Staff Summary Report

Tempe

Council Meeting Date: 07/10/03 **Agenda Item Number:** 49

SUBJECT: First public hearing to authorize the Mayor to execute agreements conveying the Chase Bankcard Service Center Property and terminating the Ground Lease.

DOCUMENT NAME: 20030710cacc02 **SOUTHWEST QUADRANT DOWNTOWN TEMPE (0403-02-04)** Ordinance No. 2003.23.

SUPPORTING DOCS: Yes

COMMENTS: N/A

PREPARED BY: Steve L. Nielsen, Community Design and Development Director (350-8294)

REVIEWED BY: Dave Fackler, Development Services Manager (350-8530)

LEGAL REVIEW BY: Marlene Pontrelli, City Attorney (350-8120)

FISCAL NOTE: Transfer of the property is based on the conversion of a pre-paid 75-year lease to fee title. The value of the property is such that no additional payment is necessary. Once on the property tax roles, this property will have a positive financial impact on the City and schools.

RECOMMENDATION: That the Mayor be authorized to execute the agreements transferring ownership of the property and placing the Chase Bankcard Facility onto the tax roles.

ADDITIONAL INFO: In July of 1991, the City of Tempe entered into a ground lease with Chase Bankcard Services to facilitate the construction of the downtown campus. taff has been working with Chase on a number of different scenarios, however, Chase ultimately decided to exercise the purchase option and place this property onto the property tax roles.

In order to effectuate this transaction, staff has prepared an Agreement to Convey Premises and Terminate the Ground Lease, a Special Warranty Deed, and a Mutual Termination of Ground Lease document. Once executed, these documents will be recorded in Maricopa County and the property will be placed on the property tax roles effective with the recordation.

ORDINANCE NO. 2003.23

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS TRANSFERRING OWNERSHIP OF THE CHASE BANKCARD SERVICE CENTER PROPERTY AND PLACING THE PROPERTY ONTO THE TAX ROLES.

WHEREAS, in July of 1991, the City of Tempe entered into a ground lease with Chase Bankcard Services to facilitate the construction of the downtown campus; and

WHEREAS, transfer of the Chase Bankcard Services property is based on the conversion of a pre-paid 75-year ground lease to fee title; and

WHEREAS, the City desires to transfer the property back to Chase Bankcard Services in order to place the property back onto the tax roles.

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 Agreement to Convey Premises and Terminate the Ground Lease, a Special Warranty Deed, and a Mutual Termination of Ground Lease, which are on file with City Clerk's Office.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2003.

_____
MAYOR

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

WHEN RECORDED, RETURN TO:

David W. Kreutzberg, Esq.
Squire, Sanders & Dempsey L.L.P.
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004

MUTUAL TERMINATION OF GROUND LEASE

THIS MUTUAL TERMINATION OF GROUND LEASE is made and entered into to be effective January 1, 2003 by and between **CITY OF TEMPE,** an Arizona municipal corporation ("Lessor") and **CHASE BANKCARD SERVICES, INC.,** a Delaware corporation ("Lessee") and is as follows:

W I T N E S S E T H:

WHEREAS, the parties previously executed that certain Ground Lease dated July 11, 1991 (the "Ground Lease") and that certain Memorandum of Ground Lease dated July 11, 1991 and recorded July 25, 1991 as Document No. 91 345265 of the records of the Maricopa County, Arizona Recorder (the "Memorandum") with respect to the real property described therein (the "Premises"); and

WHEREAS, prior to execution of this Termination Lessor has conveyed the Premises to Lessee and, therefore, the parties desire to terminate the Ground Lease and Memorandum and give constructive notice thereof to all parties dealing with the Premises.

NOW, THEREFORE, for Ten and no/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereby agree that the Ground Lease and Memorandum are terminated effective January 1, 2003, and shall be of no further force or effect, except that all liability and indemnification provisions of the Ground Lease relating to periods prior to the termination date shall fully apply notwithstanding the termination of the Ground Lease. From and after the effective date of this Termination, the Premises shall be owned by Lessee free from any effect of the Ground Lease and Memorandum.

This Termination shall be governed by the laws of the State of Arizona. Lessor agrees and confirms that it has not transferred, conveyed or encumbered the Premises or its interest in the Ground Lease in any manner, since execution of the Ground Lease. Each party and the person signing for each party represents and warrants to the other than it has the full right, ability and power to enter into this Termination and each party will indemnify and hold harmless the other from and against any and all liability, losses, costs, damages, claims, expenses and attorneys' fees of any kind incurred as a consequence or result of the breach by the representing

party of the representation and warranty contained in this paragraph. This Termination may be signed in counterparts.

IN WITNESS WHEREOF, the parties have executed this Termination to be effective as of the date set forth above.

LESSOR:

CITY OF TEMPE, an Arizona municipal corporation

By:_____

Name:_____

Title:_____

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM:

By:_____
City Attorney

LESSEE:

CHASE BANKCARD SERVICES, INC., a Delaware corporation

By:_____

Name:_____

Title:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003 by _____ the _____ of The City of Tempe, an Arizona municipal corporation, for and on behalf of said City.

_____
Notary Public

My Commission Expires:

_____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003 by _____ the _____ of Chase Bankcard Services, Inc., a Delaware corporation, for and on behalf of said corporation.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A

LEGAL DESCRIPTION
CHASE BANKCARD SERVICES SITE

Lot 1 of "Centerpoint," a subdivision recorded in Book 369 of Maps, Page 31, records of Maricopa County.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
15089
JAMES R.
CRISTEA
Date Signed 6/24/04
ARIZONA, U.S.A.

AGREEMENT TO CONVEY PREMISES AND TERMINATE GROUND LEASE

THIS AGREEMENT TO CONVEY PREMISES AND TERMINATE GROUND LEASE ("Agreement") is made and entered into to be effective January 1, 2003 (the "Effective Date") by and between the CITY OF TEMPE, an Arizona municipal corporation ("Lessor") and CHASE BANKCARD SERVICES, INC., a Delaware corporation ("Lessee") and is as follows:

W I T N E S S E T H:

WHEREAS, the parties entered into that certain Ground Lease dated July 11, 1991 (the "Ground Lease") relating to the real property described on Exhibit A to the Ground Lease [and which is described on Exhibit A attached hereto and incorporated herein by reference (the "Premises"); and

WHEREAS, the parties also entered into that certain Memorandum of Ground Lease dated July 11, 1991 and recorded July 25, 1991 as Document No. 91-345265 of the records of the Maricopa County, Arizona Recorder (the "Memorandum"); and

WHEREAS, the parties desire for Lessor to convey to Lessee the Premises and for the parties to terminate the Ground Lease, subject to the conditions and in accordance with the terms and provisions of this Agreement as provided below.

NOW, THEREFORE, for Ten and no/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereby agree as follows:

1. Conveyance of Premises and Termination of Ground Lease. Subject to and upon satisfaction of the Conditions described in Paragraph 2 below, Lessor and Lessee agree for Lessor to convey the Premises to Lessee and for the parties to terminate the Ground Lease, both with a stated effective date as of the Effective Date of this Agreement. To accomplish these transactions, the parties will execute, acknowledge and deliver to Escrow Agent, as defined in Paragraph 2 below, that certain Special Warranty Deed for the Premises in the form attached hereto as Exhibit B which is incorporated herein by this reference (the "Deed") and that certain Mutual Termination of Ground Lease in the form attached hereto as Exhibit C which is incorporated herein by this reference (the "Termination").

2. Conditions Precedent. The parties' agreements and obligations under this Agreement are expressly subject to the satisfaction of the following conditions (collectively, the "Conditions" and each a "Condition"):

   A. Approval of this Agreement, the exhibits attached hereto and the transactions described herein by the City Council of Lessor at a formal City Council meeting.

B. Lessee's receipt of a Commitment for Title Insurance (the "Commitment") from Transnation Title Insurance Company and/or such other or additional title insurance companies as Lessee may approve (collectively the "Title Insurers") providing an amount of insurance selected by Lessee, with the Commitment to (i) have no requirements that have not been satisfied and (ii) have only those title exceptions which have been approved by Lessee, and (iii) be otherwise approved by Lessee. Lessee shall be solely responsible for all costs of the Commitment and any title insurance policies purchased by Lessee ("Title Policies").

If the Conditions have not been satisfied by September 1, 2003, then at any time thereafter until the Conditions have been satisfied, either party may terminate this Agreement by giving written notice thereof to the other party.

3. Closing Procedures. Upon satisfaction of the Condition described in Paragraph 2A above, the parties will proceed to execute, acknowledge and deliver to Transnation, as Escrow Agent ("Escrow Agent"), the Deed and Termination. By letter, the parties will instruct Escrow Agent to not record, release or otherwise utilize the Deed or Termination unless and until the Title Insurers are unconditionally committed to issue the Title Policies described in the Commitment immediately following recordation of the Deed and Termination, in that order, whereupon Escrow Agent shall cause the recordation of the Deed and the Termination. Lessee shall be solely responsible for all escrow charges of Escrow Agent.

4. General Provisions.

A. Attorneys Fees. In the event of any suit instituted by either party against the other in any way connected with this Agreement, the parties agree that the successful party in 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.

B. Entire Agreement. This Agreement along with any exhibits and attachments hereto constitutes the entire agreement between Lessor and Lessee with respect to the subject matter of this Agreement and this Agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Lessor and Lessee agree that all prior or contemporaneous oral agreements between and among themselves and their agents and representatives relative to this Agreement or the subject matter hereof are merged in or revoked by this Agreement.

C. Binding Effect; Choice of Law. All of the provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by the laws of the State of Arizona.

D. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed by United States certified or registered mail, return receipt requested, postage prepaid, as follows:

If to Lessor:
City of Tempe
Development Services Department
P. O. Box 5002
132 East Sixth Street, Suite 201
Tempe, Arizona 85280
Attention: Steve Nielsen

With a copy to:
City of Tempe
City Attorney's Office
P. O. Box 5002
21 East Sixth Street, Suite 201
Tempe, Arizona 85280
Attention: Marlene A. Pontrelli City Attorney

If to Lessee:
Chase Bankcard Services, Inc.
c/o JP Morgan Chase & Company
560 Mission Street, 9th Floor
San Francisco, California 94105
Attention: David Dunson

With a copy to:
David W. Kreutzberg, Esq.
Squire, Sanders & Dempsey L.L.P.
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004

or to such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communications hereunder shall be the date of personal delivery or 72 hours after the postmark on the certified or registered mail, as the case may be.

E. Waiver. No covenant, term or condition or the breach thereof shall be 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.

5. No Conveyance or Encumbrance by Lessor. Lessor agrees and confirms that it has not transferred, conveyed or encumbered the Premises or its interest in the Ground Lease in any manner, both before and after the January 31, 2002 date described in Paragraph 24(b) of the Ground Lease.

6. Premises on Tax Rolls. Lessee agrees that the Premises will be on the real property tax rolls for the 2003 tax year and all subsequent tax years. Therefore, there will be no

further taxation of the Premises after 2002 under the Government Property Lease Excise Tax, A.R.S. §42-6201 et seq.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date set forth above.

LESSOR:

CITY OF TEMPE, an Arizona municipal corporation

By:_____

Name:_____

Title:_____

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM:

By:_____
City Attorney

CHASE BANKCARD SERVICES, INC., a Delaware corporation

By:_____

Name:_____

Title:_____

WHEN RECORDED, RETURN TO:

David W. Kreutzberg, Esq.
Squire, Sanders & Dempsey L.L.P.
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004

EXEMPT from the requirement for an Affidavit per 11-1134A3

SPECIAL WARRANTY DEED

For consideration of Ten and no/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the undersigned, **CITY OF TEMPE,** as Arizona municipal corporation (**"Grantor"**) does hereby convey to **CHASE BANKCARD SERVICES, INC.**, a Delaware corporation that certain real property described on Exhibit A attached hereto, including all improvements thereon and all appurtenances thereto (the **"Property"**).

Subject to taxes and assessments, reservations and all easements, rights-of-way, covenants, conditions, restrictions, liens and encumbrances of record or that would be shown by an accurate survey, Grantor does warrant and agree to defend the title against its acts and none other.

Dated _____, 2003.

CITY OF TEMPE, an Arizona municipal corporation

By_____
Its_____

ATTEST:

By_____
City Clerk

APPROVED AS TO FORM:

By_____
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

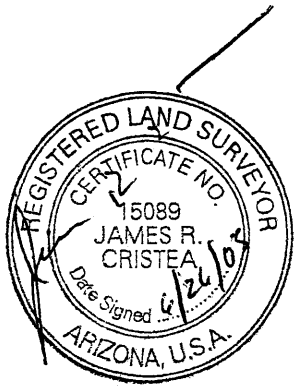
The foregoing instrument was acknowledged before me this ____ day of _____, 2003 by _____ the _____ of **THE CITY OF TEMPE**, an Arizona municipal corporation, for and on behalf of said City.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A

LEGAL DESCRIPTION
CHASE BANKCARD SERVICES SITE

Lot 1 of "Centerpoint," a subdivision recorded in Book 369 of Maps, Page 31, records of Maricopa County.