

1 **WHEN RECORDED, RETURN TO:**
2 Lila Madden (_____)
3 ONE STOP SHOP RECORDS
4 CITY OF SCOTTSDALE
5 7447 East Indian School Road, Suite 100
6 Scottsdale, AZ 85251



7 **PURCHASE AGREEMENT**
8 **IN-LIEU PARKING CREDITS**
9 **&**
10 **PROMISSORY NOTE**

11 Q.S. 17-45
12 Account No. _____
13 Permit No. _____

14 THIS AGREEMENT is made this _____ day of _____, 200____, between the
15 City of Scottsdale, an Arizona municipal corporation (City), and LUCID ENTERTAINMENT
16 a(n) CALIFORNIA resident corporation LLC/LP/Partnership (Owner).

17 RECITALS:

18 A. Owner holds a(n) 100% interest in property located at
19 4426 N SADDLEBAG TRAIL, 85251, Maricopa County Assessor parcel no(s)
20 173-41-146, further described on the map attached as Exhibit A.

21 B. This property is also the subject of the following cases:

22 _____ ZN _____; 53 DR 2002; _____ UP _____ List most recent case of each
23 type/category. (Ex. 4 ZN 81 # 3, not 4 ZN 81 # 1, 4 ZN 81 # 2, & 4 ZN 81 # 3.)
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1 C. In accordance with Section 9.108C, Zoning Ordinance of the City of Scottsdale (attached as
2 Exhibit B), Owner wishes to purchase in-lieu parking credits from the City to satisfy parking
3 requirements.

4
5 D. City maintains public parking facilities in the Downtown district, and makes available in-lieu
6 parking credits, for a fee payable either in a lump sum or one of three installment programs, as
7 described in Resolution 3506, attached as Exhibit C.

8 E. The purpose of this Agreement is to set forth the terms under which the Owner will obtain parking
9 space credits, or fractional portions thereof, upon payment to the City.

10
11 AGREEMENT:

12
13 NOW, THEREFORE, in consideration of the promises and agreements set forth
14 hereinafter, and other valuable consideration, the receipt and sufficiency of which are hereby
15 acknowledged, the City and the Owner agree as follows:

16
17 1. Recitals. The recitals set forth above are hereby incorporated by this reference.

18
19 2. Payment Options. Owner has selected the one payment option checked below:

20 4 SPACES →

21 (a) Lump sum payment for permanent in-lieu parking credits:

22 Owner shall pay to the city a lump sum of \$ 40,576.68

23 (_____ dollars) for each in-lieu parking space required by ordinance.

24 Where a fractional number of parking spaces is required, the fraction shall be
25 calculated to the nearest tenth and the fee shall be assessed on a pro rata basis.
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(b) Installment payment for permanent in-lieu parking credits:

Owner shall pay to the city a deposit of \$ _____
(_____ dollars) and a monthly sum of \$ _____
(_____ dollars) for each in-lieu parking space required by ordinance for a
period of _____ months. Where a fractional number of parking spaces is
required, the fraction shall be calculated to the nearest tenth and the fee shall be
assessed on a pro rata basis.

(c) Installment payment for impermanent in-lieu parking credits:

Owner shall pay to the city a monthly sum of \$ _____
(_____ dollars) for each in-lieu parking space required by ordinance for
a period of _____ months. Where a fractional number of parking spaces is
required, the fraction shall be calculated to the nearest tenth and the fee shall be
assessed on a pro rata basis. Owner acknowledges that his approved use which
creates the need for this agreement must stop on the _____ day of
_____, 200____, unless one of the following events occurs: 1) this
agreement is extended; 2) alternate parking spaces are provided to the City consistent
with any in lieu parking regulations in effect in at the time; or 3) owner demonstrates,
to the satisfaction of city staff, that the use giving rise to the need for the impermanent
in-lieu parking spaces has ceased.

(d) Installment for an impermanent evening-use parking credit:

Owner shall pay to the city a monthly sum of \$ _____
(_____ dollars) for each in-lieu parking space required by ordinance for
a period of _____ months. Where a fractional number of parking spaces is
required, the fraction shall be calculated to the nearest tenth and the fee shall be

1 assessed on a pro rata basis. Owner acknowledges that his approved use which
2 creates the need for this agreement must stop on the _____ day of
3 _____, 200____, unless one of the following events occurs: 1) this
4 agreement is extended consistent with any in lieu parking regulations in effect in at
5 the time; 2) alternate parking spaces are provided to the City consistent with any in
6 lieu parking regulations in effect in at the time; or 3) owner demonstrates, to the
7 satisfaction of city staff, that the use giving rise to the need for the impermanent in-
8 lieu parking spaces has ceased.

9 3. Owner seeks to purchase in-lieu parking credits for _____ spaces. Owner shall
10 pay \$ _____ (_____ dollars) to the City at the
11 time of issuance of any construction permit, as described in subsection 4a below. In
12 addition to any lump sum payments or deposits, if Owner has chosen installment payment
13 option 2b, 2c or 2d, Owner agrees to pay \$ _____
14 (_____ dollars) to the City every month. Owner shall begin making payments
15 to City at the time of issuance of any construction permit for the property described in
16 Paragraph A, and continue making monthly payments until Owner has made all payments
17 required under this Agreement.

18 4. Payment Procedure.

19 a. Owner shall pay lump sums, deposits, and first month's payment for installment
20 payment options (where applicable) prior to obtaining any type of construction
21 permit.

22 b. Thereafter, owner shall make installment payments on or before the 25th day of
23 each succeeding month until paid in full. Payments may be made via mail or in
24 person, at Customer Service, Suite 110, 7447 East Indian School Road,
25 Scottsdale, Arizona, 85251.

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c. Owner shall indicate with each payment that the payment shall be deposited in Account No. 500 00500 24129, which has been created to fund downtown parking projects. (Writing the account number on the face of the check is acceptable.)

5. Nonpayment. In the event of nonpayment of any part or installment of funds due to City:

- a. At the sole option of the City, and without notice, the entire *outstanding balance* shall become immediately due and payable. Owner shall pay to City the unpaid balance, plus interest, at a rate of 10% per year compounded monthly, until the entire amount plus accrued interest is paid in full to City; and
- b. Owner and his property shall be subject to the civil and criminal sanctions provided in Section 1.1400 and other applicable sections of the Scottsdale Zoning Ordinance; and
- c. City may withhold issuance of any staff approvals or construction permits on the property described on Exhibit A, until Owner brings the account current, including any interest that has accrued under the terms of this agreement; and
- d. Owner is subject to all other remedies available at law and in equity for breach of this Agreement.

6. Acknowledgement and Consent and Promise to Pay. By his or her signature below, Owner acknowledges and consents to all provisions in the agreement, including any penalties for non-payment described in Section 5, above. In addition, Owner jointly and severally promises to pay the amounts set forth in Paragraphs 2 and 3 of this Agreement, at the location set forth in Paragraph 4, payable as set forth in this entire Agreement.

7. Notices.

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a. Any notice to be given hereunder shall have been properly given when received by the Zoning Administrator or by Owner, as the case may be, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows:

As to City:

(PRINT NAME)
Zoning Administrator
7447 East Indian School Road
Suite 125
Scottsdale, AZ 85254

As to Owner:
RYAN JOQUE

(PRINT NAME)
DIR OF OPERATIONS (TITLE)
4426 N SADDLEBAG (ADDRESS)
SCOTTSDALE, 85251

or as addressed to such other address as the party to receive such notice shall have designed by another notice given as required by this paragraph.


8. Miscellaneous:

a. Amendment. This Agreement may be amended only by a written document executed by both parties hereto.

b. Assignment. No portion of this Agreement shall be assignable without City consent, except the rights of Developer under this Agreement may be transferred or assigned, in whole or in part, by written instrument to any subsequent owner of all or any portion of the Property without further consent from the City. Developer must give notice to the City of any assignment, except of an interest in the Property, at least ten days prior to the effective date of the assignment.

1 c. No Waiver. No delay in exercising any right or remedy shall constitute a waiver
2 thereof, and no waiver by the Parties of the breach of any provision of this
3 Agreement shall be construed as a waiver of any preceding or succeeding breach of
4 the same or of any other provision of this Agreement.

5 d. Arizona Law. This Note and Agreement is governed by the laws of the State of
6 Arizona.

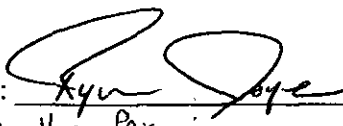
7  e. Attorney Fees. In the event the City files a lawsuit to enforce payment of this Note
8 and Agreement, Owner agrees to pay an additional sum for reasonable attorney fees
9 if so ordered by the court.

10
11 IN WITNESS WHEREOF, the parties have executed this Agreement as of the day
12 and year written above.

13
14 CITY OF SCOTTSDALE, AN ARIZONA
15 MUNICIPAL CORPORATION

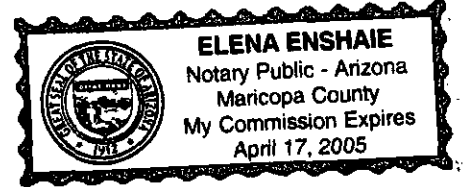
OWNER:

16
17 By: _____
18 Zoning Administrator

By:  _____
19 Its: Vice Pres
20 (Title)

1 County of Maricopa)
2 State of Arizona) ss.
3)

4 This instrument was acknowledged before me this 18th day of March,
5 2004, by Ryan M. Joque, the Vice President of Lucid Entertainment
6 a(n) CALIFORNIA (corporation, partnership/company) for and on behalf of the
7 (corporation/partnership/company).



8 In witness whereof I hereunto set my hand and official seal.

9 [Signature]
10 _____
11 NOTARY PUBLIC

11 My Commission Expires April 17, 2005

12 OR

13
14 County of Maricopa)
15 State of Arizona) ss.
16)

17 This instrument was acknowledged before me this _____ day of _____,
18 200__, by _____.

19 In witness whereof I hereunto set my hand and official seal.

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21 _____
22 NOTARY PUBLIC

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24 My Commission Expires _____
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EXHIBIT A

MAP

Please substitute a map of the property here and label it Exhibit A.

To be added to Agreement.

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EXHIBIT B

CITY OF SCOTTSDALE ZONING ORDINANCE § 9.108C

Please add a copy of the City of Scottsdale Zoning Ordinance § 9.108C here and label it Exhibit B.

To be added to Agreement

requiring cessation of a use served if access to the leased parking is terminated without substitution of parking meeting the requirements of this ordinance.

C. *Regulations for remote parking.* Remote parking under the same ownership as its generating use may be permitted subject to the approval of the City Manager or designee. In permitting remote parking, the City Manager or designee may consider factors including, but not limited to, the following:

1. The proximity of generating use to the remote parking shall be within six hundred (600) feet.
2. The presence of a continuous sidewalk or path system serving the area;
3. The siting and orientation of the generating use to the sidewalk or path;
4. Connections between the remote parking area and generating use via sidewalk, covered walkway, or street crossing;

In addition, the owner shall record restrictive covenants running with the land on both the generating use and parking properties, with the city as a third party signator, giving notice that the generating use cannot continue if the parking use is discontinued. The form of said covenants shall be approved by the city attorney.

D. *Carpool, vanpool, and other high occupancy vehicles (HOVS).* Parking designated for carpools, vanpools, and other high occupancy vehicles shall be located with priority over all other vehicular parking except for mobility impaired accessible parking.

E. *Location of parking in a pedestrian overlay district.* In type 1 areas of the pedestrian overlay district, as identified by this ordinance and the zoning map, all parking shall be accessed from an alley or side street. There shall be no curb cuts on pedestrian streets.

(Ord. No. 2736, § 1, 3-7-95)

Sec. 9.108. Special parking requirements in districts.

A. *Planned regional center.* The provisions of article IX shall apply with the following exceptions:

1. There shall be no parking required for courtyards or other open spaces, except that those portions thereof used for sales or service activities shall provide parking as specified elsewhere by this ordinance.
2. Parking for dwellings shall be covered.

B. *Western theme park district.* The provisions of article IX shall apply with the following exceptions:

1. The number of spaces required in table 9.2 may be proportionately reduced by the provision of bus parking. Bus parking provided in lieu of automobile parking spaces may account for a maximum reduction of fifty (50) percent of the spaces required in table 9.2.
2. If any bus parking is provided in lieu of automobile parking spaces, one (1) overflow automobile parking space shall be provided for each twenty-five (25) persons for whom seating is provided as indicated on the approved development plan.

C. *Downtown (D) districts.*

1. *Parking requirements.* Parking capacity shall satisfy the requirements of the land uses served, and can be provided by any of the following options: on-site parking, remote parking, parking in-lieu payments, or evening-use parking credits, these standards shall not be subject to variances.
2. *Parking in-lieu payments.* A parking requirement for nonresidential uses may be met by a parking in-lieu payment to the downtown parking fund and shall be used for the operation of a downtown parking program which may include, but is not linked to, the provision and maintenance of public parking spaces, the operation of tram shuttle services linking public parking facilities and downtown activity centers, and services related to the manage-

ment and regulations of public parking. The city shall not be obligated to provide more than twenty (20) such spaces without the express approval of the City Council. Fractional parking requirements may be paid for on a pro rata basis. The amount of the in-lieu fee shall be established by the City Council, and may include penalties for late payment. Parking in-lieu credits may be purchased either as permanent parking credits, or as impermanent parking credits in accordance with the following:

- a. *Permanent parking in-lieu credits:* parking space credits purchased under this permanent in-lieu option shall be permanently credited to the property. These parking credits may be purchased either by installment payments to the city over a fixed period of time, or by payment of a lump sum fee.

Under the lump sum purchase option, purchase shall be made by payment the total fee in the manner described herein. The installment purchase option shall require an initial cash deposit and a written agreement binding the applicant to make subsequent monthly installment payments. The installment purchase agreement shall not create a payment term longer than fifteen (15) years, and shall include payment procedures adopted by the planning and community development department. Payment of the lump sum in-lieu fee or payment of the installment purchase deposit and execution by both parties of the installment purchase agreement, shall be completed prior to the issuance of a building permit of one is required, or to the issuance of a certificate of occupancy.

- b. *Monthly parking in-lieu credits:* Parking credits obtained by payment of a monthly in-lieu fee under this option are only for the term of the activity

requiring the parking and are not permanently credited to the property. Properties must first possess a minimum of four and one-half (4½) parking spaces per one thousand (1,000) square feet of net floor area of building, and may thereafter subscribe for additional required parking spaces by paying the monthly in-lieu fee. Payments shall be made in accordance with a written agreement and procedures adopted by the planning and community development department. The first monthly payment shall be made prior to issuance of a certificate of occupancy for the business for whose benefit the monthly payments are made.

3. *FAR bonus for underground and on-site structure parking.* A maximum FAR bonus of three-tenths (0.3) is available subject to the following:
- In a type 1 area, eighty (80) percent of the required parking is in a shared structure parking.
 - In a type 2 area, ninety (90) percent of the required parking is underground.

Where shared structure parking is underground parking provided by a project is less than stipulated above, the FAR bonus shall be adjusted downward on a pro rata basis.

Parking in-lieu payments may be utilized to satisfy shared structure parking or underground parking incentives on a space per space basis.

4. *Evening-use parking.* Establishments conducting business between the hours of 5:00 p.m. and 3:00 a.m. qualify for evening-use parking credits for parking spaces identified to be vacant during those hours, subject to the following requirements:
- Application for evening use parking credits shall be through the use permit process and shall be made by the

property owner on behalf of the establishment requiring the parking credits.

- b. Before qualifying for evening use parking credits, a property must possess a minimum of four and one-half (4½) parking spaces per one thousand (1,000) square feet of net building area, on-site or by one (1) of the means provided for in paragraph c.(3) below.
- c. Evening-use parking credits may be granted for spaces provided from one (1) or more of the following sources:
 - (1) Same-site: Parking spaces on the same property which are unutilized during the designated evening hours.
 - (2) Adjacent or nearby site: Unutilized parking spaces on adjacent or near-by properties which meet the requirements of this section and 9.107.C. and D.
 - (3) Public on-street and on-site spaces: After exhausting available "same-site" evening-use parking credits, additional credits may be sought using unutilized public on-street and on-site parking spaces, subject to the following requirements:
 - (a) The use permit application shall be accompanied by an analysis, acceptable to the City Manager or his designee, establishing the availability and location of the unutilized public parking spaces for which evening-use parking credits are being sought.
 - (b) The maximum number of evening-use parking credits is limited to twenty (20) parking spaces or to fifty (50) percent of the "base minimum" parking re-

quirement ascribed to the property, whichever is less, for which a monthly fee established by City Council will be charged and deposited in a downtown parking fund.

- d. The application shall provide a plan acceptable to the City Manager or his designee for the security and maintenance of the parking areas and their environs in a neat and orderly condition, and shall demonstrate that the areas meet the lighting requirements of section 7.600.

(Ord. No. 2736, § 1, 3-7-95; Ord. No. 3225, § 1, 5-4-99)

Sec. 9.200. OFF-STREET LOADING.

Sec. 9.201. General regulations.

All buildings hereafter erected or established shall have and maintain loading space(s) as determined by Development Review [Board] approval as outlined in article I, section 1.900 hereof and subject to conditions herein.

- A. No part of an alley or street shall be used for loading excepting areas designated by the city.
- B. No loading space that is provided in an approved development review shall hereafter be eliminated, reduced or converted, unless equivalent facilities are provided elsewhere.
- C. All loading space shall be surfaced and maintained subject to the standards of the public works department.

(Ord. No. 3225, § 1, 5-4-99)

EXHIBIT C

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RESOLUTION NO. 3506

Please add a copy of the City of Scottsdale Resolution No. 3506 here and label it Exhibit C

To be added to Agreement

RESOLUTION NO. 3506

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AMENDING RESOLUTION NO. 3334 BY PROVIDING A FEE FOR EVENING-USE PARKING CREDITS IN THE DOWNTOWN DISTRICT.

WHEREAS, Ordinance No. 455 of the City of Scottsdale adopted zoning regulations for the City; and

WHEREAS, Section 5.3071 of Ordinance No. 455 provides for a cash payment in-lieu of providing on-site parking in the Downtown District, and also provides for evening use parking for establishments in the Downtown District open only during evening hours; and

WHEREAS, the fee for parking in-lieu payment was set for \$7,500.00 by adoption of Resolution 2594, amended to include yearly costs adjustment through Resolution No. 2607, and further amended in Resolution 3334, to provide the installment payments for permanent in-lieu parking credits; and

WHEREAS, the City Council wishes to provide a fee for Evening-Use Parking Credits;

NOW, THEREFORE, LET IT BE RESOLVED by the Council of the City of Scottsdale, Arizona, that Resolution No. 2594 is hereby amended to read as follows:

Section 1: The lump sum fee for permanent in-lieu parking credits is hereby established as \$7,500 per parking space. Where a fractional number of parking spaces is required, the parking fraction shall be calculated to the nearest tenth, and the fee assessed on a pro-rated basis.

Section 2: The installment fee for a permanent in-lieu parking credit is hereby established to require a minimum \$500 deposit, and a subsequent payment of at least \$71.00 per month for a period not to exceed 15 years. Where fractional spaces are required, the parking credit shall be calculated to the nearest tenth, and the fee assessed on a prorated basis.

Section 3: The monthly fee for impermanent in-lieu parking credits is hereby established as \$62.00 per parking space. Where a fractional number of parking spaces is required, the parking fractions shall be calculated to the nearest tenth, and the fee assessed on a prorated basis.

SECTION 4: THE MONTHLY FEE FOR EVENING-USE PARKING CREDITS IS HEREBY ESTABLISHED AS \$20.00 PER MONTH PER PARKING SPACE.

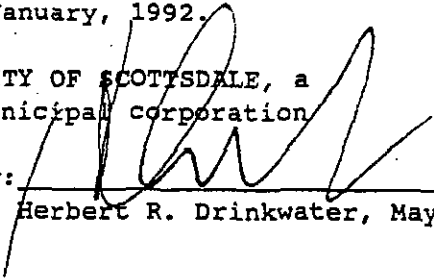
Section 4.5: The parking fees shall be recalculated every first day of January to reflect yearly cost adjustments based upon the Consumer Price Index (CPI).

EXHIBIT C

Section 5_6: Downtown Development Fund is hereby established to provide for the collection of parking in-lieu payments and the disbursement of funds for the development and management of downtown parking facilities.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona, this 21st day of January, 1992.


CITY OF SCOTTSDALE, a
municipal corporation

By: 
Herbert R. Drinkwater, Mayor

ATTEST:


Sonia Robertson, City Clerk

APPROVED AS TO FORM:


Richard W. Garnett, III, City Attorney