DISPOSITION AGREEMENT
(APPROXIMATELY 25 ACRES AT SOUTHWEST CORNER OF RIO SALADO PARKWAY AND PRIEST DR.)
ORDINANCE NO. 2003.39

THIS DEVELOPMENT AND DISPOSITION AGREEMENT ("Agreement") is entered into as of the _____ day of _____, 2004, by and between the CITY OF TEMPE, an Arizona municipal corporation (the "City"), and SUNCOR DEVELOPMENT COMPANY, an Arizona corporation ("SunCor").

RECITALS:

A. WHEREAS, the City issued a Request for Proposals No. 04-006, dated June 3, 2003, offering a long-term lease of, and opportunity to develop, a parcel of land approximately 25 acres in size located south of Rio Salado Parkway and west of Priest Drive, in the City of Tempe, Arizona, and more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property"); and

B. WHEREAS, SunCor responded with a proposal dated August 4, 2003, (the "Proposal") for the development of the Property for approximately 300,000 square feet of "flex space" industrial and office buildings and appurtenant parking, and was selected by the City under Resolution No. 2003.63 to enter into exclusive negotiations for the purposes of entering into a lease and developing the Property; and

C. WHEREAS, the Proposal and this Agreement recognize that the Property is subject to certain restrictions and limitations on the use, development, and conveyance of the Property pursuant to the terms and conditions of the patent pursuant to which the Property was acquired by the City from the Bureau of Land Management (specifically BLM Patent No. 02-97-0005); and

D. WHEREAS, this Agreement (i) supercedes and replaces the Proposal in its entirety and limits its scope to the Property, and (ii) constitutes a development agreement for the Property. This Agreement is a development agreement within the meaning of

A.R.S. §9-500.05 and shall be construed as such, and is in accordance with A.R.S. §9-500.11.

NOW, THEREFORE, in consideration of the above premises, the promises contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

A G R E E M E N T

ARTICLE I
DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1. "BLM." The term "BLM" shall mean the Bureau of Land Management.

1.2. "City." The term "City" shall mean and refer to the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

1.3. "City Council." The term "City Council" shall mean and refer to the Tempe City Council.

1.4. "Closing Date." The term "Closing Date" shall mean the date on which the Lease is executed by the City and Developer, which execution shall coincide with and be conditioned upon the approval of the Final PAD and comprehensive sign plan for the Property by the Tempe Redevelopment Review Commission and by the City Council, if City Council approval is required, and recordation of the Final PAD by the City with the Maricopa County Recorder, and the receipt of final approval by the Federal Aviation Administration of the Final PAD for the Property.

1.5. "Conceptual Development Plan." The term "Conceptual Development Plan" shall mean and refer to the plan for the development of the Property, a reduced copy of which is attached hereto as **Exhibit "B"** and incorporated herein by this reference.

1.6. "Developer." The term "Developer" shall mean and refer to SunCor Development Company, an Arizona corporation, and its successors and assigns.

1.7. "Effective Date." The term "Effective Date" shall mean the Closing Date.

1.8. "FAA." The term "FAA" shall mean the Federal Aviation Administration.

1.9. "Final PAD." The term "Final PAD" shall mean and refer to a Final Planned Area Development that is approved by the City with respect to the development of the Property and which sets forth the specific uses, densities, features, and other development matters with respect to the Property.

1.10. "Lease." The term "Lease" shall mean and refer to that 99-year ground lease described in ***Section 3.1*** below to be executed by the City and the Developer and to become effective upon the satisfaction of the conditions thereto as described in this Agreement.

1.11. "Memorandum of Lease." The term "Memorandum of Lease" shall mean that Memorandum of the Lease to be executed and acknowledged by the City and Developer and recorded upon the Closing Date.

1.12. "Parcel." The term "Parcel" shall mean and refer to any separate parcel of land created within the Property by Developer pursuant to a subdivision plat or lot split which has been prepared by the Developer and approved by the City in accordance with the City's standard approval procedure, and which has been assigned a separate tax parcel identification number by the Maricopa County Assessor.

1.13. "Property." The term "Property" shall mean and refer to all of the real property that is legally described in **Exhibit "A"** attached hereto and incorporated herein by this reference.

ARTICLE II
DEVELOPMENT PLAN

2.1. Conceptual Development Plan. The Conceptual Development Plan attached hereto as **Exhibit "B"** sets forth the current plan for development of the entire Property and depicts the types of basic land uses, permissible range of intensity and density of such uses, and a permissible range in the relative height, bulk, and size of buildings and structures on the Property. Concurrently with the approval and execution of this Agreement, the City Council has approved the Conceptual Development Plan establishing the scope of development. The specific locations of such buildings, structures, and uses will be further defined in the Final PAD.

2.2. Approval of Final PAD. The Property shall be developed in general conformance with the Conceptual Development Plan. Within ninety (90) days after the date of execution of this Agreement, the Developer shall submit to the City a Final PAD for the Property in accordance with normally applicable City submission requirements for such applications, including a list of variances, modifications, or other authorizations required to develop the Property. The Developer and the City shall work together using best efforts to resolve any outstanding issues concerning the Final PAD such that the Final PAD will be approved by the City as soon as possible after such submittal. The parties acknowledge that the City's approval of the Final PAD of the Property and its recordation with the Maricopa County Recorder is a condition precedent to the execution of the Lease and payment of the Rent by Developer under the Lease.

2.3. Other Reviews and Approvals. The City and Developer acknowledge that the Property is located within close proximity to the Doppler Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation System (DVORTAC) servicing Phoenix Sky Harbor International Airport and is directly east and within 10,000 feet of the end of the active runways at Phoenix Sky Harbor International Airport, which introduces noise impacts as well as potential impacts on navigational aids, and a required development plan approval process through the FAA.

Such plan approval process will consider factors including physical constructions and the potential for wildlife hazards to aviation. Developer shall assume all obligations with respect to obtaining any necessary approvals from any federal agency. In connection therewith, the City and Developer acknowledge that, as a condition precedent to the execution of the Lease and payment of any funds required thereunder by Developer, Developer shall have requested and received the following reviews and approvals:

2.3.1. Federal Aviation Administration Approval. The Developer shall have received final approval by the FAA of the Final PAD for the development of the Property in accordance with the applicable requirements therefor. The Developer shall submit, within thirty (30) days after the date of this Agreement, a copy of the Final PAD for a review by the FAA in accordance with Section 6(g)(i) of BLM Patent No. 02-97-0005 (the "BLM Patent") (a copy of which is attached hereto as **Exhibit "C"**), with respect to which the Property is subject. The Developer shall promptly respond to any inquires or requests for additional information made by the FAA in connection with the FAA's review and approval of the Final PAD. The City shall cooperate in good faith with the Developer in connection with its responses to any such requests from the FAA and in connection with any changes and modifications which need to be made to the Final PAD in order to accommodate any modifications thereto requested by the FAA.

2.3.2. Bureau of Land Management Review. Either prior to or as soon as possible after the mutual execution of this Agreement, the City and Developer shall provide a copy of this Agreement to the BLM for its review for the purpose of providing the City with any reasons it believes that the Agreement does not conform to the BLM Patent and shall cooperate in good faith to respond to any requests or inquiries made by the BLM with respect to this Agreement, or in connection with the development of the Property as contemplated by the Conceptual Development Plan. After execution of the Lease, the Developer shall be responsible for observing all requirements, restrictions and conditions applicable to the Property under the BLM Patent.

2.3.3. Noise Mitigation. The City and Developer acknowledge that the Property falls within certain noise mitigation areas identified by the City of Phoenix in connection with the operation of Phoenix Sky Harbor International Airport, and that it is incumbent upon the Developer to obtain the most current noise contour maps from the City of Phoenix. The City recommends that the Developer adhere to the FAA Noise Mitigation measures identified in that Phoenix Sky Harbor International Airport F.A.R. Part 150 Noise Compatibility Study Update dated September 2000 for all new construction in the area within which the Property is located. In accordance with the BLM Patent and the Tempe/Phoenix Intergovernmental Agreement #C94-175, a change of zoning from Light Industrial (I-1) to either single family or multifamily zoning shall not be permitted. Notwithstanding anything contained herein or elsewhere in this Agreement to the contrary, the City hereby agrees that it will support the Developer in all efforts to develop the Property for the uses and in the densities contemplated pursuant to the Conceptual Development Plan and approved by the City pursuant to the Final PAD, in connection therewith, the City shall not initiate or join in any attempts to downzone or otherwise restrict or limit any development on the Property.

2.3.4. Timing of Approval. In the event that the conditions precedent as indicated in Section 2.3 are not satisfied within two hundred and seventy (270) days from the execution of this Agreement, then the City shall have the right to automatically terminate this Agreement without any further obligation or liability to Developer, by written notice to the Developer. The Developer shall have the right to appeal the termination of to the City Council within twenty (20) days after the termination. The decision of the City Council shall be final.

2.4. Signage. The City and Developer acknowledge and agree that a distinctive characteristic of the Property is its proximity to Phoenix Sky Harbor International Airport, the Red Mountain Freeway (State Highway 202) and the Tempe Town Lake. However, the Property configuration is such that a multi-tenant/project identification monument sign at the corner of Priest Drive and the Rio Salado Parkway is essential to the successful development of the Property. Therefore, the City and the Developer agree that appropriate signage, such as that which is conceptually illustrated in sign type A in **Exhibit "D"**, is an integral part of the development of the Property and may be necessary to attract users and occupants to the Property.

2.5. Non-Exclusive License for Off-Site Storm Water Retention. The City and Developer acknowledge and agree on the need to maximize the developable land within the Property to offset the anticipated development costs associated with development of the Property. As a result, concurrently with the execution of the Lease, the City shall execute and record a non-exclusive license to use a portion of City-owned property, identified generally as the "Off-Site Storm Water Retention Area" on **Exhibit "E"**, for the purpose of meeting the City's requirements for delivery of 245,000 cubic feet of storm water generated from the Property to a regional retention area by an open channel delivery system (the "Drainage License"). The Drainage License shall be in form and substance mutually acceptable to the City and Developer, and shall be in recordable and insurable form. Pursuant to the terms of the Drainage License, the owner(s) of the Property will be responsible for the improvement of the Off-Site Storm Water Retention Area, as and when necessary in connection with the construction of any building improvements on the Property; provided, however, that neither the Developer or the then owners of the Property shall be responsible for constructing any additional improvements to the Off-Site Storm Water Retention Area if required in order to accommodate storm water runoff from any other properties with respect to which the City may grant similar rights. The Drainage License will also provide that the owner(s) of the Property shall be responsible for the ongoing maintenance of the Off-Site Storm Water Retention Area consistent with other storm water retention areas servicing similar projects within the City, including insuring against environmental contamination caused by storm water runoff from the Property. If the City grants rights to use the Off-Site Storm Water Retention Area to any other property, then the City shall also require that owners of such property shall be responsible for (a) a proportionate share of the costs of the ongoing operation, maintenance and repair of the Off-Site Storm Water Retention Area on a volume added basis, and (b) any environmental contamination caused by such other properties, pursuant to an agreement which shall be reasonably acceptable to the then owners of the Property, the City and such other property owners who have been granted the right to use the Off-Site Storm Water Retention Area. The Drainage License shall be recorded concurrently with the mutual execution of the Lease and the recordation of the Memorandum of Lease.

2.6. Coordination of Existing Easements. The City and Developer acknowledge that the City is currently the grantor under several easements entered into for the benefit of owners of parcels of real property adjacent to the Property (the "Neighboring Parcel Easements"), pursuant to which the owners of such parcels have been granted rights of ingress and egress, drainage retention, and signage necessary for the economic use and enjoyment of such parcels. Pursuant to the Neighboring Parcel Easements, the City receives periodic payments from such parcel owners. The City and Developer hereby acknowledge that it is the City's and the Developer's intent to negotiate modifications to the Neighboring Parcel Easements in order to coordinate the use of the City's property that is subject to such easements for the benefit of all currently-benefited parcel owners and Developer. In connection therewith, the parties intend that an association of property owners shall be organized for the purpose of establishing cross-access easements, maintaining, repairing and operating all portions of the City's property that are subject to the Neighboring Parcel Easements, with all costs and expenses thereof to be shared proportionally by all benefited parcel owners on a land area basis. The City and Developer shall work together in good faith in order to negotiate modifications to the Neighboring Parcel Easements and, in connection therewith, the City will agree to contribute all fees, charges and payments currently received by the City for the use of such easements to the association of property owners for the ongoing maintenance, repair and operation of such easement areas.

ARTICLE III
PROPERTY LEASE AND ACQUISITION

3.1. Lease. The Developer shall initially acquire the right of development and use of the Property pursuant to a prepaid ninety-nine (99) year ground lease (the "Lease"). The exact boundaries of the Property to be subject to the Lease shall be determined by an ALTA survey to be prepared by Developer and approved by the City prior to the Closing Date. The Closing Date shall be the date that both the City and Developer execute the Lease, which execution shall be conditioned and contingent upon satisfaction of the following: (a) the approval of the Final PAD and comprehensive sign plan for the Property by the Tempe Redevelopment Review Commission and by the City Council, if City Council approval is required, and recordation of the Final PAD by the City, (b) final approval of the Final PAD by the FAA, and, (c) review of this Agreement by the BLM for the purpose of confirming its conformance to the BLM Patent. Concurrently with the execution of the Lease, Developer shall pay to the City the full amount of the Rent as defined in ***Section 3.1.2.*** The City shall continue to hold fee title to the Property during the Lease term, subject to the provisions of ***Section 3.2*** below.

3.1.1. Form of Lease. The Property shall be leased by the City to Developer pursuant to the Lease which shall be in substantially the form attached hereto as **Exhibit "F"**, subject to the terms and conditions of the BLM Patent and all liens and encumbrances of record which are approved by Developer prior to the Closing Date after receipt and review of a current preliminary title report for the Property to be obtained by the Developer from the Escrow Agent (as hereinafter defined) (the "Permitted Exceptions"). Upon the Closing Date, the Memorandum of Lease shall be executed by the City and Developer and recorded in the Official Records of Maricopa County, Arizona, and the Escrow Agent shall cause to be issued for the benefit of the Developer an extended coverage leasehold title insurance policy in form, substance and amount satisfactory to

Developer, subject only to the Permitted Exceptions. The premium payable for the standard coverage portion of such leasehold title policy shall be paid by the City, and the Developer shall pay the additional premium required for the extended coverage portion of such policy and shall be responsible for the satisfaction of all conditions required for the issuance of such policy; provided, however, that the City shall be responsible for satisfying any conditions of the Escrow Agent with respect to the issuance of such leasehold title policy which may only be satisfied by the City.

3.1.2. Rent. Subject to the provisions of ***Section 3.3*** below, the rent payable under the Lease for the Property (the "Rent") shall be equal to $8.53 per square foot within the Property for a prepaid ninety-nine-(99) year lease term. The exact amount of the Rent shall be determined based upon the ALTA survey of the Property described in ***Section 3.1*** above. The parties hereto acknowledge that the area of the Property which shall be subject to the Lease shall not include any portion of the Property currently subject to the Neighboring Parcel Easements, except for a strip of property approximately ten feet (10') in width and a triangular portion of such property at the intersection of Priest Drive and Rio Salado Parkway upon which a multi-tenant/project identification monument sign for the Property will be erected, nor shall the area of the Property include any portion of the right-of-way for First Street to the south of the Property.

3.1.3. Rent Adjustment. In consideration of the removal of unsuitable material that will be necessary to develop the Property, the City agrees that six hundred thousand dollars ($600,000) of the Rent payable to the City shall be held in an escrow account established with Security Title Agency (the "Hold Back Amount"), and that the Developer after written notice to the City may draw funds from the Hold Back Amount in the amounts reasonable and necessary to remove the unsuitable materials including excavation of soil, replacement of soil, hauling of debris, and furnishing of environmental and geotechnical engineers to monitor the debris removal and soil replacement and compaction. All work performed is subject to inspection by the City to confirm that such work has been completed, and must be performed in a commercially reasonable manner. Upon removal and disposal of the unsuitable material and completion of the work described herein, the remaining Hold Back Amount will be paid to the City. In the event an amount above the Hold Back Amount is necessary in order to develop the Property, such amounts shall be paid for by the Developer.

3.2. Acquisition of Fee Title. From time to time during the term of the Lease, the Developer shall have the right to acquire fee simple title to all of the Property or specific Parcels therein by providing written notice to the City of such election; provided, however, that in no event shall Developer have the right to acquire fee simple title to the Property or any portion thereof prior to May 31, 2007, pursuant to the restrictions set forth in the BLM Patent. In addition, subject to the provisions of ***Section 5.1*** below with respect to any Government Property Lease Excise Tax lease entered into by the City and Developer, if the Developer has not acquired fee simple title to any Parcel within the Property by that date that is eight (8) years after the issuance by the City of the first certificate of occupancy with respect to any building improvements constructed on such Parcel, then the City shall have the unilateral right to convey fee simple title to the Developer by recordation of a deed for such Parcel. The conveyance of fee title to any Parcel shall be at no additional cost to the Developer other than recording cost, and Developer shall not be entitled to any refund of any portion of the Rent with respect to any parcel acquired by Developer pursuant hereto.

At such time as the Developer desires to acquire title to any Parcel, the Developer shall deliver a written notice to the City, which notice shall indicate: (a) the legal description of the Parcel of the Property to be conveyed to the Developer (which shall be confirmed by an ALTA survey to be provided by Developer); and (b) the date by which the closing of the conveyance of such Parcel is desired by Developer. The City and the Developer shall thereupon enter into an escrow with Security Title Agency, Hayden Ferry Office, ("Escrow Agent"), who shall hold all documents, receive all monies, and perform such other acts as are normal and customary for a commercial escrow agent in similar transactions. The parties acknowledge the restrictions on transfer of the Property and any acquisition of title under this paragraph may only be done in accordance with the conditions of the BLM Patent. To the extent there is an ambiguity in any of the terms of this Agreement which would constitute a violation of the BLM Patent, such ambiguity shall be resolved in favor of creating an enforceable document that does not constitute a violation of such Patent.

3.2.1. Form of Deed. Fee simple title to any Parcel of the Property conveyed by the City to the Developer shall be conveyed pursuant to a special warranty deed executed by the City, subject only to the Permitted Exceptions and any additional title matters created by Developer.

3.2.2. Conveyance of Fee Title to the Property. The City agrees to convey fee title to the Property to Developer at no additional cost to the Developer other than reasonable closing costs. The parties agree that there shall be no reimbursement of the unused portion of the prepaid Rent by the City upon conversion from the Lease to fee title ownership of the Property by the Developer.

3.2.3. Prorations. All real property taxes and assessments shall be prorated between the City and Developer as of the date of fee title closing and conveyance of any Parcel of the Property to Developer, based upon the latest available information.

3.2.4. Escrow Fees. Developer shall pay all escrow fees in connection with the conveyance of any Parcel of the Property. Developer shall pay all of the customary escrow fees, recording fees, and any premiums required to convert the leasehold title insurance policy to an owner's title policy. The City and the Developer shall bear their own costs, including attorneys' fees, in connection with the closing of the conveyance of any such Parcel to Developer.

3.3. Condition of Property. The City makes no warranty as to the condition of the Property. The Property shall be leased and subsequently conveyed by the City to the Developer in its "As Is" condition. Notwithstanding anything contained herein to the contrary, the City and Developer acknowledge that portions of the Property have been determined to require remediation of existing adverse soil and environmental conditions resulting from a landfill previously operated on the Property. By its lease of the Property, Developer shall not be deemed to have accepted any existing adverse environmental conditions that presently affect the Property; provided, however, that to the extent that Developer incurs any cost or expense in connection with the remediation of such adverse soil and environmental conditions, such costs and expenses shall apply as a credit against the Rent payable by the Developer under the Lease as stated in **Section 3.1.2** above.

ARTICLE IV
DEVELOPMENT PROCESS

4.1. Appointment of Representative; Development Approvals. In order to help expedite decisions by the City relating to the Property, the City agrees to designate a representative of the City ("City Representative") to act as a liaison between the City and the Developer and between the various departments of the City and the Developer. The City Representative shall be available at all reasonable times to serve as such liaison, it being the intention of this ***Section 4.1*** to provide the Developer with one individual as the City's principal representative with respect to the Property. The Developer shall also designate a representative ("Developer Representative") who shall serve as a liaison between the Property and the City. The initial City Representative shall be Chris Anaradian and the initial Developer Representative shall be Peggy Kirch. Representatives may be changed at any time by the parties giving notice as provided in ***Section 7.3***. The City hereby agrees that, in connection with all requests for approvals relating to the development within the Property and the construction of any improvements that no new, unusual, or extraordinary plan or review requirements, conditions, or stipulations will be imposed on the Developer.

4.2. Off-Site Improvements. The City and Developer hereby acknowledge and agree that, except for the improvements required to be made by the Developer to the Off-Site Storm Water Retention Area, and the off-site improvements as specified on the Final PAD, the development of the Property pursuant to the Conceptual Development Plan does not require any installation or construction of, or contribution to, additional off-site public infrastructure improvements. However, in the event that the Developer takes any action with respect to the Property which is not in substantial conformance with the Final PAD and that would require additional off-site improvements, such off-site improvements shall be the responsibility of the Developer.

ARTICLE V
PROPERTY TAX ASSESSMENTS

5.1. Government Property Lease Excise Tax. The City and Developer hereby acknowledge and agree that the Property is subject to the Government Property Lease Excise Tax rate pursuant to the provisions of A.R.S. §§42-6201 through 42-6209. In connection therewith, the City and Developer shall cause to be executed and delivered such documents and instruments as may be necessary in order to effect the application of the Government Property Lease Excise Tax. In connection therewith, the City hereby acknowledges and agrees that the Government Property Lease Excise Tax shall apply with respect to Parcels within the Property for a period of eight (8) years following the date of completion of construction of any building improvements on a Parcel, which completion of construction shall be evidenced by the issuance of a certificate of occupancy for any building improvements constructed on such Parcel.

5.1.1. Insurance Provisions for Lease. The Lease shall provide that during the term of the Lease, the Developer, as tenant, shall, at Developer's expense, carry and maintain, for the mutual benefit of the City and Developer, general public liability insurance against claims for bodily injury, death, or property damage occurring in, upon, or about the Property, with limits of

not less than $5,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage's for contractual liability (including defense expense coverage for additional insured), personal injury, broad form property damage, products and completed operations. All of Developer's policies of liability insurance shall name the City and all leasehold mortgagees as additional insured and shall contain no special limitations on the coverage, scope, or protection afforded to the City, its officials, employees, or volunteers. The Developer's policy of liability insurance shall be primary as to the City, and any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City. Certificates with respect to all policies of insurance required to be carried by the Developer shall be delivered to the City in form and with insurers acceptable to the City, which shall clearly evidence all insurance required and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage.

5.1.2. Indemnification Provision for Lease. The Lease shall provide that during the term of the Lease, the Developer, as tenant, shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of the Lease.

5.2. Successor Financing Incentive Programs. The City hereby acknowledges that if development of the Property or any Parcel therein is economically feasible only as a result of the availability of financing incentives, such as statutorily authorized property tax abatement programs currently available under Arizona law, and, for any reason, any such programs are amended, modified, repealed, or rescinded such that the full benefits thereof as currently provided on the date of the execution of this Agreement are no longer in effect, then, in that event, the City will use its best efforts to provide alternative development incentives and to cooperate with Developer with respect to any other available tax abatement programs or other public financing mechanisms provided for under Arizona law or otherwise available in order to obtain essentially the same economic benefits for the Property as are currently provided under existing law. Said incentives or tax abatement programs shall be limited so that they result in no greater cost to the City.

ARTICLE VI
DEFAULT; REMEDIES; TERMINATION

6.1. Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance and such breach or default continues for a period of ninety (90) days after written notice thereof from the no defaulting party.

6.2. Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and the Developer or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation upon the conclusion of mediation.

6.3. Developer's Remedies. In the event that the City is in default under this Agreement and fails to cure any such default within the time period required therefore as set forth in ***Section 6.1*** above, then, in that event, in addition to all other legal and equitable remedies which the Developer may have, the Developer may either (a) terminate this Agreement by written notice delivered to the City, or (b) specifically enforce this Agreement.

6.4. No Personal Liability. No current or former member, official or employee of the City or Developer shall be personally liable (a) in the event of any default or breach by the City or Developer, as applicable, (b) for any amount which may become due to the no breaching party or its successor or assign, or (c) pursuant to any obligation of the City or Developer, as applicable, under the terms of this Agreement.

6.5. City's Remedies. In the event that the Developer is in default under this Agreement by failing to execute the Lease or pay the Rent required hereunder after all conditions precedent thereto have been satisfied, and the Developer thereafter fails to cure any such default within the time period described in ***Section 6.1*** above, then the City shall have the right to terminate this Agreement immediately upon written notice to the Developer.

6.6. Liability and Indemnification. The Developer shall unconditionally indemnify, protect, defend, and hold harmless the City, its City Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of this Agreement by Developer.

6.7. Effect in Event of Termination. Upon the termination of this Agreement as a result of the default or breach of the Developer prior to the execution of the Lease by the City and Developer, the Developer shall have no further rights to lease or develop the Property pursuant to this Agreement.

6.8. Termination in the Event Conditions Not Satisfied. Notwithstanding anything contained in this Agreement to the contrary, if the conditions to the execution of the Lease which are described in ***Section 3.1*** above are not satisfied within two hundred and seventy (270) days from the execution of this Agreement, then, in that event, but subject to Developer's right to

appeal any termination by the City as provided in ***Section 2.3*** above, both the Developer and the City shall have the right to elect to terminate this Agreement by written notice to the other party, whereupon the parties shall have no further rights, duties, or obligations hereunder.

ARTICLE VII
GENERAL PROVISIONS

7.1. **Cooperation**. The City and the Developer hereby acknowledge and agree that they shall cooperate in good faith with each other and use best efforts to pursue the economic development of the Property as contemplated by this Agreement.

7.2. **Conflict of Interest**. Pursuant to Arizona law, rules, and regulations, no member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to A.R.S. § 38-511.

7.3. **Notice.** All Notices that shall or may be given pursuant to this Agreement shall be in writing and transmitted by registered or certified mail, return receipt requested, addressed as follows:

To Developer:
SunCor Development Company
80 East Rio Salado Parkway, Suite 410
Tempe, Arizona 85281
Attn: Vice President, Commercial Development

With copies to:
SunCor Development Company
80 East Rio Salado Parkway, Suite 410
Tempe, Arizona 85281
Attn: Corporate Counsel
-and-
Jeffrey J. Miller, Esq.
Gammage & Burnham PLC
Two North Central Avenue, 18th Floor
Phoenix, Arizona 85004

To the City:
City Manager
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

With a copy to: City Attorney
City of Tempe
P. O. Box 5002
21 East Sixth Street, Suite 201
Tempe, Arizona 85281

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein.

7.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

7.5. Successors and Assigns. This Agreement shall run with the land, and all of the rights, covenants, and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

7.6. Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant, or condition herein contained.

7.7. Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

7.8. Severability. In the event that any phrase, clause, sentence, paragraph, section, article, or other portion of this Agreement shall become illegal, null or void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, provided that the overall intent of the parties is not materially vitiated by such severability.

7.9. Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

7.10. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations, and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

7.11. Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City. However, this Agreement shall not become effective until thirty (30) days after approval by City Council.

7.12. <u>City Manager's Power to Consent</u>. The City authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested to by the City Clerk, and the Developer has executed and sealed the same on or as of the day and year first above written.

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

"CITY"

THE CITY OF TEMPE, an Arizona municipal corporation

By_____
Neil Giuliano, Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2004, before me, the undersigned officer, personally appeared Neil Giuliano, who acknowledged himself to be Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his _____, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

_____
Notary Public

"DEVELOPER"

SUNCOR DEVELOPMENT COMPANY, an Arizona corporation

By_____
Name_____
Title_____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2004, before me, the undersigned officer, personally appeared _____ who acknowledged him/herself to be the _____ of SUNCOR DEVELOPMENT COMPANY, an Arizona corporation, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his/her _____, and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

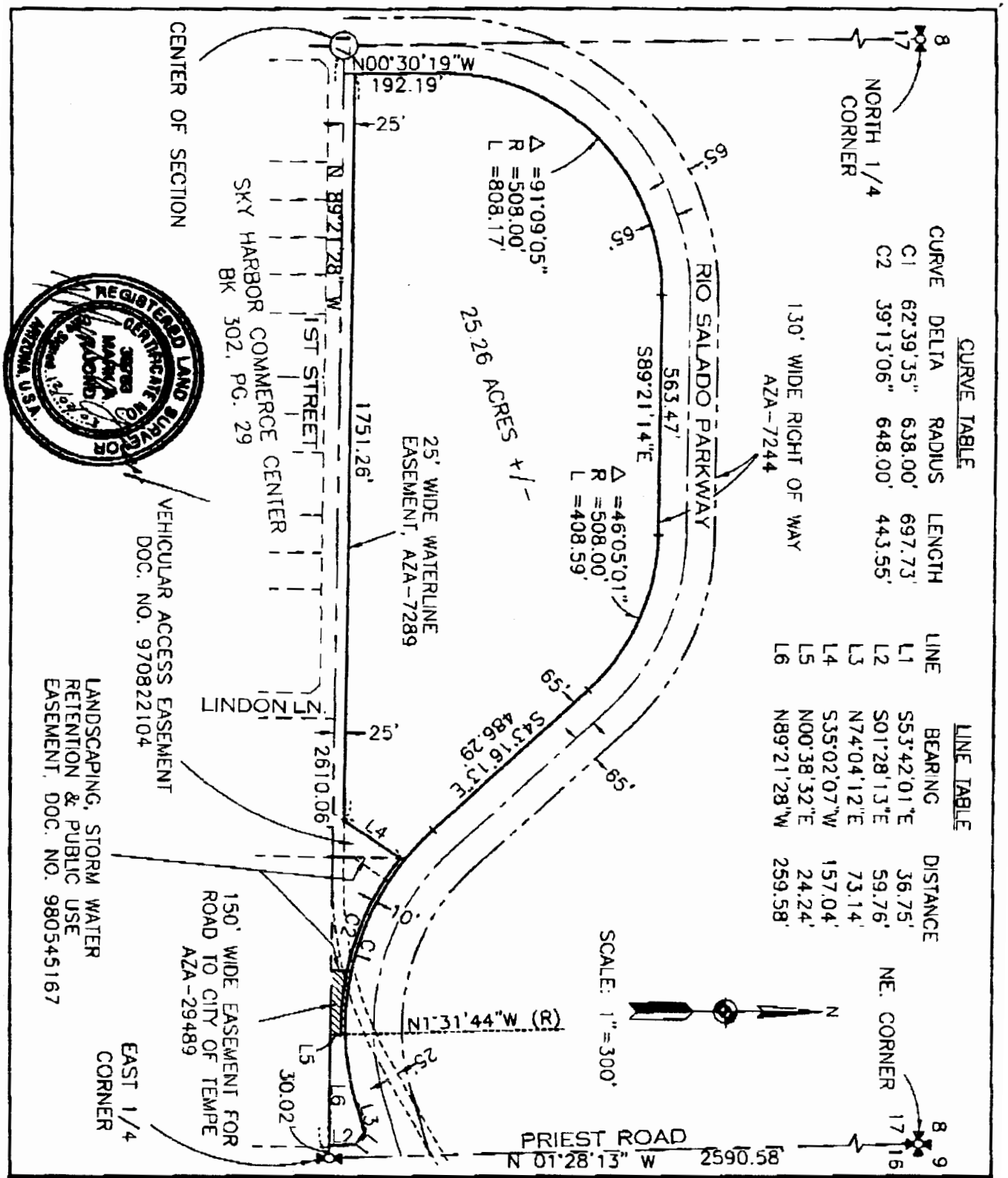
_____

NOTARY SEAL: Notary Public

LIST OF EXHIBITS

Exhibit A	Property
Exhibit B	Conceptual Development Plan
Exhibit C	BLM Patent No. 02-97-0005
Exhibit D	Conceptual Sign Plan
Exhibit E	Off-Site Storm Water Retention Location/Plan
Exhibit F	Ground Lease

EXHIBIT A



MORRISON MAIERLE, INC.
an Arizona Corporation

DRAWING: EXHIBIT.DWG	PARCEL EXHIBIT FOR SUNCOR DEVELOPMENT CO.
PROJECT: 8172002	
DRAWN: MAL	
CHECKED: MAL	NE. 1/4, SEC. 17, T. 1 N., R. 4 E., G.& S.R.B.& M.

PARCEL DESCRIPTION:

That portion of the Northeast Quarter of Section 17, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, County of Maricopa, State of Arizona, being more particularly described as follows:

Commencing at the East quarter corner of said Section 17;

thence North 89° 21' 28" West, 30.02 feet along the East-West mid-section line of said Section, to the **Point of Beginning**;

thence continuing North 89° 21' 28" West, along said mid-section line, 259.58 feet;

thence North 00° 38' 32" East, 24.24 feet to the beginning of a non-tangent curve, concave to the North, having a radius point which bears North 01° 31' 44" West, 648.00 feet;

thence Westerly, along the arc of said curve, parallel with and 10.00 feet South of the Southerly right of way of Rio Salado Parkway, through a central angle of 39° 13' 06", an arc distance of 443.55;

thence South 35° 02' 07" West, 157 04 feet;

thence North 89° 21' 28" West, parallel with and 25.00 feet North of said mid-section line, 1751.26 feet to the Easterly right of way of said Rio Salado Parkway;

thence North 00° 30' 19" West, 192.19 feet, along said Easterly right of way to the beginning of a curve concave Southeasterly having a radius of 508 00 feet;

thence Northeasterly 808.17 feet along said curve and the Southerly right of way of said Rio Salado Parkway through a central angle of 91° 09' 05";

thence South 89° 21' 14" East, 563.47 feet, along said right of way, to the beginning of a curve concave Southwesterly having a radius of 508.00 feet;

thence Southeasterly 408 59 feet, along said right of way and said curve, through a central angle of 46° 05' 01";

thence South 43° 16' 13" East, 486.29 feet, along said right of way, to the beginning of a curve concave Northeasterly having a radius of 638.00 feet;

thence Easterly 697.73 feet, along said right of way and said curve, through a central angle of 62° 39' 35";

thence North 74° 04' 12" East, 73.14 feet, along said right of way;

thence departing said Southerly right of way of the Rio Salado Parkway, South 53° 42' 01" East, 36.75 feet to the West line of the East 30.00 feet of said Section 17;

thence South 01° 28' 13" East, 59.76 feet along said West line to the **Point of Beginning.**

EXCEPT any portion thereof located within the limits of 1st Street.

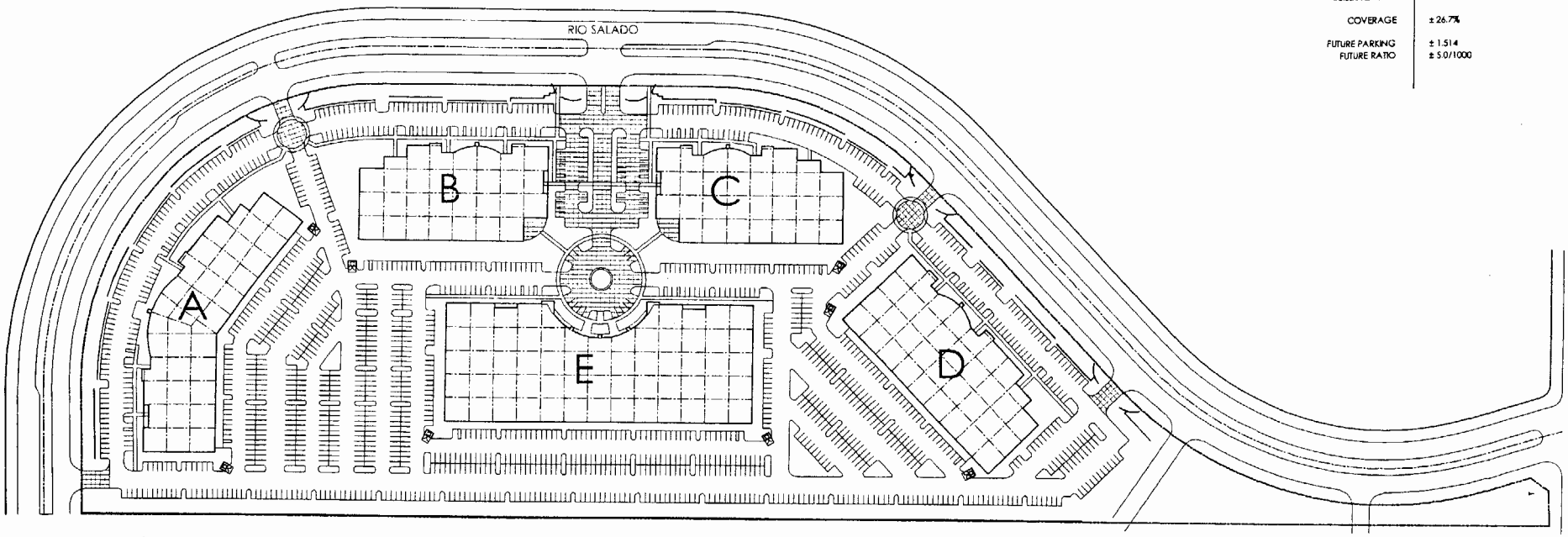
(The above described parcel containing 25.26 acres, more or less).

EXHIBIT B

EXHIBIT B

Conceptual Development Plan

PROJECT	DATA
SITE AREA (net)	± 1,178,055 s.f. (± 27.04 acres)
	- ± 53,045 s.f. (± 1.22 acres)
SITE AREA (net remaining)	± 1,125,010 s.f. (± 25.82 acres)
BUILDING AREA	± 300,300
COVERAGE	± 26.7%
FUTURE PARKING	± 1,514
FUTURE RATIO	± 5.0/1000



A

PROJECT	DATA
SITE AREA (net)	± 227,432 s.f. (± 5.22 acres)
BUILDING AREA	± 54,500 s.f.
COVERAGE	± 24.0%
FUTURE PARKING	±332 spaces
FUTURE RATIO	± 6.1/1000

B

PROJECT	DATA
SITE AREA (net)	± 196,894 s.f. (± 4.52 acres)
BUILDING AREA	± 46,900 s.f.
COVERAGE	± 23.8%
FUTURE PARKING	± 246 spaces
FUTURE RATIO	± 5.3/1000

C

PROJECT	DATA
SITE AREA (net)	± 161,366 s.f. (± 3.70 acres)
BUILDING AREA	± 46,900 s.f.
COVERAGE	± 29.1%
FUTURE PARKING	± 149 spaces
FUTURE RATIO	± 3.2/1000

D

PROJECT	DATA
SITE AREA (net)	± 214,114 s.f. (± 4.92 acres)
BUILDING AREA	± 55,300 s.f.
COVERAGE	± 25.8%
FUTURE PARKING	± 276 future spaces
FUTURE RATIO	± 5.0/1000

E

PROJECT	DATA
SITE AREA (net)	± 325,205 s.f. (± 7.47 acres)
BUILDING AREA	± 97,200 s.f.
COVERAGE	± 29.9 %
FUTURE PARKING	± 511 spaces
FUTURE RATIO	± 5.3/1000

SUNCOR

PATRICK HAYES ARCHITECTURE

EXHIBIT C

When Recorded mail to:

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

97-0432433 06/26/97 01:44

MESA2 2 OF 27

CAPTION HEADING:_____

DO NOT REMOVE
This is part of the official document.

In accordance with Arizona Revised Statutes §11-480, Requirements for form of instruments, this instrument should have been rejected for recording for the following reason(s) However as a courtesy, this cover sheet has been added to allow recording. Future instruments presented for recording that do not comply will be rejected:

☐ Effective January 1, 1991, each instrument shall be no larger than eight and one-half inches in width and no longer than fourteen inches and shall have a print size no smaller than ten point type.

☒ The first page shall have a top margin of at least two inches which shall be reserved for recording information. The left three and one-half inches of the top margin of the first page or sheet may be used by the public to show the name of the person requesting recording and the name and address to which the document is to be returned following recording. IF THE FIRST PAGE OF THE INSTRUMENT DOES NOT COMPLY WITH THE TOP MARGIN REQUIREMENTS, A SEPARATE SHEET THAT MEETS THE REQUIREMENTS AND THAT REFLECTS THE TITLE OF THE DOCUMENT AS REQUIRED BY ARS §11-480.A.1, SHALL BE ATTACHED TO THE FRONT OF THE DOCUMENT **BY THE PARTY REQUESTING RECORDING.**

The United States of America

To all to whom these presents shall come, Greeting:

AZA 28907

WHEREAS

City of Tempe

is entitled to a land patent pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, for the following described land:

Gila and Salt River Meridian, Arizona

T. 1 N., R. 4 E.,

sec. 14,	NE¼NW¼, N½SW¼NW¼, N½SW¼SW¼NW¼, NE¼NE¼SE¼SW¼NW¼, W½NE¼SE¼SW¼NW¼, NW¼SE¼SW¼NW¼;
sec. 17,	lots 1, 2, W½NE¼, NW¼.

The areas described aggregate 366.705 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES, unto the City of Tempe the land described above; TO HAVE AND TO HOLD the said land with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the City of Tempe, its successors and assigns forever; and

EXCEPTING AND RESERVING TO THE UNITED STATES:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 43 U.S.C. 945.

2. A perpetual right-of-way for a Doppler Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (DVORTAC) facility and access road as reserved under Right-of-Way No. AZA 29508, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761, 1767, as to section 17, and the right to enforce all or any of the terms and conditions of the right-of-way.

3. A perpetual right-of-way of the Bureau of Reclamation (Salt River Project) for an electric transmission line, effective April 21, 1971, as to section 14, under Subsection P, Section 4, of the Act of December 5, 1924, 43 U.S.C. 417. (AZA 5402)

4. An appropriation of a right-of-way for a Federal Aid Highway under the Act of August 27, 1958, as amended, 23 U.S.C. 317. (AZA 9289)

Patent Number 02-97-0005

A-3

5. Those rights for highway purposes granted to Arizona Department of Transportation, its successors or assigns, by Right-of-Way No. AZA 23567, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761, and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way.

6. With respect to that portion of the Lands conveyed by this patent consisting of lots 1 and 2, W½NE¼, and NW¼ of section 17, T. 1 N., R. 4 E., Gila and Salt River Meridian (the "Restricted Lands"), the patentee agrees for itself, its assigns and successors in interest to the Restricted Lands herein conveyed, or any part thereof, that the covenants set forth below shall attach to and run with the Restricted Lands:

   (a) No structures, except as noted below in subdivision (e) of this paragraph, shall penetrate a vertical angle of 1.2 degrees above the horizontal measured from the ground elevation at the center of the DVORTAC antenna site, coordinates and elevations defined as:

   Latitude 33 degrees 25 minutes 58.20 seconds North;
   Longitude 111 degrees 58 minutes 10.19 seconds West;
   Elevation 1,182 feet above mean sea level.

   (b) No structures exceeding an elevation of 1,182 feet above mean sea level shall be allowed within 750 feet of the center of the DVORTAC antenna.

   (c) No trees or other vegetation within 1,000 feet of the DVORTAC antenna shall be permitted to exceed 30 feet in height.

   (d) No structures which are partially or entirely metallic, excluding lighting structures, shall exceed a vertical angle of 1.2 degrees above the DVORTAC antenna.

   (e) Lighting structures shall not exceed a vertical angle of 2.0 degrees above the DVORTAC antenna elevation, configured radially from the center thereof.

   (f) Lighting structures shall be designed to present a minimal reflective, or if feasible non-reflective, surface to the DVORTAC antenna.

   (g) (i) In addition to the restrictions above (subdivisions (a) through (f) of this paragraph), and subject to subdivision (g)(ii)-(iv), no facilities of any kind which would cause disruption of or interference with the safe and effective operation of the DVORTAC antenna, authorized by Right-of-Way No. AZA 29508, reserved to the Federal Aviation Administration (the "FAA"), its successors and assigns, may be placed on any portion of the Restricted Lands. Preliminary plans for any facilities proposed to be constructed on the Restricted Lands must be submitted to the FAA at the same time that such plans are submitted for the City of Tempe's preliminary review. The FAA shall submit written

comments on the preliminary plans within 30 days of receipt. Final plans for any facilities proposed to be constructed on the Restricted Lands must be submitted to the FAA at the same time that such plans are submitted for the City of Tempe's final review. The FAA shall approve the proposed facility or issue an adverse determination concluding that the facility proposed to be built on the Restricted Lands would cause disruption of or interference with the safe and effective operation of the DVORTAC antenna within 90 days of receipt of the final plans. In exceptional circumstances, if the FAA's Regional Administrator concludes that additional information critical to its determination is needed, he may extend the deadline for issuing its approval by a reasonable amount of time by notifying the builder/developer and the City of Tempe of the extension and the reasons therefor. Any determination by the FAA that a proposed facility on the Restricted Lands would cause interference with the safe and effective operation of the DVORTAC, shall be provided in writing to the City of Tempe and the developer or builder, and shall be based on reasonable grounds adequately supported by the relevant information or analyses necessary to understand the reasoning underlying the determination. In the event the builder/developer decides to construct the proposed facility, it shall modify the proposals to address the FAA's objection at no cost, obligation or charge to the United States or any agency or instrumentality thereof.

(ii) For the purpose of subdivision (g)(i) of this paragraph, the requirement that preliminary and final development and construction plans be submitted to the FAA shall be satisfied by submission of the plans to the FAA, Logistics Division, AWP-54B, P.O. Box 92007 WPC, Los Angeles, California 90009, or successor office as may be identified by the FAA.

(iii) In the event that a builder or developer of a site on the Restricted Lands has not secured FAA approval prior to commencement of actual construction, a determination by the Administrator of the FAA, or his or her designee, or successor or assign that any facility placed on the Restricted Lands has caused interference with the safe and effective operation of the DVORTAC antenna is conclusive of the facts and said facility shall be modified or removed at no cost, obligation or charge to the United States or instrumentality thereof.

(iv) In the event that a builder or developer of a site on the Restricted Lands has received FAA approval prior to the commencement of actual construction and said construction has commenced or been completed, the FAA may still require removal or modification of the facility so long as the FAA determines that the facility actually interferes with the safe and effective operation of the DVORTAC antenna and the FAA pays for the costs of the modification or removal of the facility in question.

(v) As part of its review of any proposal submitted, the FAA simultaneously will undertake any review required under Part 77 of the Federal Aviation Regulations.

7. With respect to that portion of the Lands conveyed by this patent consisting of lots 1 and 2, W½NE¼, and NW¼ of section 17, T. 1 N., R. 4 E., Gila and Salt River Meridian (the "Restricted Lands"), the patentee agrees for itself, its assigns, and successors in interest to the Restricted Lands herein conveyed, or any part thereof, that the covenants set forth below shall attach to and run with the Restricted Lands:

(a) The city of Tempe agrees that aviation safety will govern any aesthetics or physical characteristics of any proposed development within the Restricted Lands, and as part of its review process, shall evaluate any proposal for development of the Restricted Lands to determine the potential for creating an airport wildlife hazard, as defined in part 139 of the Federal Aviation Regulations. No facility or permanent land use constituting an airport wildlife hazard shall be permitted on the Restricted Lands. The FAA Administrator shall make the final determination concerning whether proposed development involving open water or a landfill (as defined by the U.S. Environmental Protection Agency) constitutes a wildlife hazard. Open water includes all deliberately or incidentally created open water, whether ephemeral or permanent, flowing or standing.

(b) The city's review process will include a "wildlife hazard" assessment addressing the identification of anticipated species, numbers, locations, local movements, daily and seasonal occurrences of wildlife, development features that would attract wildlife, and describe how the anticipated wildlife would be a hazard to aircraft operations at Phoenix Sky Harbor International Airport. The city of Tempe will provide a copy of the wildlife hazard assessment to the State Director, Animal Damage Control, U.S. Department of Agriculture and the FAA Western-Pacific Regional Administrator prior to granting any final approval of a proposed development. The Director and the Regional Administrator shall raise any concerns regarding proposed development that does not involve the items described in subsection (a) of this paragraph within 90 calendar days of receiving the wildlife hazard assessment. In the event that either the Director or the Regional Administrator disagrees with the wildlife hazard assessment's evaluation of the potential for a site to become a hazard, Tempe or any subsequent owner, lessee, or developer shall address any concerns raised by either the Director or Regional Administrator.

8. Patentee agrees that it will not sell, dispose of, or otherwise transfer or attempt to transfer title to any portion of the Lands for a period of 10 years from the date of patent issuance. If a breach of this covenant (the "No Transfer Covenant") occurs, title to the Lands conveyed under this patent shall revest in the United States in full and without reservation. A determination by the Secretary or designate that the No Transfer Covenant has been breached is conclusive of the facts.

9. Patentee agrees for itself, its assigns, and successors in interest to the Lands herein conveyed, or any part thereof, that the covenants set forth below shall attach to and run with the Lands:

   (a) No residential use shall be allowed on the Lands (the "No Residential Use Covenant"). Residential use for the purposes of this covenant means any use of the Lands for single-family or multi-family dwelling purposes for residential stays exceeding 90 days. Residential use shall not include hotels, motels, or extended stay facilities which, for the purposes of this covenant, means temporary stay facilities, excluding mobile homes, designed and used for occupancy by transients or as residential dwellings for periods of 90 days or less in any calendar year.

   (b) If a breach of the No Residential Use Covenant occurs, this grant is terminated as to that portion of the Lands where the breach occurred and any other portion of the Lands held by said Owner. The patentee, by acceptance of this patent, agrees for itself, its assigns, and successors in interest, that termination of this grant as against an Owner of a portion of the Lands where the breach of the No Residential Use Covenant occurred shall operate to revest in the United States full title to each and every portion of the Lands owned by such Owner.

   (c) In the event of a reversion of all or any portion of the Lands pursuant to subdivision (b) of this paragraph, the United States shall have the right to seek judicial enforcement of the reverter against the Owner of the Lands where a breach of the No Residential Use Covenant occurred, and also as to all other Lands owned by such Owner and conveyed under this patent.

   (d) A determination by the Secretary or designate that the No Residential Use Covenant has been breached is conclusive of the facts.

SUBJECT TO:

1. Those rights for electric transmission line purposes granted to Arizona Public Service Company, its successors or assigns, by Right-of-Way No. AZAR 020023, as to section 14, pursuant to the Act of March 4, 1911, 43 U.S.C. 961; repealed 1976.

2. Those rights for gas pipeline purposes granted to Southwest Gas Corporation, its successors or assigns, by Right-of-Way No. AZAR 024876, as to section 14, pursuant to the Act of February 25, 1920, 30 U.S.C. 185.

3. Those rights for electric transmission line purposes granted to Arizona Public Service Company, its successors or assigns, by Right-of-Way No. AZAR 025230, as to section 14, pursuant to the Act of March 4, 1911, 43 U.S.C. 961; repealed 1976.

4. Those rights for sewer pipeline purposes granted to the City of Phoenix, its successors or assigns, by Right-of-Way No. AZAR 033748 pursuant to the Act of February 15, 1901, 43 U.S.C. 959; repealed 1976.

5. Those rights for gas pipeline purposes granted to Southwest Gas Corporation, its successors or assigns, by Right-of-Way No. AZAR 035921, as to section 17, pursuant to the Act of February 25, 1920, 30 U.S.C. 185.

6. Those rights for storm drainage purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 1119, as to section 14, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

7. Those rights for highway and bridge construction, river channelization, and grading construction purposes granted to Maricopa County Highway Department, its successors or assigns, by Right-of-Way No. AZA 4283, as to section 14, pursuant to the Act of August 4, 1939, 43 U.S.C. 387.

8. Those rights for electric transmission line purposes granted to Salt River Project, its successors or assigns, by Right-of-Way No. AZA 6066, as to section 14, pursuant to the Act of March 4, 1911, 43 U.S.C. 961; repealed 1976.

9. Those rights for road purposes granted to the City of Tempe by Right-of-Way No. AZA 7244, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

10. Those rights for water distribution pipeline purposes granted to the City of Phoenix, its successors or assigns, by Right-of-Way No. AZA 7289, as to section 17, pursuant to the Act of February 15, 1901, 43 U.S.C. 959; repealed 1976.

11. Those rights for industrial sewer pipeline purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 8636, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

12. Those rights for flood control structure purposes granted to the Flood Control District of Maricopa County, its successors or assigns, by Right-of-Way No. AZA 8887, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

13. Those rights for buried telephone cable purposes granted to U.S. West Communications, Inc., its successors or assigns, by Right-of-Way No. AZA 9271, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

14. Those rights for road purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 20311, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

15. Those rights for river channelization purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 24632, as to section 14, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

16. Those rights for water pipeline purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 25254, as to section 14, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

17. Those rights for water and sewer pipeline purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 25963, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

18. Those rights for electric line, telephone and television cable purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 25964, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

19. Those rights for buried gas pipeline purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 27825, as to section 17, pursuant to the Act of February 25, 1920, 30 U.S.C. 185.

20. Those rights for road purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 29489, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Phoenix, Arizona, the fifteenth day of May in the year of our Lord one thousand nine hundred and ninety-seven and of the Independence of the United States the two hundred and twenty first.

By _____
Denise P. Meridith
State Director

Patent Number **02-97-0005**

URS Greiner Woodward Clyde
A Division of URS Corporation

7878 North 16th Street, Suite 200
Phoenix, AZ 85020
Tel: 602.371.1100
Fax: 602.371.1615
Offices Worldwide

LEGAL DESCRIPTION FOR A PARCEL LYING SOUTH OF THE RIO SALADO PARKWAY WITHIN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 1 NORTH, RANGE 4 EAST

That portion of the Northeast quarter of Section 17, Township 1 North, Range 4 East, of the Gila and Salt River Base and Meridian, County of Maricopa, State of Arizona, being more particularly described as follows:

Commencing at the East quarter corner of said Section 17;

thence North 89°21'28" West, 30.02 feet along the East-West mid-section line to the POINT OF BEGINNING;

thence continuing, North 89°21'28" West, 2514.00 feet along said East-West mid-section line to the easterly right of way of the Rio Salado Parkway;

thence departing said East-West mid-section line, North 00°30'19" West, 217.19 feet along said easterly right of way to the beginning of a curve concave southeasterly having a radius of 508.00 feet;

thence northeasterly 808.17 feet along said curve and the southerly right of way of said Rio Salado Parkway through a central angle of 91°09'05";

thence South 89°21'14" East, 563.47 feet to the beginning of a curve concave southwesterly having a radius of 508.00 feet;

thence southeasterly 408.59 feet along said curve through a central angle of 46°05'01";

thence South 43°16'13" East, 486.29 feet to the beginning of a curve concave northeasterly having a radius of 638.00 feet;

thence easterly 697.73 feet along said curve through a central angle of 62°39'35";

thence North 74°04'12" East, 73.14 feet;

thence departing said southerly right of way of the Rio Salado Parkway, South 53°42'01" East, 36.75 feet to the West line of the East 30.00 feet of said Section 17;

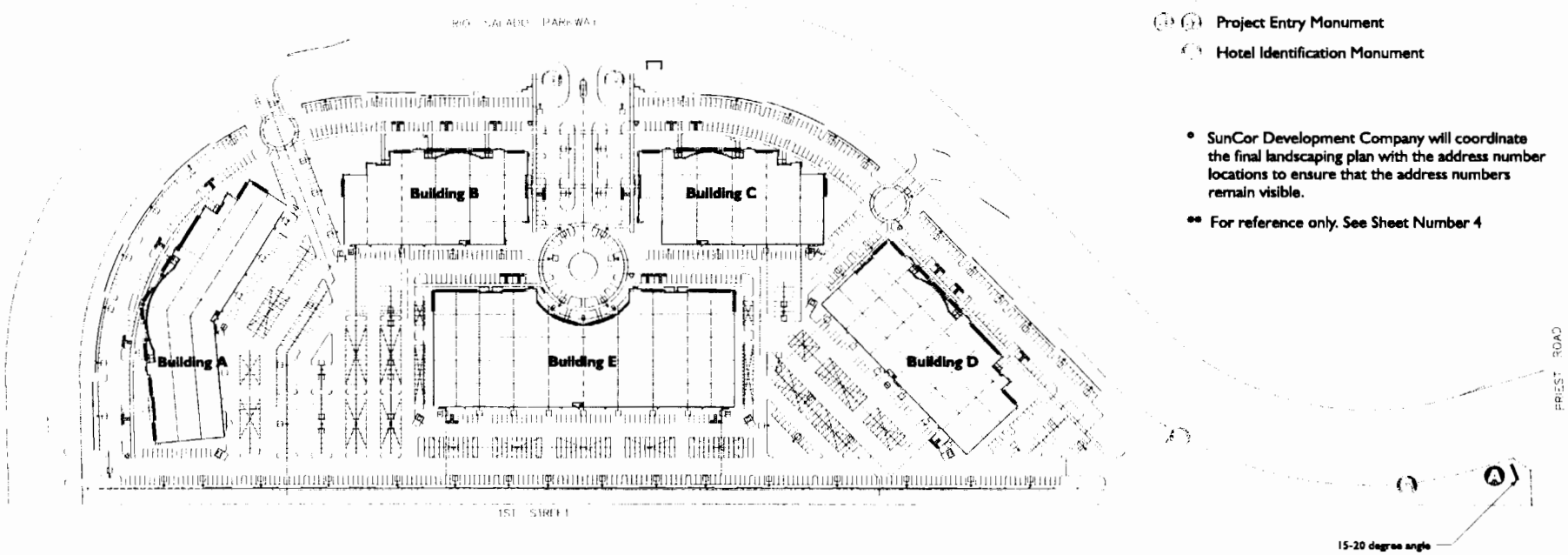
thence South 01°28'13" East, 59.76 feet along said East line to the POINT OF BEGINNING.

Said parcel contains 1,178,064 square feet or 27.0446 acres more or less.

EXHIBIT D

EXHIBIT D

Conceptual Site Plan



— Tenant Signage

Address Numbers

Main Monument

Project Entry Monument

Hotel Identification Monument

- SunCor Development Company will coordinate the final landscaping plan with the address number locations to ensure that the address numbers remain visible.

** For reference only. See Sheet Number 4

PLAN - SIGNAGE LOCATIONS
Scale: N.T.S.

Thinking Caps
815 north first avenue 3w
phoenix, arizona 85003
602-495-1260
FAX 602-495-1258
email: info@thinkingcaps.net

© 2003 Thinking Caps

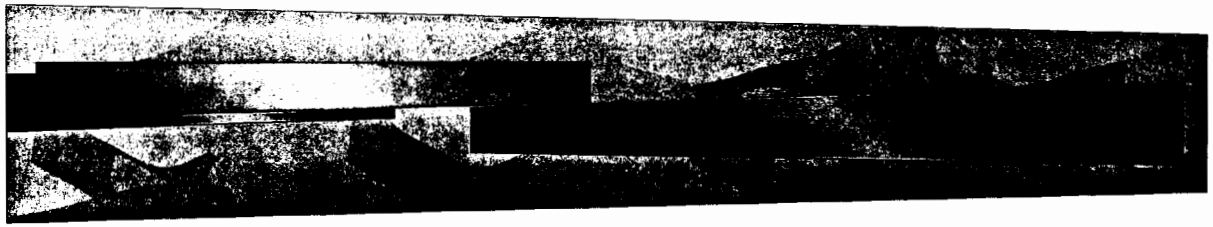
Schematic Design
Rio East

Sign Location Plan

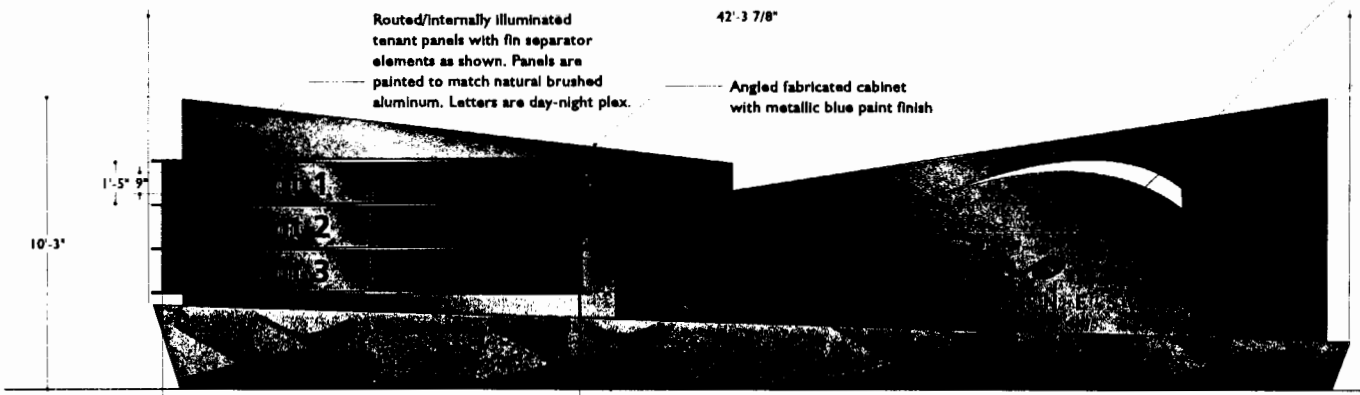
Date: 10/02/03 KAL
Revisions: 10/13/03 KAL
11/21/03 KAL

SIGN TYPE

SHEET NUMBER 1



PLAN VIEW
Scale: 1/4" = 1'-0"



ELEVATION - Option 2
Scale: 1/4" = 1'-0"

T h i n k i n g C a p s

815 north first avenue 3w
phoenix, arizona 85003
602-495-1260
FAX 602-495-1258
email: info@thinkingcaps.net

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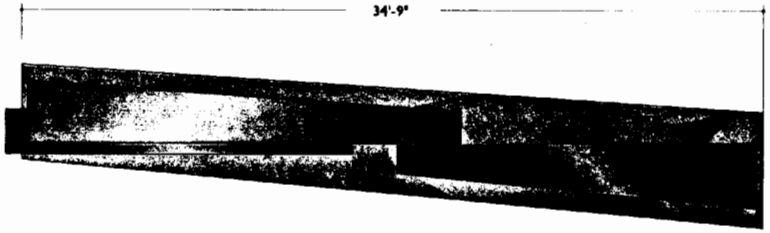
Schematic Design
Rio East

Entry Monument
Priest and Rio Salado

Date: 9/22/03 ACM
Revisions: 10/13/03 ACM

SIGN TYPE
A

SHEET NUMBER 2



PLAN VIEW (right side)
Scale: 3/16" = 1'-0"

Routed/internally illuminated tenant panels with fin separator elements as shown. Panels are painted to match natural brushed aluminum. Letters are day-night plex.

Angled fabricated cabinet with metallic blue paint finish

Option 2-Angled fabricated cabinet with routed/intrnally illuminated letters and graphics. Cabinet is painted to match natural brushed aluminum finish. Graphics are "push-through" plex in colors as shown (dark gray is day-night plex)-see sheet one

Logo approx. 41 sq. ft.

ELEVATION (right side)
Scale: 3/16" = 1'-0"

Cast-in-place intergral dark gray colored concrete base angled in plan as shown

Four tenant panels = approx. 42 sq ft

CENTER DRIVE ELEVATION
Scale: 3/32" = 1'-0"

T h i n k i n g C a p s

815 north first avenue 3w
phoenix, arizona 85003
602-495-1260
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email: info@thinkingcaps.net

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Schematic Design
Rio East

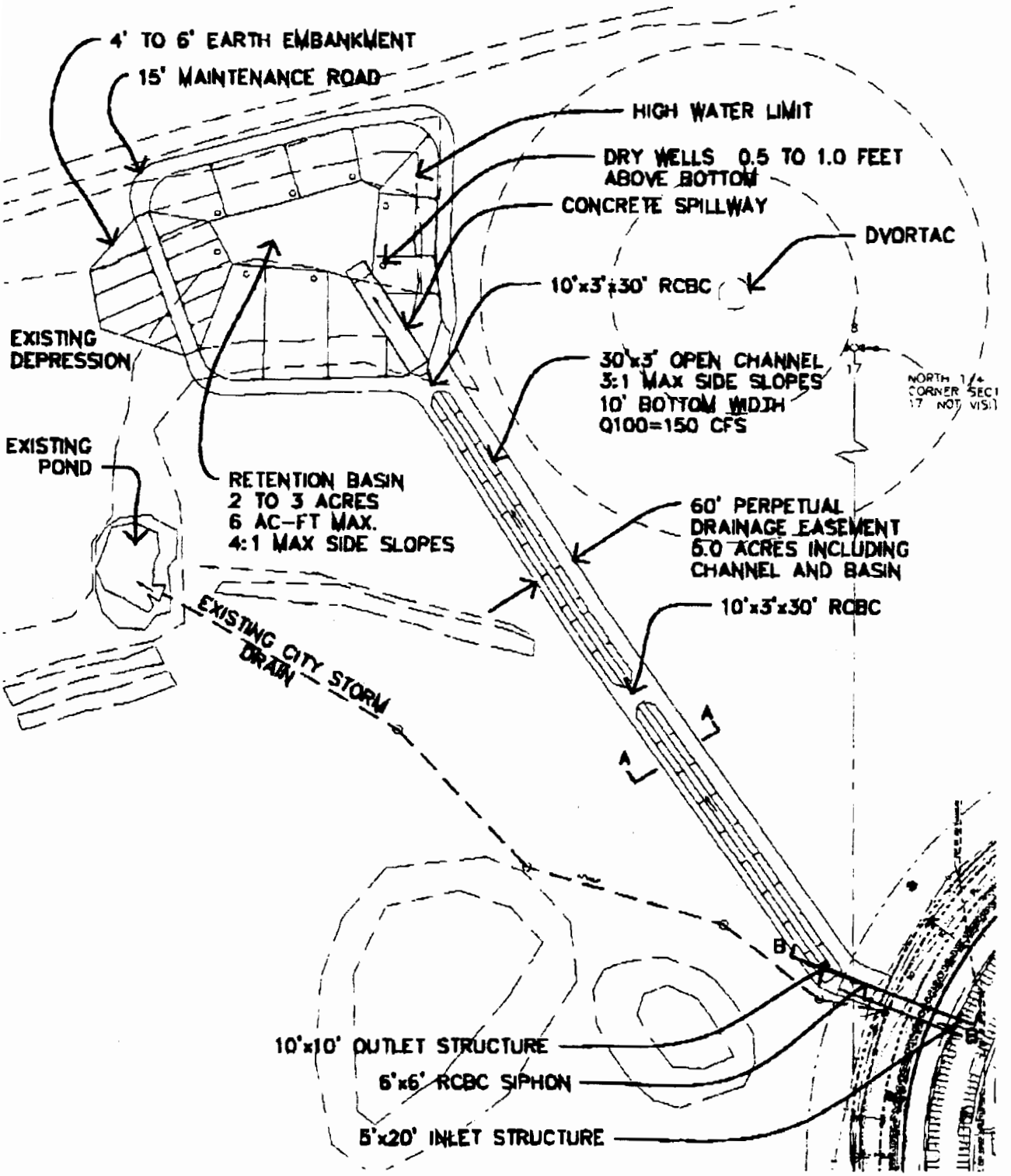
Project Entry Monument
At Center Entry

Date: 9/23/03 ACM
Revisions: 10/13/03 ACM

SIGN TYPE
B

SHEET NUMBER 3

EXHIBIT E



RIO EAST BUSINESS PARK
STORM WATER RETENTION

EXHIBIT
SHEET 1 OF 2

EXHIBIT F

EXHIBIT "F"
GROUND LEASE

D R A F T

THIS GROUND LEASE ("Lease") is made and entered as of the ___ day of _____, 2004, by and between THE CITY OF TEMPE, an Arizona municipal corporation ("Landlord"), and SUNCOR DEVELOPMENT COMPANY, an Arizona corporation ("Tenant").

RECITALS

A. Landlord owns that parcel of land described in ***Exhibit "A"*** hereto, together with all rights and privileges appurtenant thereto and all future additions thereto or alterations thereof (collectively, the "Leased Premises").

B. Prior to the date of this Lease, Landlord and Tenant entered into that certain Development and Disposition Agreement [Ordinance No. 2003.39] dated _____, 2004, and recorded as Instrument No. _____ in the Official Records of Maricopa County, Arizona (the "Development Agreement"), pursuant to which, subject to the satisfaction of the conditions described therein, the Landlord agreed to lease to Tenant, and the Tenant agreed to lease from Landlord, the Leased Premises.

AGREEMENT

1. Lease of Leased Premises. For and in consideration of the Rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

2. Quiet Enjoyment. Landlord covenants and agrees with Tenant that conditioned upon Tenant's paying the Rental herein provided and performing and fulfilling all the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant, Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Leased Premises.

3. Term. The term of this Lease shall be for ninety-nine (99) years, commencing on the date of this Lease (the "Commencement Date") and ending at midnight on the day immediately prior to the ninety-ninth (99th) anniversary of the Commencement Date, subject to earlier termination as to all or part of the Leased Premises at Tenant's option, as hereinafter provided.

4. Rental. Tenant covenants to pay to Landlord as rental for the Leased Premises the sum of $_____ (the "Rental") on the Commencement Date. The full amount of the Rental shall be prepaid on the Commencement Date, without prejudice to Tenant's right to terminate this Lease as provided herein, but in no event shall Landlord be obligated to refund any portion of the prepaid Rental.

5. Mortgage of Leased Premises.

5.1 Subject to the provisions of this Lease, Tenant is hereby given the absolute right without the Landlord's consent to create a security interest in Tenant's leasehold interest under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust or collateral assignment or otherwise. Any such security interest shall be referred to herein as a "Leasehold Mortgage," and the holder of a Leasehold Mortgage shall be referred to herein as a "Leasehold Mortgagee."

No liability for the performance of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, unless such Leasehold Mortgagee forecloses its interest and becomes the Tenant hereunder, following which the liability shall attach only during the term of ownership of the leasehold estate by said Leasehold Mortgagee.

6. Taxes; Ground Lease Obligations.

6.1 Excise Tax. The Landlord and Tenant intend that the Leased Premises shall be subject to the government property lease excise tax rate pursuant to the provisions of A.R.S. § 42-6201-42-6209. In connection therewith, Landlord and Tenant shall cooperate with each other to cause to be prepared, executed and delivered such documents and instruments, and to process such applications and other materials, as may be necessary in order to effect the application of the government property lease excise tax as contemplated pursuant to the terms of the Development Agreement. The Landlord shall cooperate with the Tenant in connection with ensuring the application of the government property lease excise tax to the Leased Premises and in connection with any protest or appeal made by Tenant as hereinafter contemplated.

6.2 Payment. Tenant shall pay and discharge all general and special real estate and/or personal property taxes and assessments levied or assessed against or with respect to the premises during the term hereof and all charges, assessments or other fees payable with respect to or arising out of the ground lease and all recorded deed restrictions affecting or relating to the Premises. Any sales, use, excise or transaction privilege tax consequence incurred by landlord because of this lease or in relation to the premises or improvements included therein may be passed on to the tenant either directly if applicable or as "additional rent."

6.3 Protest. Tenant may, at its own cost and expense protest and contest, by legal proceedings or otherwise, the validity or amount of any such tax or assessment herein agreed to be paid by Tenant and shall first pay said tax or assessment under protest if legally required as a condition to such protest and contest, and the Tenant

shall not in the event of and during the bona fide prosecution of such protest or proceedings be considered as in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

6.4 Procedure. Landlord agrees that any proceedings contesting the amount or validity of taxes or assessments levied against the Lease Premises or against the rentals payable hereunder may be filed or instituted in the name of Landlord or Tenant, as the case may require or permit, and the Landlord does hereby appoint the Tenant as its agent and attorney-in-fact, during the term of this lease, to execute and deliver in the name of the Landlord any document, instrument or pleading as may be reasonably necessary or required in order to carry on any contest, protest or proceeding contemplated in this section. Tenant shall hold the Landlord harmless from any liability, damage or expense incurred or suffered in connection with such proceedings.

6.5 Allocation. All payments contemplated by this Section 6 shall be prorated for partial years at the commencement date and at the end of the Lease Term.

7. Use. Subject to any restrictions expressly set forth in the Development Agreement, the Leased Premises may be used and occupied by Tenant for any lawful purpose.

8. Landlord Nonresponsibility. Except as otherwise set forth in the Development Agreement, as may be amended, Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

(a) utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Leased Premises;

(b) disruption in the supply of services or utilities to the Leased Premises;

(c) maintenance, repair or restoration of the Leased Premises;

(d) any other cost, expense, duty, obligation, service or function related to the Leased Premises.

9. Tenant's Responsibility. Tenant shall have the responsibility, obligation, and liability for any and all expenses set forth in ***Section 8*** above. In addition, Tenant shall pay upon demand by Landlord, all charges related to any improvement district liens together with any interest or late charges connected therewith which exist against the Leased Premises or which are imposed upon the Leased Premises during the existence of this Lease. If Landlord, during the term of this Lease, is required to pay any costs or expenses in connection with the ownership of the Leased Premises, Tenant shall indemnify, hold harmless, and immediately reimburse Landlord for any costs or expenses. Landlord during the term of this lease shall not encumber or cause any lien to be imposed upon the Leased Premises except for any cost or expense that is imposed upon the Leased Premises during the normal course of government actions or is imposed by law.

10. Entry by Landlord. Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable prior notice to enter upon the Leased Premises for inspection, except that Landlord shall have no right to enter portions of the Leased Premises which are subject to a sublease or license agreement without the prior written consent of the occupant and the sublessee or licensee, or as otherwise provided by law. Notwithstanding anything contained herein to the contrary, the provisions of this ***Section 10*** shall not be deemed to operate as an express or implied waiver of any rights of privacy of Tenant or any occupant, subtenant or licensee of any portion of the Leased Premises as guaranteed by the United States Constitution.

11. Improvements. Tenant shall have the right to make improvements to the Leased Premises from time to time, without Landlord's consent, except that Tenant shall comply with all applicable requirements of Landlord's building code, and obtain all approvals as necessary pursuant to local, state and federal law. In connection therewith, Landlord shall not be responsible for and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements and any subsequent alterations, additions or other changes made by Tenant, including, without limitation, materialmen's and mechanics' liens. Tenant covenants and agrees that Landlord shall not be called upon or be obligated to make any improvements, alterations or repairs whatsoever in or about the Leased Premises, and Landlord shall not be liable or accountable for any damages to the Leased Premises or any property located thereon. Tenant shall have the right at any time to demolish or substantially demolish improvements located upon the Leased Premises. In making improvements and alterations, Tenant shall not be deemed Landlord's agent and shall hold Landlord harmless from any expense or damage Landlord may incur or suffer.

12. Easements, Dedications and Other Matters. At the request of Tenant, Landlord shall dedicate or initiate a request for dedication to public use of any improvements constructed by Tenant within any roads, alleys or easements and convey any portion so dedicated to the appropriate governmental authority, execute (or participate in a request for initiation by the appropriate commission or department) petitions seeking a change in zoning for all or a portion of the Leased Premises, consent to the making and recording, or either, of any map, plat, condominium documents, or declaration of covenants, conditions and restrictions of or relating to the Leased Premises or any part thereof, join in granting any easements on the Leased Premises, and execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, construction, razing, redevelopment or reconstruction of the Leased Premises.

13. Insurance. During the term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Leased Premises, with limits of liability not less than $5,000,000.00 combined single limit per occurrence for bodily injury and property damage, including coverages for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and shall contain no special limitations on the coverage, scope or protection afforded to Landlord, its officials, employees or volunteers. Tenant's policy of liability insurance shall be primary as to Landlord and any failure of any insurance providers to comply with the

reporting provisions of such policies shall not affect coverage provided to the Landlord. Certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this ***Section 13*** shall be delivered to Landlord in form and with insurers acceptable to Landlord. Each policy shall contain an endorsement prohibiting cancellation or nonrenewal without at least thirty (30) days prior notice to Landlord (thirty (30) days for nonpayment). In the event that any such policy of insurance required to be maintained by Tenant hereunder is terminated, canceled or not renewed by the carrier thereof, and Tenant fails to immediately cause such insurance policy to be reinstated or secure a new policy as of the effective date of cancellation, termination or nonrenewal, then, in that event, in addition to all other rights and remedies available to Landlord hereunder, Landlord shall have the right (without first being required to provide any notice or opportunity to cure to Tenant) to immediately obtain all such required insurance, whereupon the premiums paid therefor by Landlord shall be due and payable by Tenant to Landlord immediately upon Tenant's receipt of written notice from Landlord. Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine subject to Landlord's reasonable approval.

14. Liability; Indemnity. Tenant covenants and agrees that Landlord, its Council, members, officers, employees and agents are to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Leased Premises during the term of this Lease or any extension hereof, or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save harmless Landlord, its Council, members, officers, employees and agents from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring. Landlord agrees that Tenant shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this Section shall survive the expiration or other termination of this Lease.

15. Fire and Other Casualty. In the event that all or any improvements or fixtures on the Leased Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, this Lease shall continue in full force and effect, and Tenant, at Tenant's sole cost and expense, may, but shall not be obligated to, rebuild or repair the same. Landlord and Tenant agree that the provisions of A.R.S. §33-343 shall not apply to this Lease. In the event that Tenant elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be entitled to such proceeds, whether or not Tenant rebuild or repairs the improvements or fixtures.

16. Condemnation.

16.1 Entire or Partial Condemnation. If the whole or any part of the Leased Premises shall be taken or condemned by any competent authority for any public use or purposes during the term of the Lease, this Lease shall terminate with respect to the part

of the Leased Premises so taken, and Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs), in consideration of Tenant's payment for all of the cost of construction of the improvements constituting the Leased Premises, Landlord hereby assigns to Tenant all claims, awards and entitlements relating to the Leased Premises arising from the exercise of the power of condemnation or eminent domain, including, without limitation, any claims for loss of fee title interest in the Leased Premises.

16.2 Continuation of Lease. In the event of a taking of less than all of the Leased Premises, then at Tenant's election, this Lease shall continue in effect with respect to the portion of the Leased Premises not so taken.

16.3 Temporary Taking. If the temporary use of the whole or any part of the Leased Premises or the appurtenances thereto shall be taken, the term of this Lease shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, subject to the applicable provisions of any Leasehold Mortgage.

16.4 Notice of Condemnation. In the event any action is filed to condemn the Leased Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Leased Premises or Tenant's leasehold estate or any part thereof, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Landlord, Tenant and each Leasehold Mortgagee shall each have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Tenant's leasehold interest shall be made without the consent of Tenant and each Leasehold Mortgagee.

17. Acquisition of Fee Title by Tenant. At any time on or after June 1, 2007, Tenant shall have the right to acquire fee simple title to all of the Leased Premises or any specific Parcels (as defined below) therein by providing written notice to Landlord of such election. In addition, if Tenant has not acquired fee simple title to any Parcel within the Leased Premises by the date that is eight (8) years after the issuance by Landlord of the first certificate of occupancy with respect to any building improvements constructed on such Parcel, Landlord shall have the unilateral right to put and convey fee simple title to Tenant by recordation of a deed for such Parcel. The conveyance of fee title to any Parcel shall be at no additional cost to Tenant other than recording costs. At such time as Tenant desires to acquire title to any Parcel, Tenant shall deliver a written notice to Landlord, which notice shall indicate: (a) the legal description of the Parcel or Parcels of the Leased Premises to be conveyed to Tenant (which shall be confirmed by an ALTA survey to be provided by Tenant); and (b) the date by which the closing of the conveyance of such Parcel is desired by Tenant. Landlord and Tenant shall thereupon enter into an escrow with Security Title Agency (Phillis Lapanis, Agent) ("Escrow Agent"), who shall hold

all documents, receive all monies and perform such other acts as are normal and customary for a commercial escrow agent in similar transactions. For the purposes of this Lease, the term "Parcel" shall mean any separate parcel of land created within the Leased Premises by Tenant pursuant to a subdivision plat or lot split which has been prepared by Tenant and approved by Landlord in accordance with Landlord's standard approval procedures.

17.1 Form of Deed. Fee simple title to any Parcel of the Leased Premises to be conveyed by Landlord to Tenant shall be conveyed pursuant to a special warranty deed in the form attached hereto as ***Exhibit "B"*** executed by Landlord, subject only to the Permitted Exceptions described in the Development Agreement and any additional title matters created by Tenant.

17.2 Prorations. All real property taxes and assessments shall be prorated between Landlord and Tenant as of the date of fee title closing and conveyance of any Parcel of the Leased Premises, based upon the latest available information.

17.3 Escrow Fees. Landlord and Tenant shall each pay one-half (1/2) of all escrow fees in connection with the conveyance of any Parcel of the Leased Premises. Tenant shall pay all of the customary escrow fees, recording fees and any premiums required to convert the leasehold title insurance policy issued pursuant to the Development Agreement to an owner's title policy. Landlord and Tenant shall bear their own costs, including attorneys' fees, in connection with the closing of the conveyance of any such Parcel to Tenant.

17.4 Partial Termination of Lease. In the event Tenant acquires title to less than all of the Leased Premises pursuant to the provisions hereof, this Lease shall terminate with respect to the portion of the Leased Premises acquired by Tenant but shall remain in full force and effect as to the portions of the Leased Premises with respect to which fee title has not been conveyed by Landlord to Tenant.

18. Assignment; Subletting.

18.1 Transfer by Tenant. Tenant shall have the right to fully or partially assign or transfer its rights under this Lease (including, without limitation, its rights to acquire fee title to any Parcel pursuant to ***Section 18*** hereof), or to sublease or license all or any part of the Leased Premises, including, without limitation, with respect to any Parcel therein, to any third party without the Landlord's prior consent (in each case, a "Transfer").

18.2 Liability. Each assignee pursuant to a Transfer shall assume all of the obligations of the Tenant under the Lease (but not for liabilities or obligations arising prior to such assignment becoming effective) with respect to the portion of the Leased Premises subleased or assigned to such assignee. Each assignment shall automatically release the assignor from any personal liability in respect of any obligations or liabilities arising under the Lease from and after the date of assignment, and Landlord shall not seek recourse for any such liability against any assignor or its personal assets. Landlord agrees that performance by a subtenant or assignee of Tenant's obligations under this

Lease shall satisfy Tenant's obligations hereunder and Landlord shall accept performance by any such subtenant.

19. Default; Remedies; Protection of Leasehold Mortgagee and Subtenants.

19.1 Default. The failure by Tenant to observe and perform any material provision of this Lease to be observed or performed by Tenant, where such failure continues for one hundred eighty (180) days after written notice thereof by Landlord to Tenant, shall constitute a default and breach of this Lease by Tenant; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such one hundred eighty (180) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

19.2 Remedies. In the event of any such material default or breach by Tenant, which is not cured by Tenant within the applicable period of time set forth in ***Section 19.1*** above, Landlord may at any time thereafter, by written notice to Tenant terminate this Lease, in which case the provisions of ***Section 20*** below shall apply.

19.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and released of record or the Leasehold Mortgagee shall give to Landlord written notice that said Leasehold Mortgage has been satisfied:

(a) No agreement between Landlord and Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent.

(b) If Landlord shall give any notice, demand, election or other communication required hereunder (hereinafter collectively "Notices") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two (72) hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this subsection. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

(c) The Leasehold Mortgagee shall have the right, for a period of sixty (60) days after the expiration of any grace period afforded Tenant to perform any term, covenant, or condition and to remedy any default, by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require to effect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by tenant, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Landlord. The Leasehold Mortgagee shall have the right to enter upon the Leased Premises to give such performance.

(d) In case of a default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably be cured by the Leasehold Mortgagee without taking possession of the Leased Premises, in such Leasehold Mortgagee's reasonable opinion, or if such default is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not serve a notice of lease termination pursuant to ***Section 19.2*** if and so long as:

(i) the Leasehold Mortgagee shall proceed diligently to obtain possession of the Leased Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure such defaults as are reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession); or

(ii) the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Leased Premises pursuant to ***Section 19.3(d)(i)*** above, or to continue to prosecute foreclosure proceedings pursuant to ***Section 19.3(d)(ii)*** above, if and when such default shall be cured.

(b) If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in ***Sections (d)(i) and (ii)*** above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

(c) No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder shall be effective without the prior written consent of any Leasehold Mortgagee.

19.4 Protection of Subtenant. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (a) so long as a subtenant within the Leased Premises complies with the terms and conditions of its sublease, shall not disturb the peaceful possession of the subtenant under its sublease, and in the event of a default by a subtenant, Landlord may only disturb the possession or other rights of the subtenant as provided in the sublease, (b) shall recognize the continued existence of the sublease, (c) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, and (d) shall be bound by the provisions of the sublease, including all options. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or Tenant's right to possession shall be binding upon or effective as against any subtenant without its prior written consent.

20. New Lease.

20.1 Right to Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to any default by Tenant), Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Leased Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease, at the rent and upon the terms, covenants and conditions herein contained, provided:

(a) Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;

(b) Such Leasehold Mortgagee shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Landlord shall have incurred by reason of such termination;

(c) Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Tenant, and shall further remedy any other conditions which Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee; and

(d) The tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Leased Premises as Tenant had under the Lease immediately prior to its termination. Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this ***Section 20*** shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee of

the Leased Premises, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by the termination of this Lease.

20.2 No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to this ***Section 20*** or to cure any default of Tenant referred to above.

20.3 Possession. If any Leasehold Mortgagee shall demand a new lease as provided in this ***Section 20***, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon a guaranty from it reasonably satisfactory to Landlord, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Leased Premises, but not any subtenants actually occupying the Leased Premises or any part thereof.

20.4 Grace Period. Unless and until Landlord has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new lease as provided in this ***Section 20***, or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new leases or subleases with respect to the Leased Premises without the prior written consent of each Leasehold Mortgagee.

20.5 Effect of Transfer. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Tenant to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Landlord under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under this Lease.

21. No Merger. In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the premises. Such leasehold interest, estate and rights of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Leased Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

22. Surrender; Conveyance.

22.1 Conveyance Upon Termination or Expiration. On the last day of the term of this Lease or upon any earlier termination of this Lease, whether under ***Section 20*** above or otherwise, title to the Leased Premises or any Parcel with respect to which fee title has not previously been conveyed shall automatically vest in Tenant or in Tenant's successor (or successors) by Transfer with respect to any Parcel(s), as the case may be.

22.2 Conveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver: (a) a deed conveying all of Landlord's right title and

interest in the Leased Premises to Tenant or Tenant's successor(s) by Transfer with respect to any Parcel(s), as applicable; (b) a memorandum in recordable form reflecting the termination of this Lease; (c) an assignment of Landlord's right, title and interest in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Leased Premises to which Landlord is a party and which are assignable by Landlord, and (d) such other reasonable and customary documents as may be required by Tenant or its title insurer.

22.3 Title and Warranties. The Leased Premises shall be conveyed "AS IS" without representation or warranty whatsoever. Upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Leased Premises created by Landlord and which were not consented to or agreed to by Tenant or authorized by applicable law.

22.4 Expenses. All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance, except Landlord's own attorneys' fees and any commissions payable to any broker retained by Landlord, shall be paid by Tenant or Tenant's successor(s) by transfer, as applicable.

23. Trade Fixtures, Machinery and Equipment. Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Leased Premises by Tenant or Tenant's subtenants may be removed by Tenant or Tenant's subtenants, or their agents and employees, in their discretion, at any time and from time to time during the entire term or upon the expiration of this Lease. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, lessors, chattel mortgages or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Leased Premises by any subtenant setting forth the fact that Landlord waives, in favor of such vendor, Landlord, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, Landlord, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Leased Premises by the vendor, Landlord, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in accordance with the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

24. Estoppel Certificate.

24.1 Landlord shall at any time and from time to time upon not less than ten (10) days prior written notice from Tenant or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any; (b) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if they are claimed; and (c) certifying such other matters relating to this Lease as Tenant or the

Leasehold Mortgagee may reasonably request. Any such statement may be relied upon by any prospective purchaser or encumbrances of all or any portion of the leasehold estate and/or the improvements.

24.2 Landlord's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord (a) that this Lease is in full force and effect, without modification except as may be represented by Tenant; and (b) that there are no uncured defaults in Tenant's performance.

25. General Provisions.

25.1 Attorneys' Fees. In the event of any suit instituted by either party against the other in any way connected with this Lease or for the recovery of possession of the Leased Premises, the parties respectively agree that the successful party to any such action shall recover from the other party a reasonable sum for its attorneys' fees and costs in connection with said suit, such attorneys' fees and costs to be fixed by the court.

25.2 Transfer or Encumbrance of Landlord's Interest. Landlord may not transfer or convey its interest in this Lease or in the Leased Premises during the term of this Lease without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Leased Premises or rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall have no right or power to grant or create mortgages, deeds of trust or other encumbrances superior to this Lease without the consent of Tenant in its sole and absolute discretion. Any mortgage, deed of trust or other encumbrance granted or created by Landlord shall be subject to this Lease, all subleases and all their respective provisions including, without limitations, the options under this Lease and any subleases with respect to the purchase of the Leased Premises.

25.3 Captions: Attachments; Defined Terms.

(a) The captions of the sections of the Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.

(b) Exhibits attached hereto, and addenda and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.

(c) The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. The obligations contained in this Lease to be performed by Tenant and Landlord shall be binding on Tenant's and Landlord's successors and assigns only during their respective periods of ownership.

25.4 Entire Agreement. This Lease along with any addenda, exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Leased Premises and this Lease and the addenda, exhibits and attachments may be

altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing f the Leased Premises are merged in or revoked by this Lease, except as set forth in any addenda hereto and except to the extent of any continuing rights and obligations of the parties under the Development Agreement.

25.5 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

25.6 Binding Effect: Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate section hereof. All of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Arizona.

25.7 Memorandum of Lease. The parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) a Memorandum of Lease, a form of which is attached hereto as ***Exhibit "C"***.

25.8 Notices. All notices under this Lease shall be in writing and (a) delivered personally, (b) delivered by a reputable, nationally recognized overnight courier service, (c) mailed by registered or certified mail, postage prepaid, return receipt requested, or (d) sent by a facsimile transmission (provided that any notices delivered by facsimile transmission shall be followed by a confirming hard copy delivered in any other manner for providing notice as described in the foregoing), to the parties at the following addresses:

If to Landlord:	City of Tempe City Manager's Office 31 East 5th Street Tempe, Arizona 85281
With a copy to:	City of Tempe City Attorney's Office 21 East Sixth Street, Suite 201 Tempe, Arizona 85281
If to Tenant:	SunCor Development Company 80 East Rio Salado Parkway, Suite 401 Tempe, Arizona 85281 Attention: Vice President, Commercial Development

With copies to: SunCor Development Company
80 East Rio Salado Parkway, Suite 401
Tempe, Arizona 85281
Attention: Corporate Counsel
-and-
Jeffrey J. Miller, Esq.
Gammage & Burnham, P.L.C.
Two North Central Avenue, 18th Floor
Phoenix, Arizona 85004

or to such other street address as may be designated by the respective parties in writing from time to time.

26. Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

27. Negation of Partnership. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

28. Leasehold Mortgagee; Further Assurances. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, of allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify, terminate or waive this Lease or any of its provisions without the prior written approval of the Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date and year first written above.

LANDLORD:

ATTEST:

CITY OF TEMPE, an Arizona municipal corporation

_____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

TENANT:

SUNCOR DEVELOPMENT COMPANY,
an Arizona corporation

By_____
Name_____
Title_____

EXHIBIT "A"

LEASED PREMISES

[Intentionally omitted at this time]

EXHIBIT "B"

FORM OF DEED

[Intentionally omitted at this time]

EXHIBIT "C"

WHEN RECORDED, RETURN TO:

Jeffrey J. Miller, Esq.
Gammage & Burnham P.L.C.
Two North Central Avenue
18th Floor
Phoenix, AZ 85004

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into this ___ day of _____, 200___, by and between THE CITY OF TEMPE, an Arizona municipal corporation ("Landlord"), and SUNCOR DEVELOPMENT COMPANY, an Arizona corporation ("Tenant").

1. The parties have entered into and executed that certain Lease dated (the "Lease") whereby Landlord has leased to Tenant, and Tenant has leased from Landlord, the land, all improvements owned by Landlord described in ***Exhibit "A"*** attached hereto and incorporated herein by this reference, together with all rights and privileges appurtenant thereto and all present and future improvements thereon (collectively the "Leased Premises"), for a ninety-nine (99) year term commencing on the date of the Lease and ending at midnight on the day immediately preceding the ninety-ninth (99th) anniversary thereof. The Lease sets forth all terms and provisions relative to the lease of the Leased Premises by Landlord to Tenant. Without limiting the generality of the foregoing, Tenant has the right and option, under Section 16 of the Lease, to acquire fee simple title to all or part of the Leased Premises, as described in said section. Further, Tenant has the right to mortgage its leasehold interest as described in Section 4 of the Lease and there are restrictions on the right of Landlord to transfer or encumber its interest in the Leased Premises or the Lease as described in Section 24 of the Lease.

2. The parties consider the Lease to be a binding agreement between them creating vested rights in and for Tenant superior to the right, title and interest of any party hereafter acquiring any interest in the Leased Premises, including but not limited to purchasers of the Leased Premises or lien holders acquiring any lien or encumbrance interest against the Leased Premises. All persons dealing with the Leased Premises are advised to contact Tenant and Landlord to ascertain the current status of the Lease and Lessee's tenancy rights and leasehold interests in the Leased Premises. The parties are executing and recording this Memorandum, as authorized by the Lease, to provide notice to all persons dealing with the Leased Premises of the binding and vested rights of Tenant and the leasehold interests of Tenant created by the Lease.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease to be effective on the date first written above.

ATTEST:

_____

CITY OF TEMPE, an Arizona municipal corporation

By _____
Name _____
Title _____

APPROVED AS TO FORM:

By _____
Name _____
Title _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 200___, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be _____ of the CITY OF TEMPE, an Arizona municipal corporation:

_____ whom I know personally;

_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;

_____ whose identity I verified on the basis of his/her _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

_____
Notary Public

SUNCOR DEVELOPMENT COMPANY,
an Arizona corporation

By_____
Name_____
Title_____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 200___, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of SunCor Development Company, an Arizona corporation, the Manager of SUNCOR DEVELOPMENT COMPANY, an Arizona corporation:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL: _____
Notary Public